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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: April 22, 2014

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RFA(OS) 157/2013

M/S GAMMON INDIA LIMITED

..... Appellant

Represented by: Mr.Abhindra Maheshwari, Advocate

versus

T L VERMA & CO (P) LTD

..... Respondent

Represented by: Mr.Sunil Malhotra, Advocate
with Mr.Amit Sanduja,
Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

CHIEF JUSTICE (Oral)

1. The respondent filed a suit under Order XXXVII of the Code of Civil Procedure against the appellant, pleading in paragraphs 3, 4, 5 6 and in paragraphs 11 and 12 of the plaint as under:-

“3. The Defendant namely M/s Gammon India Limited, Company Registered under the provisions of the Companies Act, 1956 and having its Registered office at Gammon House, Veer Savarkar Marg, P.O. Box No.9129, Prabhadevi, Mumbai-400025 Also at, 2nd Floor, Ahluwalia Chambers, 16/17, LSC, Madangir, New Delhi-110062.

4. The defendant are a Civil Engineering Construction Company executing works pertaining to construction of bridges, ports, power stations, dams, high-rise structure and other civil works in India and abroad. The defendant had undertaken certain works at Jodhpur and MAP Housing Projects at Alwer and Jaisalmer (collectively referred to hereinafter as the “works”)

5. That the Defendant had approached the plaintiff for supply of Glass and related materials \9referred to hereinafter as the “materials” for incorporation in the working being executed by the Defendant.

6. That the plaintiff had agreed to supply the requisite quantity of materials as required by the Defendant. Accordingly, several Purchase/Supply Order were placed on the Plaintiff by the Defendant from time to time for the supply of materials.

11. The plaintiff say that separate Purchase/Supply Order were issued by the Defendant for the materials to be supplied at the various sites and therefore, the plaintiff is dealing with the Purchase/Supply Orders site-wise herein below.

12. JODHPUR SITE:

- a. That the Defendant has issued Purchase Order bearing No.NKM/08/P.49 dated 24.12.2008 for the supply of Plain Glass and Figured Glass as per specifications stipulated therein. The estimated quantity of the materials to be supplied along with the agreed rates for the same was also specified therein.
- b. That the Defendant had placed another Purchase Order bearing No.NKM/08/P.50 dated 27.12.2008 on the plaintiff for the supply of Plain glass and Figured glass as per the specifications specified therein.
- c. Immediately on receipt of the said purchase orders dated 24.12.2008 the plaintiff made all necessary arrangements for supply and delivery of the materials at the site as per the terms thereof.
- d. That a consignment consisting of 8 cases of glass (plain and figured) was sent by the plaintiff through Satnam Road Lines, Transporters and Contractors, as evidenced by Lorry Receipt No.2601. It is further submitted that the Plaintiff had raised an invoice dated 25.12.208 on the Defendant in

respect of the materials dispatched by the plaintiff for an amount of ₹3,48,818/-. It is further submitted that materials had been delivered and received by the Defendant at site as per the terms of the purchase order, the defendant at site as per the terms of the purchase orders, the defendant have not made payments to the plaintiff against the Invoice dated 25.12.2008 till date.

