

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

+ **RFA No. 879/2018**

% **16th November, 2018**

MARWAR HOTELS PVT. LTD.

..... Appellant

Through: Mr. Sunil Choudhary,
Advocate (M. No.9899750209).

versus

SURYA ENTERPRISES, THROUGH ITS PROPRIETOR SH.
VINOD KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 44912/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No. 879/2018 and C.M. No. 44911/2018(stay)

2. 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 30.01.2018 by which the trial court has decreed the suit for recovery of moneys filed by the respondent/plaintiff for the work of water-proofing treatment done for the appellant/defendant at the hotel site of the appellant/defendant at Jodhpur in Rajasthan. The suit has been decreed for a sum of Rs. 11,31,531.98/- alongwith interest @ 12% per annum.

3(i) The facts of the case are that the respondent/plaintiff had filed the subject suit pleading that the appellant/defendant had placed four purchase orders of the value of Rs. 20,26,194/- upon the respondent/plaintiff, and details of which are as under:

Sl. No.	Date	Contract(s)/Purchase Order No.	Subject Matter	Amount Rs.
1.	27.9.99	MHL/PROJ/J/0139	Work for water tanks and swimming pool. Additional work as per verbal order	9,03,000 21,594.00
2.	15.5.2000	MHL/PROJ/J/0218	For the work of filling expansion joints with Polysulphide	6,05,600
3.	26.7.2000	MHL/PROJ/J/0335	Water	2,66,000

proofing
treatment to
roof terrace
(WATTA)

4. 4.8.2000 MHL/PROJ/J/0326 For Silicone 2,30,000
sealant work
in windows

TOTAL = 20,26,194

(Rs. Twenty Lacs Twenty Six Thousand One Hundred Ninety Four only)

(ii) In addition to the aforesaid allotted work, the respondent/plaintiff also pleaded that extra work was done as per the oral directions of the appellant/defendant by the respondent/plaintiff. Respondent/Plaintiff pleaded that the work was done to the satisfaction of the appellant/defendant and the value of the said completed work amounted to Rs. 20,30,128.58/-. Out of the total amount, an amount of Rs. 12,73,737.12/- was pleaded to have been received by the respondent/plaintiff from the appellant/defendant and details of the payment are as under:-

DATE	AMOUNT	MODE
26-2-2000	Rs.2,00,000	Cheque
4-4-2000	Rs.5,27,956.89	Cheque/Draft
13-5-2000	Rs.91,070	Cheque/Draft
30-06-2000	Rs.2,45,725	Cheque/Draft
25-8-2000	Rs.53,018	Cheque
25-8-2000	Rs. 1,00,000/-	Cheque
26-8-2000	Rs.20,013	Cash
TOTAL	Rs.12,37,782	(exclusive of bank charges, income tax and sales tax)

(iii) Respondent/Plaintiff also pleaded that the appellant/defendant also issued TDS Certificate to the respondent/plaintiff. The balance outstanding came to Rs. 7,39,801.88/-, which was not paid by the appellant/defendant, and the respondent/plaintiff had thus sent a Notice dated 27.01.2003 to the appellant/defendant to make the payment due. This was replied to by the appellant/defendant almost after a year in terms of the appellant's/defendant's Letter dated 15.01.2004, denying any liability by taking up the excuse that the work done by the respondent/plaintiff was of defective quality. Therefore, the subject suit was filed for recovery of balance amount alongwith interest. The principal amount claimed in the suit was Rs. 7,39,801.88/- and alongwith the interest at 18% per annum from 14.07.2001 till the date of filing of the suit amounting to Rs.3,99,493.08/-, the total suit amount thus claimed was Rs. 11,39,295/-.

4. The appellant/defendant contested the suit and took up various objections. The first objection was with respect to courts at Delhi not having territorial jurisdiction and which is the first aspect argued by the appellant/defendant before this Court. It was also the

case of the appellant/defendant that the work done by the respondent/plaintiff was not of good quality, and consequently no further payment had to be made, for the work done by the respondent/plaintiff. Before this Court, learned counsel for the appellant/defendant also argued that the purchase orders which have been proved by the respondent/plaintiff are only photocopies and before commencement of cross-examination, the exhibition of such documents was objected to by the appellant/defendant, and therefore the purchase orders should have been held 'not to have been proved' by the trial court, and therefore the suit could not have been decreed.

