

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 304/2018**

% **Reserved on: 4th April, 2018**
Pronounced on: 9th April, 2018

TRIMAX IT AND INFRASTRUCTURE SERVICES LTD.

..... Appellant

Through: Mr. Dilip Kumar Mishra,
Advocate

versus

KALAKRITI INTERIORS

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

CM No. 12701/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 12699/2018 (delay of 118 days in filing the appeal)

For the reasons stated in the application, delay in filing is condoned, subject to just exceptions.

CM stands disposed of.

RFA No. 304/2018 & CM No. 12700/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit

impugning the judgment of the trial court dated 18.8.2017 by which the trial court has decreed the suit of the respondent/plaintiff for a sum of Rs.34,08,656/- along with interest at 8% per annum. Suit is decreed on account of claim of respondent/plaintiff towards unpaid bills of civil works of Data Centres for Life Insurance Corporation of India Limited and for which civil works contracts were awarded to appellant/defendant by LIC.

2. The facts of the case are that the subject suit was filed by pleading that respondent/plaintiff is engaged in the work of interior design, civil works and related services. The appellant/defendant company was dealing in turnkey projects for setting up data centres in various IT and other projects. Appellant/defendant contacted the respondent/plaintiff in the year 2010 for execution of civil works of Data Centres of LIC at places initially at Delhi, Punjab, Haryana, Himachal Pradesh and Jammu and Kashmir. Thereafter, the respondent/plaintiff was also engaged by the appellant/defendant for execution of projects all over India. Respondent/plaintiff pleaded to have completed the jobs to the entire satisfaction of the appellant/defendant, with the works being completed by the year

2011. Respondent/plaintiff raised bills from time to time which were acknowledged and paid in part by appellant/defendant. The appellant/defendant however did not pay the balance amount of Rs.25,56,656/- along with interest and therefore after serving a legal notice dated 28.7.2014 the subject suit was filed for recovery of Rs.35,08,656/-, i.e the principal amount of Rs.25,56,656/- along with interest at 12% per annum of Rs.8,52,000/-.

3. Appellant/defendant contested the suit by filing its written statement. It was not disputed in the written statement that respondent/plaintiff was awarded contracts for doing the interior work for LIC projects and appellant/defendant assigned to the respondent/plaintiff interior work jobs at Delhi, Punjab, Haryana, Jammu and Kashmir etc. Various purchase orders were placed by the appellant/defendant upon the respondent/plaintiff. It was pleaded that appellant/defendant kept on releasing payment at regular intervals without verifying details of the invoices submitted and the appellant/defendant found that in fact respondent/plaintiff has received an excess amount of Rs.10,37,333/- with respect to LIC projects of the appellant/defendant. In the written statement it was also pleaded that

the main dispute arose when respondent/plaintiff started mingling up the accounts of various projects for which monies were taken but when respondent/plaintiff was asked to give separate accounts for various projects the respondent/plaintiff kept on delaying the same on one pretext or the other and resultantly there was an over-payment of Rs.10,37,333/- by the appellant/defendant to the respondent/plaintiff. Appellant/defendant pleaded that there were oral talks on 29.4.2014 between the parties at the office of the appellant/defendant at Mumbai for settlement and after re-conciliation respondent/plaintiff admitted that there was excess payment of Rs.10,37,333/- in the LIC projects and in fact after adjusting amounts for the LIC project and a subsequent project of HPSCBL a sum of Rs.3,90,603/- was payable by the respondent/plaintiff to the appellant/defendant. It was pleaded by the appellant/defendant that the various bills given by the respondent/plaintiff towards the extra works done totaling to eight in numbers have never been accepted by appellant/defendant, and therefore no amount is due to the respondent/plaintiff.

4. After pleadings were complete, trial court framed the following issues:-

- “1. Whether the plaintiff is entitled for the recovery of the amount as prayed for? OPP
2. Whether the plaintiff is entitled for interest as prayed for? OPP
3. Relief.”

5. Whereas the respondent/plaintiff examined himself as PW-1 for proving his case, appellant/defendant led the evidence of two witnesses namely Sh. Amit Tehrani as DW-1 and Sh. Ankush Rana as DW-2.

