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

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Date of Decision : August 27, 2015

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RFA(OS) 9/2014

M/S VIMAL TELEKRTONIX PRIVATE LTD Appellant
Represented by: Ms.Amita Gupta, Advocate

versus

M/S TATA TELECOM LTD Respondent
Represented by: Mr.Anupam Srivastava, Advocate
with Ms.Sharmistha Ghosh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The appellant was the plaintiff. The respondent was the defendant. Case pleaded by the appellant was that its Director Vimal Gupta had been authorized by the Board of Directors vide resolution dated June 02, 2006 (Ex.PW-1/2) to institute the suit and sign and verify the pleadings. The respondent awarded a contract to the appellant vide order No.1/D/B0990521 and order No.1/D/SC 990522 to execute the works listed in the two orders, which were carried out by the appellant to the satisfaction of the respondent and while making payment the respondent unilaterally deducted ₹49,485/-. Certain extra items supplied by the appellant were agreed to be reimbursed

at a meeting held on September 21, 2001 in sum of ₹41,800/-. For extra work executed by the appellant to remove kinks from the ducks laid by L&T the appellant was entitled to a sum of ₹21,01,500/-. Some extra works were executed for which ₹1,14,790/- was payable. Claiming pre-suit interest in sum of ₹8,36,505/-, decree prayed for was in sum of ₹31,44,080/-, being the total of : ₹21,01,500/- + ₹49,485/- + ₹41,800/- + ₹1,14,790/- + ₹8,36,505/-. Pendente lite and future interest was claimed @ 15% per annum.

2. In the written statement filed it was denied that any amount was payable as claimed in the plaint. Authority of Sh.Vimal Gupta to institute the suit, sign and verify the pleadings was denied. It was pleaded that the suit was barred by limitation.

3. On the pleadings of the parties following issues were settled vide order dated March 21, 2006:-

- (i) Whether the plaint is signed and verified and the suit instituted by a duly authorized person? OPP
- (ii) Whether the plaintiff is entitled to any balance amount towards work done for the defendant? OPP
- (iii) Whether any of the bills raised by the plaintiff forming subject matter of the present suit are barred by limitation? OPD
- (iv) Whether the plaintiff is entitled to any interest? If so, on what amount, at what rate and for which period? OPP

4. In view of the evidence led, the learned Single Judge has held that the appellant has proved the entitlement to ₹49,485/- and ₹41,800/-. It has been held that the appellant has not been able to prove that it was entitled to ₹1,14,790/- as also ₹21,01,500/-. But no decree has been passed in favour of the appellant because issue No.1 has been decided against the appellant,

and the reason is the language of the Board Resolution dated June 02, 2002 proved as Ex.PW-1/2.

5. The Board Resolution reads as under:-

“RESOLUTION

In the General meeting of the Board of Directors of M/s.Vimal Telekomix (P) Ltd., having its Registered Office at B-161, Basement, Sector-26, Noida-201301 on 02nd June, 2002, it has been decided and resolved to:

. File the suit against TATA TELECOM LTD. As they are not paying company dues.

. Mr.Vimal Gupta, Director is authorized to sign all documents and delegate the same power to anybody to settle-down and interaction in the above case.”

6. The learned Single Judge has held that the resolution does not authorize Sh.Vimal Gupta to institute the suit.

7. A meaningful (not pedantic) reading of the resolution Ex.PW-1/2 would show that the Board of Directors of the appellant have first resolved that a suit be filed against the respondent. Thereafter it has been resolved that Mr.Vimal Gupta, a Director of the appellant be authorized to sign all documents, and which would mean all documents concerning the suit. In the contemplation of the Board the plaint would be a document and thus Mr.Vimal Gupta has been authorized to sign the plaint, which in our opinion would subsume the power delegated to Mr.Vimal Gupta to institute the suit.