- e. That in addition to the purchase order placed on the plaintiff for supply of Glass, the defendant had also requested the plaintiff to fix the glass delivered at site. The plaintiff had sent 8 cases of glass (plain and figured), 100 glass strips bundies and 50 bags of glass putty at Jodhpur sites as evidenced by the Lorrey Receipt No.2604 of Satnam Road Lines dated 29.12.2008. A perusal of the said document would reveal that the value of the materials transported from Chandigarh to Jodhpur was ₹4,02,482/-. The plaintiff says that the plaintiff had raised an Invoice dated 29.12.208 on the defendant for an amount of ₹4,02,482/- for the supply of glass (plain and figured), glass strips and glass putty. The plaintiff say that the materials dispatched on 29.12.208 were delivered at the defendant site at jodhpur ad have been accepted by the Defendant, however, no payments have been released by the defendant against the said Invoice dated 29.12.2008 till date in spite of several reminders.*
- f. That the plaintiff had also sent another consignment through Satnam Road Lines, consisting of 24 cases of Glass (Plain) and Figured) and 100 bags of glass putty to the Defendant as evidenced by the Lorry Receipt No.2620 dated 16.01.2009. The plaintiff say that the endorsement of the defendant on the lorry receipt clearly reveals that the defendant have received the said consignments at the site Jodhpur on 19.01.2009 valued at ₹4,76,990/-. That the plaintiff had raised an invoice dated 16.01.2009 on the defendant for an amount of ₹4,76,990/- being the value of the materials delivered at the Jodhpur site as confirmed by the Lorry Receipt dated 16.01.2009 raised an Invoice dated 16.01.2009 on the Defendant for an amount of ₹4,76,990/- being the value of the materials delivered at the Jodhpur*

site as confirmed by the Lorry Receipt dated 16.01.2009. The plaintiff say that the defendant have failed to make payments against the said Invoice till date in spite of several reminders.

- g. That the plaintiff had also raised an Invoice dated 02.03.2009 on the Defendant for an amount of ₹1,31,036/- towards glass fixing charges. The plaintiff say that the defendant have not released any payments against the said invoice till date in spite of repeated request and reminders.*
- h. That the plaintiff had supplied and delivered materials to the defendant at the Jodhpur site in accordance with the terms of the purchase order issued by the defendant, however, no payments have been released by the defendant against any of the Invoices raised by the Plaintiff till date. The plaintiff say that no complaints regarding the quality or quantity of the materials delivered at the Jodhpur site was raised by the defendant.*

ALWAR SITE:

- i. That the Defendant had issued Supply Order bearing No.SD/08/Alwar/102 dated 26.12.2008 on the plaintiff for the supply of 4000sqm. Of 4 mm plain glass at the agreed rate of ₹232/- per sqm for the MAP Housing Projects at Alwar being executed by the defendant in accordance with the terms and conditions stipulated therein. In accordance with the supply order issued by the defendant, the plaintiff say that the plaintiff had dispatched a consignment consisting of 6 cases of glass valued at ₹3,33,412/- from Chandigarh to the Defendant site at Alwar through Satnam Road Lines, Transporters & Contractors, as evidenced by the Lorry Receipt dated 02.01.2009 of Satnam Road Lines. The plaintiff say that the materials were delivered to the Defendant at Alwar in accordance with the supply order. The defendant have confirmed receipt of the materials on 04.01.2009 as evidenced by the endorsement of the defendant on the said Lorry Receipt. The plaintiff say that the plaintiff had raised an Invoice dated 02.01.2009 on the defendant for an amount of ₹3,33,412/- being the value of*

the materials supplied by the plaintiff. It is further submitted that though the materials have been delivered to the defendant at the Alwar site as per the terms of the supply order, the defendant have not released any payments to the plaintiff against the said invoice till date. The plaintiff say that such failures on the part of the defendant constitute materials breach of the terms of the agreement between the parties.

- j. That the materials forming part of the consignment was delivered to the defendant on 20.01.2009 at Alwar site and the same has been accepted by the defendant as evidenced by the endorsement of the defendant on the said Lorry Receipt. Against the materials supplied by the plaintiff, the plaintiff had raised an invoice dated 19.1.2009 on the defendant for an amount of ₹2,70,029/- being the value of the materials supplied by the plaintiff and as evidenced by the Lorry Receipt dated 19.0.1.2009. It is further submitted that no payments have been released by the defendant against the said Invoice till date. The non-payment of the legitimate dues of the plaintiff was contrary to the terms of the agreement between the parties and was unjustified and unlawful.*
- k. That the plaintiff had also sent another consignment consisting of 12 cases of plain glass valued at ₹4,32,198/- to the defendant from Chandigarh to Alwar through Chandigarh Faridabad Transport Company (Regd.), Fleet Owners & Transport Contractors, as evidenced by the Lorry Receipt bearing No.039 dated 24.01.2009. It is further submitted that the materials forming part of the consignment was delivered to the defendant at the Alwar site on 25.01.2009 and the same has been accepted by the defendant as confirmed by the defendant vide its endorsement on the said receipt. As the plaintiff had supplied the materials as required by the defendant, the plaintiff had raised an invoice dated 24.01.2009 on the defendant for an amount of ₹4,32,198/- being the value of the materials supplied by the plaintiff and as evidenced by the Lorry Receipt dated 24.01.2009.*

