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

+ RFA 123/2015 and CM No.3619/2015 (stay) and 3621/2015
(condonation of delay of 200 days in filing the appeal)

M/S WOVEN GOLD ACRYLIC (INDIA) PVT LTD Appellant
Through: Mr. Kapil Kumar, Advocate

versus

NARESH CHANDER MALHOTRA Respondent
Through: Mr. Abhimanyu Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **30.07.2015**

1. This is an appeal directed against the judgment and decree dated 28.04.2014, passed by the Additional District Judge, Central, Delhi.

1.1 The respondent herein had filed a suit for recovery of a sum of Rs.4,59,555/- in respect of the supplies made to the appellant/defendant. It was a case of the respondent/plaintiff before the trial court that goods had been supplied to the appellant/defendant vide the following invoices :-

“Invoice no.11 dated 10.3.2006; (ii). Invoice no.12 dated 20.03.2006; (iii). Invoice no.13 dated 29.03.2006; (iv). Invoice no.28 dated 31.05.2007, invoice no.29 dated 31.05.2007 and invoice no.39 dated 15.09.2007”

1.2 The sum total of the aforementioned invoices, according to the respondent/plaintiff was a sum of Rs.3,42,032/-. Since, the payment, against the said invoices was not forthcoming, the respondent/plaintiff got a notice of demand dated 12.02.2008, served on the appellant/defendant.

1.3 In the said notice, a demand was made for a sum of Rs.3,42,032/- with interest at the rate of 18% p.a. The appellant/defendant though having received the notice did not satisfy the demand for payment made by the

respondent/plaintiff.

1.4 In these circumstances, the respondent/appellant instituted a suit for recovery, as indicated above, on 19.09.2008. The trial court has ruled in favour of the respondent/appellant vide the impugned judgment dated 28.04.2014.

2. The principal defence of the appellant/defendant both in the trial court and before me is that the goods supplied were sub-standard. There is no dispute raised before me or before the trial court that the goods in issue, in fact, were received by the appellant/defendant.

2.1 In so far as the defence raised by the appellant /defendant with respect to the goods being sub-standard was concerned, the same was not believed. The findings with respect to the same are contained in paragraph 26 and 27 of the impugned judgment, which for the sake of convenience, are extracted hereinbelow :-

“...26. The defendant has taken a plea that goods supplied by the plaintiff were fitted in the bath system installed at the residence of Mr. Madhvan which caused problem and had to be replaced by the defendant subsequently under the order of the court. The defendant itself has placed on record a copy of the appeal filed by the defendant before the State Consumer Disputes Redressal Commission, Hyderabad. In para 4 of the said appeal, the defendant has averred that “the respondent no.1 placed then order for supply for the Woven Gold Bath Tubs, crown with whirlpool system which has been imported from Australia as the respondent no.1 has required the same to be installed in the newly constructed house.” Similar averment has been made by the defendant in Revision Petition filed by the defendant before the National Consumer Disputes Redressal Commission, New Delhi in para 5.

27. The above averment made by the defendant before the Consumer Forums clearly shows that the bath tubs installed at the house of Mr. Madhvan were imported by the

defendant from Australia and the material of the said bath tub was not supplied by the plaintiff as sought to be pleaded by defendant. The above fact thus clearly shows that defendant has taken a false plea that sub-standard material was supplied by the plaintiff in order to avoid their liability towards the plaintiff...”

2.2 Before me the counsel for the appellant/defendant has not been able to show anything which would persuade me to hold a contrary view. I may also note that to the notice of demand, no reply was sent by the appellant/defendant.

2.3 Besides, the aforesaid, the counsel for the appellant has not made any other submission.

3. For the reasons given in the impugned judgment; with which I am in agreement, I find no merit in the appeal.

4. Before I conclude, I may also note that there is a 200 days delay in filing the appeal. The reasons given therein are, broadly, that the representative of the appellant was attempting to arrive at a settlement. There is nothing on record to show that what proposal, if any, was made to the respondent.

5. The appeal and the pending applications are, therefore, dismissed, both on merits and on account of delay.

6. The Registry will thus release the sum deposited by the appellant to the respondent/plaintiff forthwith alongwith accrued interest.

RAJIV SHAKDHER, J

JULY 30, 2015

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