8. We reverse the findings of the learned Single Judge and hold that the appellant has successfully proved the authority of Mr.Vimal Gupta to institute the suit and thus we decide issue No.1 in favour of the appellant.

9. Since no cross-objections have been filed to the impugned decision wherein appellant has been held entitled to ₹49,484/- and ₹41,800/- from the respondent, the consequence of reversal of the decision of the learned Single Judge on issue No.1 would be the entitlement of the appellant to receive from the respondent ₹91,284/-.

10. We therefore do not note the evidence led at the trial on the strength whereof the learned Single Judge has held that the appellant has proved its entitlement to receive ₹49,484/- and ₹41,800/- from the respondent.

11. We are therefore left to decide whether the appellant has proved entitlement to receive ₹21,01,500/- and ₹1,14,790/-.

12. Noting that the learned counsel for the appellant has gone about proving bills and documents in respect of which there was no claim for an outstanding amount, we have called upon learned counsel for the appellant to list out and thereafter read such exhibits on which the appellant would rely and draw our attention to the testimony of the appellant's witness concerning the claim pertaining to ₹21,01,500/- and ₹1,14,790/-.

13. We have called upon learned counsel for the appellant to do so because in the plaint the only claim pertaining to the two contract orders is for ₹49,485/-, which the respondent admittedly deducted from the running bills and in respect of which the learned Single Judge has held that the evidence showed that the deduction was illegal i.e. the respondent could not establish good reasons justifying the deduction. Three other amounts claimed : (i) ₹21,01,500/-, ₹41,800/- and ₹1,14,790/- were for extra works done; and the first sum was for work done to rectify the defects in the works executed by another contractor named L&T. The latter two amounts were for extra work relating to the two work orders in question. Since the learned

Single Judge has held that as per the evidence the appellant had proved its entitlement to ₹41,800/-, we need not note evidence relating thereto as already noted by us and thus our job would be to give our opinion with respect to the evidence led qua claim ₹21,01,500/- and ₹1,14,790/-.

14. As per the appellant, it was entitled to ₹21,01,500/- under bill No.3, 8 and 9 submitted by it. Regretfully for the appellant the three bills have not been proved at the trial. The witness of the appellant, its Director Vimal Gupta, has not even made a mention of the bills in question in his testimony. The only document proved at the trial which is of some evidentiary value is Ex.PW-1/14. Learned counsel for the appellant concedes that this is the only proved document on strength whereof the appellant can possibly try to prove its case of being entitled to ₹21,01,500/-.

15. Ex.PW-1/14 is a minutes of a meeting held on September 21, 2001 between the representatives of the appellant and the respondent, and vide serial No.4 it has been minuted:-

“VTPL has also submitted bill Nos.3, 8 and 9 for removing kinks and damages found in the ducks laid L&T and the bill for additional services. The amount of such claim is ₹22,30,318/- which have not agreed by IOCL hence TTL will not be able to pay.”

16. To appreciate the language it needs to be highlighted that Indian Oil Corporation Ltd. was the owner of the works and different heads of the works were to be executed by different contractors, one of which was L&T. It was a direct contractor under IOCL. Certain works were awarded by IOCL to the respondent which were interconnected with the works which had to be executed by L&T and part work awarded by IOCL to the respondent was subcontracted to the appellant. It is the case of the appellant

that the works which were to be executed by it were contingent to the satisfactory execution of the works awarded to L&T and because there were deficiencies in the work executed by L&T, to execute the contracted works awarded to it, the appellant had to rectify the kinks in the works executed by L&T.

17. What has been minuted at serial No.4 of Ex.PW-1/14 would at best prove that the appellant had removed the kinks and damage found in the ducks laid by L&T and for which it had raised a claim of ₹22,30,318/-. But that would not mean that the appellant has proved therefrom that it was entitled to said amount.