- l. The defendant had also issued another supply order bearing No.SD/08/Alwar/111 dated 02.02.2009 for the supply of 800 sqm of 4 mm plain glass at the rate of ₹232 per sqm for the MAP Housing Projects at Alwar being executed by the Defendant in accordance with the terms and conditions stipulated therein. Pursuant to the supply order dated 02.02.2009 issued by the defendant, the plaintiff had also supplied 4 cases of plain Glass and 15 bags of Glass Putty valued at ₹2,37,473/- to the defendant and had delivered the same at the Alwar. The plaintiff say that the putty was required to be supplied as the defendant had requested the plaintiff to fix the glass delivered at site. A perusal of the said Lorry Receipt would reveal that the plaintiff had sent the consignment valued at ₹2,37,473/- from Chandigarh to the site at Alwar. The endorsement of the defendant on the said Lorry receipt also confirms that the defendant have received the consignment on 07.02.2009 and have accepted the same. Accordingly, the plaintiff had raised an Invoice dated 06.02.2009 and 2.3.2009 on the defendant towards supply of the materials specified in the said Invoices for the amount of ₹2,37,473/- and ₹52,196/-.*
- m. That the defendant have failed and neglected to make payments against any of the invoice raised by the plaintiff on the defendant for the supply and delivery of the materials specified in the supply orders issued by the defendant. The plaintiff had adhered to the terms of the supply orders but the defendant have failed to honour their obligations under the contract and make payments for the materials supplied to the plaintiff. The plaintiff say that no reasons were ever cited by defendant for non payments of the legitimate dues of the plaintiff.*

JAISLAMER SITE:

- a. That the defendant had issued Supply Order being No.SD/08/Jaisalmer/100 dated 02.02.2009 for the supply of plain glass and pin Head Glass of the description and specification and in accordance with the terms and conditions stipulated for incorporation in the MAP Housing Project being executed by the defendant at*

Jaisalmer. Immediately on receipt of the Supply Order dated 02.02.2009, the Plaintiff had made necessary arrangements to send the requisite quantity of glass through Chandigarh Faridabad Transport Company (Regd.), Fleet Owners & Transport Contractors and to deliver the same at the Jaisalmer site. The value of the consignment was ₹4,00,405/-. The plaintiff say that the materials were dispatched and delivered but no payments have been made by the defendant against the said invoice till date. A perusal of the various purchase/supply orders, Lorry Receipts and the invoices referred to hereinabove would reveal that the plaintiff had supplied and delivered the materials at the various sites as required by the defendant. The plaintiff had also executed the work of fixing the glass delivered at site at the request of the defendant. The defendant have never raised any allegation regarding the quality or quantity of the materials supplied by the plaintiff till date. The plaintiff had continued supplying materials to the defendant on the bona fide belief that the defendant would release the due payments of the plaintiff. However, the defendant have miserably failed in their primary obligation to make payments against the various invoices raised by the plaintiff. It is pertinent to note that eh defendant have not released payments against any of the invoices raised by the plaintiff till date though the materials, as required by the defendant, had been supplied and fixed by the plaintiff. The plaintiff say that defendant have failed to adhere to the terms of the payments stipulated in the purchase/supply orders and the same constitutes a material breach of the terms of the agreement between the parties.

