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

+ RFA 3/2015 & CM No.95/2015

M/S. LOOM CRAFTS FURNITURE INDIA
PVT. LTD.

..... Appellant

Through: Mr. Pranav Sarthi, Adv.

versus

M/S. MT & T RENTALS LTD.

..... Respondent

Through: Mr. Rupesh Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

08.12.2015

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1. It is noticed that, vide order dated 06.01.2015, the impugned judgment and decree was stayed. The record shows that the respondent/ plaintiff had filed a suit under Order XXXVII of the code of Civil Procedure, 1908 (in short the CPC). The trial court has decreed the suit.

2. This is an appeal against the judgment and decree dated 21.11.2014, passed by the learned Additional district Judge (ADJ). By the impugned judgment the learned ADJ has dismissed the appellant's/ defendant's application for leave to defend.

3. The case set up by the respondent / plaintiff, broadly, is that, it is, inter alia, in the business of providing aerial work platforms and access equipments, such as, Scissor Lifts, Boom Lifts and aerial work, on rental basis (here after collectively referred to as equipments unless specially adverted to, otherwise).

3.1 It is, therefore, averred by the respondent / plaintiff that equipments

were supplied to the appellant / defendant on rental basis, in respect of which, invoices were raised from time to time.

4. It is the case of the respondent / plaintiff that eight (8) invoices were raised between 2.11.2011 and 2.12.2011; the details of which are given in paragraph 7 of the plaint total amounting to Rs.3,37,244/-.

5. It is the stand of the respondent / plaintiff that, at a point in time when, the use of the equipments was over, the equipments supplied to the appellant / defendant, were retrieved.

5.1 On retrieval, the respondent / plaintiff noticed that out of equipments supplied, certain equipments, were either damaged or had missing parts and / or components.

5.2 In respect of the said equipments, challans were generated which, according to the respondent / plaintiff, were counter signed by the site official of the appellant / defendant.

5.3 In view of the aforesaid circumstance obtaining, the respondent / plaintiff placed three (3) additional bills, the details of which are given in paragraph 8 of the plaint. These three (3) invoices, which are of even date, i.e. 31.03.2012, are for an amount of Rs.3,22,578/- and are titled “damaged / missing parts”.

6. The respondent / plaintiff further avers that the appellant / defendant did not pay the sums, which were due and payable against the services/ rental charges as also against the three invoices which were served upon it, with regard to damaged and missing parts. The only amount which was paid against the eleven (11) invoices, referred to in the plaint, was a sum of Rs.1,65,270/-.

7. Therefore, the respondent / plaintiff being aggrieved by the fact that

the appellant / defendant had not paid the entire amount duly served, apparently, upon it, a demand notice dated 19.07.2013.

8. By virtue of the said notice, respondent / plaintiff demanded a sum of Rs.4,94,552/- along with interest at the rate of 18% per annum, payable from the date mentioned on each of the said invoices.

9. To be noted, the sum of Rs.4,94,552/-, is a summation of the amounts due against the eight (8) invoices, referred to in paragraph 7 of the plaint, and the three (3) invoices, referred to in paragraph 8 of the plaint, after adjusting a sum of Rs.1,65,270/-.

10. It is in this background that the respondent / plaintiff instituted the suit, from which, the present appeal arises. The suit was instituted on 03.02.2014. The amount claimed in the suit is Rs.6,58,202/-, which includes the sum of Rs.4,94,552/- i.e. the principal amount alongwith interest at the rate of 18% per annum, spanning the period 01.04.2012 till 31.01.2014. The interest was, accordingly, crystallized at Rs.1,63,650/-.

10.1 The sum total of the principal and the interest is the suit amount, which is, a sum of Rs.6,58,202/-.

11. Upon institution of the suit under Order XXXVII of the CPC, summons for judgment were issued, whereupon, the appellant / defendant, filed its application for leave to defend.

12. In the application, the appellant / defendant took the following pleas :-

(i). That the concerned court did not have the jurisdiction to entertain and try the suit as the disputes between the parties were subject to the jurisdiction of courts at Chennai.

(i)(a). It is further averred in this behalf that the head office of the appellant / defendant company was located at Ghaziabad.

(ii). That the respondent / plaintiff had not approached the appellant / defendant with details of the damage suffered, and therefore, it should be put to strict proof regarding the assertions made on that score.