6. Trial court by the impugned judgment has decreed the suit by holding that the purchase orders were proved by the respondent/plaintiff as Ex.PW1/1 (colly). The bills raised upon the appellant/defendant were proved as Ex.PW1/2 (colly). The emails sent by the respondent/plaintiff to the appellant/defendant with the replies were proved as Ex.PW1/3 (colly) along with the certificate under Section 65-B of the Indian Evidence Act, 1872 as Ex.PW1/4. Legal notice dated 28.7.2014 along with postal receipts were proved as Ex.PW1/6 and Ex.PW1/7 with reply to the legal notice proved as Ex.PW1/8. Summary of accounts was Ex.PW1/2 (colly). Trial court has held that the bills were allowed to be raised only after approval of measurements by the LIC, and which organization had awarded work to the appellant/defendant. Trial court has further held that disputes

between the parties had only arisen on account of the stand of the appellant/defendant that when the various accounts of the different projects were tallied, it was only then for the first time that the appellant/defendant contended over payment of Rs.10,37,333/- but DW-1 Sh. Amit Tehrani in his cross-examination never disputed issuing of purchase orders to the respondent/plaintiff and that the work of LIC and projects awarded to the respondent/plaintiff came to an end in October 2011 and only whereafter the final bill was raised by the respondent/plaintiff with the fact that respondent/plaintiff was allowed to raise bills only after approval of measurements by the LIC. This was so specifically admitted by DW-2 Sh. Ankush Rana in his cross-examination (Page 3 para 2) dated 30.3.2017. Trial court has also found as a matter of fact that the defence of the appellant/defendant that appellant/defendant did not ask the respondent/plaintiff to do extra work is without basis because appellant/defendant had never objected to the work being done on the ground that said extra work was not to be done by the respondent/plaintiff. DW-2 also admitted that no objections were raised in writing ever with respect to the bills raised by the respondent/plaintiff for the extra items bills. Trial court

has further held that the claim of the appellant/defendant of having made excess payment of Rs.10,37,333/- is without basis because this has not been proved by the appellant/defendant and the documents have not been proved and exhibited but only marked as Mark B and Mark D. The relevant observations of the trial court for decreeing the suit read as under:-

"16. Having heard the arguments and perused the evidence brought on record, firstly I find that it is an admitted case that the plaintiff was allowed to raise bills only after approval of measurements by the LIC India Ltd. i.e. parent organization and that the defendant entered into an agreement with the LIC India Ltd. to build data center on 28.06.2010. It has also been admitted that after having discussion with the plaintiff, the defendant assigned the job for doing interior work on various places including Delhi, Punjab, Haryana, H.P and J&K etc. and also that various purchase orders were issued to the plaintiff by the defendant for these projects. It is also admitted fact that the defendant, because of good business relationship with the plaintiff, released the payment at regular intervals to the plaintiff without verifying the details of the invoices submitted by the plaintiff.

17. As per the defendant's version, the dispute between the parties arose only when the statement of account of various projects were tallied and the defendant found that the plaintiff in the garb of trust and confidence had received the excess amount of Rs.10,37,333/- in the LIC project from the plaintiff. On perusal of cross-examination of DW-1 Sh. Amit Tehrani, I find that he has categorically admitted that the defendant company issued purchase orders while awarding the contract to the plaintiff on 28.06.2010 in writing. He further admitted that the LIC project awarded to the plaintiff came to an end till October 2011 and only thereafter, the final bill was raised by the plaintiff. Further, DW-1 had no knowledge whether the defendant company had received the final bill running into 27 bills Ex.PW-1/3 or not.

18. Besides above, perusal of the summary of accounts Ex.PW-1/2 (colly) shows that the plaintiff has also claimed bills for the extra work done by the plaintiff, whereas DW-1 during his cross-examination stated that he was not aware whether the extra work executed by the plaintiff was approved by the company bearer or not.