- b. The plaintiff had supplied all the material as per the purchase/supply orders issued by the defendant. The plaintiff had also fixed the glass at the request of the defendant. The plaintiff had affected supply of the last consignment for Judhpur site on or about 16.01.2009. Similarly, plaintiff had affected supply of the best consignment for Alwar site on or about 06.02.2009.”*

2. In paragraph 17 of the plaint it was pleaded that plaintiff had received an e-mail dated October 30, 2009 from the Purchase Officer of the appellant admitting liability to pay ₹30,85,039/-.
3. Decree prayed for was for said outstanding sum together with pre-suit interest @ 24% per annum being ₹14,80,795/-.
4. In the application seeking leave to defend being IA No.145953/2013, the appellant pleaded that no cause of action accrued at Delhi. Liability was denied on the plea that the goods supplied were not as per specification. It was pleaded that the appellant did not have any office at Delhi and that the address at Pushp Vihar, Delhi wherefrom communications were sent to the respondents was only a correspondence address.
5. It is thus apparent that leave to defend was sought on two principle grounds. Firstly that Courts at Delhi lacked territorial jurisdiction. Secondly that the goods supplied were not as per specification.
6. The learned Single Judge has declined leave to defend to the appellant.
7. Having heard learned counsel for the parties, we note that the learned counsel for the appellant concedes that the purchase order(s) were sent by the appellant from Delhi. The address being Aluwalia Chambers, Sector 16-17, LSC, Madangir, Pushp Vihar, Delhi. The plea of the learned Counsel that aforesaid address is only a correspondence address is neither here nor there in law, for the reason what matters is that the appellant has a work place at Delhi wherefrom it issues letters, communications and orders. Concededly, the order(s) emanated from the appellant at Delhi. The learned Single Judge has thus rightly held that in view of said admitted pleading of the appellant, the Courts at Delhi would have jurisdiction.
8. On merits, the appellant has admitted receipt of the goods under the

various invoices raised by the respondent pursuant to the purchase order(s) placed by the appellant.

9. We have extracted the pleadings from the plaint to bring home the point that the goods were supplied by the respondent to the appellant between December 25, 2008 till March 02, 2009. It is the case of the respondent that after goods were received liability to pay was admitted in the e-mail dated October 30, 2009. The liability to pay, alleging goods being not as per specifications, was denied for the first time after the respondent sent a legal notice on November 02, 2010 to the appellant.

10. In the application seeking leave to defend it has not been pleaded as to on what date, for the first time, rejection of the goods was communicated. It is trite that an application seeking leave to defend must plead facts which give birth to a triable issue. It means facts have to be pleaded, which would, upon proof thereof, disentitle the plaintiff to a decree.

11. Section 42 of the Sale of Goods Act, 1930 reads as under:-

“Acceptance-The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.”

12. Thus, unless rejection of goods is within a reasonable period from the date of receipt of the goods the same shall be deemed to be appropriated by the buyer.

13. The goods in question are admittedly Glass. The receipt of the goods is not in dispute. The last date of receipt of the goods being March 02, 2009 is also not in dispute. The rejection had to be within reasonable period. The price as per contract is also not in dispute. Undisputedly no

rejection alleging goods not adhering to specifications was sent till when the respondent had to serve a legal notice upon the appellant on November 02, 2010. Reckoned from March 02, 2009 (the last date when last consignment was delivered) it would be too late in the day to intimate rejection on November 02, 2010. Reasonable period for inspection and verification of goods which are Glass would be at the maximum a month. In any case a period of one year and seven months would certainly not be a reasonable period to reject the goods. Further we find that the appellant has neither denied nor explained the contents of the e-mail pleaded in the plaint as having emanated from the appellant.

14. The appeal is dismissed but without any order as to costs.

CM No.20089/2013

Dismissed as infructuous.

CHIEF JUSTICE

**(PRADEEP NANDRAJOG)
JUDGE**

APRIL 22, 2014

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