18. In the plaint there are no pleadings that before the appellant executed the rectification works required to be executed to remove the kinks and damage found in the ducks laid by L&T, any rate was approved. Besides, the rectification of said defects had to be with the concurrence of IOCL because it related to a work awarded by IOCL to L&T and not to a work awarded by IOCL to the respondent. The appellant thereafter had to prove that IOCL had given a concurrence for the rate asked for to rectify the defects. That apart, during cross-examination the witness of the appellant admitted : *‘Besides, there were some miscellaneous jobs as well to be done. Purchase Order was to be given to me by the defendant before I would carry out the work. Some jobs used to be carried out without a specific purchase order, simply on the basis of a letter from the defendant stating the nature of work to be done and that rates would be settled subsequently’*. The appellant has not proved any specific purchase/work order nor any letter written by the respondent disclosing the nature of the work (extra) to be done or the rate thereof. There is no evidence that subsequently any rates

were agreed to. In the absence of the three bills being proved we have no legally admissible evidence to even ascertain the extent of the extra work done. There is no pleading in the plaint that notwithstanding price not being agreed for the extra works the appellant would be entitled to the money claimed on the principle of quantum meruit, and for which, if there was a pleading it had to be made good with reference to some evidence regarding the quantification thereof. We cannot but refrain from lamenting that learned counsel for the appellant at the trial has done a very shoddy job.

19. Similar would be the position regarding appellant's claim to the sum of ₹1,14,790/- in respect of which the only documentary evidence, as conceded to by learned counsel for the appellant is a bill exhibited as Ex.PW-1/15A without proof that it was ever submitted to the respondent.

20. With respect to the bill Ex.PW-1/15A, we need to make a comment. The learned Joint Registrar before whom evidence was recorded has exhibited the bill dated September 24, 2001 as Ex.PW-1/15A, but we find that in the affidavit by way of examination in chief filed by the witness of the appellant in which proved documents have been exhibited there is no reference to Ex.PW-1/15A (collectively). The reference to the documents collectively exhibited as Ex.PW-1/14 is to the minutes of a meeting which has been exhibited as Ex.PW-1/15. The affidavit which has been tendered towards examination in chief has been marked as PX. Pertaining to Ex.PW-1/15 it reads:-

“Copy of the minutes of the said meeting furnished to the plaintiff by the defendant may be exhibited as Ex.PW-1/15. The various bills submitted by the plaintiff may be exhibited Ex.PW-1/15 collectively.”

21. The file would show that minutes of a meeting held on April 17, 2000 have been exhibited as Ex.PW-1/15 and five bills have been exhibited as Ex.PW-1/15A (collectively). There is a clear mismatch between the document proved in the deposition of the witness and a corresponding exhibit mark given.

22. Be that as it may, the witness has not deposed that the five bills which have been exhibited Ex.PW-1/15A collectively were delivered to the respondent. The witness has not deposed that the works referred to in the bill dated September 24, 2001 which is a part of Ex.PW-1/15A collectively were executed.

23. The admission by the witness that for extra works a work order had to be issued and that if the work was carried out by a verbal order it had to be followed by a written communication requires it to be held that in the absence of any work order or a written communication post a verbal order that the work be executed the appellant has not proved its entitlement to receive ₹1,14,790/- from the respondent.

24. The appellant had claimed pre-suit as also pendente lite and future interest @ 15% per annum without any pleading as to the basis thereof. We therefore inclined to grant interest @ 10% per annum.

25. The upshot of the discussion above would be that on issue No.2 the appellant would be entitled to ₹49,484/- and ₹41,800/- i.e. ₹91,284/- (Rupees Ninety One Thousand Two Hundred and Eighty Four only) together with interest thereon @ 10% per annum and since the entitlement would relate to the minutes of the meeting dated September 21, 2001 we grant interest from said date and pass a decree in favour of the appellant and against the respondent in sum of ₹91,284/- with simple interest @ 10% per

annum with effect from September 21, 2001 till date of realization.

26. Parties shall bear their own costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 27, 2015
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