(ii)(a). The Provisions of Section 74 of the Contract Act, were taken recourse to by the appellant / defendant in support of this plea.

(iii). That the appellant / defendant had taken a “Boom Lift”, on rental basis, from the respondent/plaintiff. Since the said lift was operated by respondent’s/plaintiff’s personnel, it was their responsibility to ensure that it remained in, good working condition.

(iii)(a). In this behalf, it was pleaded by the appellant/defendant that a fitness certificate for the concerned equipment had been issued by the appropriate authorities, approved by the government of Tamil Nadu, and that, the maintenance of the said equipment was the responsibility of the respondent / plaintiff.

(iv). Finally, that equipments hired, were insured, and that, the respondent / plaintiff had already received monies from the insurer.

13. The respondent/plaintiff, in reply to the said application, refuted the assertions made by the appellant / defendant.

13.1 In so far as the jurisdiction of this court was concerned, it was sought to be demonstrated that the cause of action arose in Delhi, and that, the appellant’s / defendant’s registered office was also at Delhi, with its head office at Ghaziabad.

13.2 It was thus, submitted that, irrespective of the agreement obtaining between the parties with respect to the jurisdiction, jurisdiction could not be conferred if it was not, in law, otherwise triggered vis-a-vis the courts at Chennai.

13.3 It is further submitted that the respondent / plaintiff's claim pertained to missing parts and that damages were sought on the basis of equipments, which were found missing. Furthermore, it was pleaded by the respondent / plaintiff that damages claimed were liquidated amounts. In that behalf, the respondent / plaintiff also relied upon the demand raised vide notice dated 19.07.2013.

14. I have heard learned counsel for the parties and examined the record. In my opinion, what emerges is as follows :-

(i). There is no dispute qua the fact that eight (8) invoices, referred to in paragraph 7 of the plaint and the three (3) invoices referred to in paragraph 8 of the plaint, had been received by the appellant / defendant.

(ii). There is also no dispute that the appellant / defendant had paid a sum of Rs.1,65,270/- to the respondent/plaintiff.

(iii). The three (3) invoices referred to in paragraph 8 of the plaint bear the caption "damaged / missing parts".

(iv). The appellant / defendant in the application for leave to defend has raised the plea, as noticed above, that the respondent / plaintiff would be required to prove the damages suffered by it.

(v). There is also a plea to the effect that the respondent / plaintiff has received monies from the insurer with regard to the damaged equipment / components.

15. The trial court, however, seems, not to have examined the matter from this angle.

16. To my mind, therefore, it is necessary, as a sample, to advert to one of the three (3) invoices, which are referred to in paragraph 8 of the plaint. The other two invoices in so far as the headings are concerned are similar.

Sl. No.	Description	Rate per unit	No.	Net value	Total Amount Rs.
1.	Damage/ Missing item charges Model No. 42901 --> Push on Frame 2m	19313.00	3	57939	85,339
2	Model No. 42970 --> Hinged Platform 1.8m	27400.00	1	27400	

17. A perusal of the aforementioned extract would show that there is no clarity at this stage as to whether the respondent/plaintiff is making a claim for damages or towards missing items. In my view, both the situations cannot obtain simultaneously.

18. Furthermore, if there is a claim for damages, it can only be decreed to the extent, respondent / plaintiff has actually suffered injury.

18.1 These aspects require the suit to be tried. However, having regard to the fact that the appellant / defendant has not, in the first instance, raised an objection to the claim raised by the respondent/plaintiff in its demand notice dated 19.07.2013, and given the fact that invoices referred to above have been received by the appellant / defendant, leave to defend can be granted to the appellant / defendant only on conditions.

19. In my view, this is a fit case in which the appellant / defendant should be asked to deposit the sum of Rs.3,22,578/- within four weeks from today. It is ordered accordingly.

20. Upon the amount being deposited, as indicated above, the trial court will direct its investment in an interest bearing fixed deposit.

21. Parties and their counsels shall appear before the trial court on

11.01.2016.

22. The appellant / defendant will carry his written statement to the court and file the same, on the date given above.

23. The trial court will, accordingly, give time to the respondent/ plaintiff to file a replication, if it so desires. Furthermore, the trial court will fix time lines for admission and denial of documents, framing of issues, for filing of list of witnesses and affidavits of evidence by parties, cross-examination and hearing submissions in the matter.

24. The appeal and the pending application are disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

DECEMBER 08, 2015

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