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

- “1. Whether this court has no jurisdiction to entertain and decide the present suit? OPD
2. Whether the suit is barred by limitation as alleged in para no.16 in the WS? OPD
3. To what principal amount, if any, is the plaintiff entitled from the defendant? OPP
4. Whether the plaintiff is entitled to any interest, if so, at what rate, for which period and to what amount? OPP
5. Relief.”

6. Trial court has held the issue of territorial jurisdiction against the appellant/defendant by holding that that the payments were made at Delhi, and therefore, the courts at Delhi have territorial jurisdiction. Trial court has also held that the contract has taken place at Delhi, and therefore, this is one another reason that the courts at Delhi have territorial jurisdiction.

7(i). Learned counsel for the appellant/defendant with respect to the issue of territorial jurisdiction argued that courts at Delhi did not have territorial jurisdiction because the purchase order were issued by the appellant/defendant from Jodhpur, and therefore, courts at Jodhpur only will have territorial jurisdiction.

(ii) In my opinion, however, this argument of the appellant/defendant is misconceived because the purchase orders placed upon the respondent/plaintiff by the appellant/defendant are addressed to the respondent/plaintiff at New Delhi, and therefore, acceptance for the work done by the respondent/plaintiff for the appellant/defendant would be when the purchase orders are received at Delhi, and it is at the place of acceptance of the purchase orders that

the contract becomes complete, and which is at Delhi. Therefore, courts at Delhi will have territorial jurisdiction.

8. It is also not disputed before this Court on behalf of the appellant/defendant that payments have been made by the appellant/defendant to the respondent/plaintiff at New Delhi.

9. Therefore, since the contract has been concluded at Delhi, and payments have been made at Delhi, courts at Delhi will have territorial jurisdiction vide *A.B.C. Laminart (P.) Ltd. and Another v. A.P. Agencies, Salem 1989 (2) SCC 163*. The argument urged on behalf of the appellant/defendant that courts at Delhi have no territorial jurisdiction is therefore rejected.

10. On the merits of the matter, trial court has held that the respondent/plaintiff actually completed the work is an undisputed fact, and in my opinion this is a correct finding because the appellant/defendant states that the work was done, but the work was defective. Also, it is not disputed on behalf of the appellant/defendant that the appellant/defendant did make the payment for an amount of Rs. 12,37,782/- to the respondent/plaintiff. Therefore, completion of the work by the respondent/plaintiff for the appellant/defendant cannot

be disputed, and thus the fact of the matter is that even if the documents which have been proved by the respondent/plaintiff as photocopies, and were thus such, which could not have been exhibited being photocopies, however ultimately the object behind proving the purchase orders documents was to prove that the work was allotted to the respondent/plaintiff and the respondent/plaintiff did the work, and these aspects are otherwise not disputed as per the pleadings before and the evidence led in the trial court.

11(i) The next aspect argued on behalf of the appellant/defendant was that the work done by the respondent/plaintiff was defective and therefore the respondent/plaintiff was not entitled to any further payment and all the payments which were due to the respondent/plaintiff stand paid.

(ii) Trial court has rejected this argument giving the reason, and which in the opinion of this Court is a valid reason, that if the work was defective then there was no reason why during the period that the work was done in the year 2000, the appellant/defendant had not written even a single letter complaining to the respondent/plaintiff

that the work done by the respondent/plaintiff was defective. The first and the only letter written by the appellant/defendant that the work was defective was by the appellant's/defendant's Letter dated 15.01.2004/Ex.DW1/PX and which letter is nothing but a response sent by the appellant/defendant to the Notice of the respondent/plaintiff dated 27.01.2003. This reply in any case was delayed by almost one year because the Notice was dated 27.01.2003 and the response of the appellant/defendant is dated 15.01.2004. Trial court was therefore justified in rejecting the defence taken up for the first time vide Letter dated 15.01.2004 by the appellant/defendant that the work done by the respondent/plaintiff was defective.

12. I may note that the respondent/plaintiff has otherwise proved sending of the Notice dated 27.01.2003 asking for payment of interest at 24% per annum alongwith payment of work done as Ex.PW1/F, and therefore, requirements of grant of interest under the Interest Act, 1978 are satisfied.

13. No other argument is urged except the arguments which have been referred to above.

14. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed.

NOVEMBER 16, 2018
Ne

VALMIKI J. MEHTA, J