19. Similarly, DW-2 Sh. Ankush Rana during his cross-examination also could not say that whether the defendant company had raised any objections towards the extra item bills raised by the plaintiff. further, DW-2 admitted that he used to visit the sites for checking of the quality and quantity of work, but he did not remember that whether he had written any mail to the plaintiff regarding the quality and quantity of work. He also did not remember what issued were raised by him at the time of conclusion or running of the LIC project against the plaintiff. DW-2 also could not say that the defendant company had raised any objection towards the extra item bills raised by the plaintiff. DW-2 further admitted that LIC used to give the acceptance/approval regarding the measurement of the work done over the said project and only then the plaintiff was allowed to raise the bills qua the projects. He was not aware as to whether the defendant company had raised any objection towards the bills raised by the plaintiff prior to filling of the present suit;

20. It is pertinent to mention that DW-2 also stated during his cross-examination that he had not restrained the plaintiff from doing any extra work on the said projects in writing. Apparently, the defendant has not been able to show that there was any deviation from the work as assigned and approved by the defendant company or that the plaintiff has received any extra payment by not maintaining the separate accounts for various projects. None of the defendant witnesses stated so in their testimonies that the plaintiff, by not creating separate accounts of different projects, received extra payments from the defendant. It is an admitted case that LIC project came to an end in the year 2011 and the HPSCBL project was awarded to the plaintiff in the year 2012. The final payments qua the LIC projects are of 2011 only and the plaintiff has not raised the bills of the subsequent years for LIC projects as it admittedly came to an end in October, 2011. DW-1 Sh. Amit Tehrani admitted that HPSCBL project was awarded to the defendant company on 21.11.2011.

21. Besides above, it was alleged in the written statement that the defendant kept requesting for a separate account for various projects, however, I find that none of the witnesses entered into the witness box depose anywhere on this issue specifically. Further, the defendant took a plea that they had paid excess amount of Rs.10,37,333/-to the plaintiff and as such, DWs relied upon the documents namely Mark B to Mark D. However, I find that neither the originals of these documents have been brought on record nor any authorized person from the accounts department was called in the witness box for his evidence on this aspect. In these circumstances, the defence taken by the defendant is found vague and thus, is rejected.”
(underlining added)

7. I do not find any illegality whatsoever in the aforesaid findings and conclusions of the trial court and in fact this Court would like to add the fact that if allegedly appellant/defendant had over paid the respondent/plaintiff an amount of Rs.10,37,333/- then there was no reason why no letter was sent or legal notice issued nor suit filed for recovery of this amount or allegedly the balance amount of Rs.3,90,603/- on allegedly taking a joint accounts of both the LIC projects and HPSCBL projects. Another important aspect which is worth noting is that it is not the case of the appellant/defendant that with respect to any work or any extra work which the respondent/plaintiff did in the LIC projects, the appellant/defendant was not paid for by the LIC for such works, and once that is so, appellant/defendant cannot retain with it payments for works which was done by the respondent/plaintiff and paid for by LIC to the appellant/defendant. Also, I find it strange that why would respondent/plaintiff allegedly do any extra work when such work was admittedly beyond the scope of the contract, and therefore this extra work only would have been because appellant/defendant and /or LIC

had asked for the same. In my opinion, therefore, the impugned judgment suffers from no illegality for being interfered in this appeal.

8. Learned counsel for the appellant/defendant argued that suit was time barred and was liable to be dismissed but when queried it is admitted that no such defence of limitation was taken in the written statement by the appellant/defendant, no such issue framed and no such argument urged by the appellant/defendant before the trial court. For this reason therefore this argument is liable to be and is accordingly rejected. In any case it is also noted that the bills in this case raised by the respondent/plaintiff upon the appellant/defendant are from 18.10.2011 to 10.12.2011 whereas the subject suit was filed on 20.8.2014 i.e before the expiry of three years of the first bill raised on 18.10.2011 and therefore it cannot be argued that the suit was barred by time. Though counsel for the appellant/defendant argued that suit was based on the balance due at the foot of the running account, but admittedly the suit plaintiff is not a suit plaintiff claiming balance due at the foot of the account covered under Article 1 of the Limitation Act and the suit filed by the respondent/plaintiff is a suit for recovery of amount of various bills as detailed in para 5 of the

plaint and as reproduced in para 14 of the impugned judgment. Therefore the argument that the suit could not have been decreed because respondent/plaintiff had not filed its statements of account and proved the same as required by law, is a misconceived argument.

9. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

APRIL 09, 2018
ib/ak

VALMIKI J. MEHTA, J