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

+ RFA 637/2015

HINDUSTAN PETROLEUM CORPORATION

LTD & ORS

..... Appellants

Through: Mr. C.S. Parasher, Advocate

versus

M/S JYOTI RUBBER UDHYOG (INDIA) LTD Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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29.09.2015

CM No.21291/2015 (Exemption)

1. Allowed subject to just exceptions.

RFA 637/2015 and CM No.21292/2015 (additional evidence) and CM

No.21290/2015 (stay)

2. This appeal is directed against the judgment dated 30.05.2015 passed by the Additional District Judge (Central), Delhi. The respondent / plaintiff had filed a suit for recovery of a sum of Rs.9,58,464/- against the bill bearing no.681 dated 13.01.2009. The respondent / plaintiff had supplied to the appellant / defendant no.1, hose-pipes against the aforementioned bill. The hose pipes were 160 in number. The value of the hose-pipes was a sum of Rs.5,76,000/- with sales tax in the sum of Rs.23,040/- added on.

2.1 The appellant / defendant no.1 failed to clear payment with respect to the said bill. Consequently, the matter went to trial. One of the main

objections of the appellants / defendants was that the supply made was not in terms of the purchase order.

2.2 According to the appellant / defendant no.1, the respondent / plaintiff was required to furnish test reports certified by the competent Quality Assurance personnel of the OEM for each individual hose-pipe.

2.3 Furthermore, individual hose was required to be marked with an unique identification / tag number, so that it could be co-related with the relevant test report. This condition is contained in clause 5 of the purchase.

2.4 Furthermore, the appellant / defendant no.1 says that the goods are defective and it had received complaints from its dealers.

3. It is, in the background of the aforesaid broad facts, that the matter went to trial. The trial court after permitting both parties to lead evidence, decreed the suit against the appellant / defendant no.1. The findings returned by the trial court are as follows :-

(i). That the respondent/plaintiff, admittedly, did not submit the test reports.

(ii). That the complaints received by the appellant / defendant no.1 were not proved.

(iii). Despite taking a stand that the bill in question (i.e. bill no.681 dated 13.01.2009) bore the endorsement that performance was not satisfactory, in the cross-examination of the appellant / defendant witnesses (DW-1), it emerged that bill no.681 dated 13.01.2009 did not contain the said endorsement.

(iv). In the cross-examination of DW-1 (i.e. the appellant / defendant), it also emerged that no written communication was sent to the respondent / plaintiff informing it as to the alleged defects in quality of the goods

supplied. Furthermore, no replacement whatsoever was sought qua the goods received by the appellant / defendant.

3.1 The findings with regard to the above are contained in paragraph 29 and 30 of the impugned judgment. The same are extracted for the sake of convenience : -

“..29. According to the defendant, the hose-pipes supplied by the plaintiff were defective and they had received the complaints from various vendors. DW 1 proved on record the complaints as Ex. D1/3 (colly). But when this witness was cross examined, he stated in his cross examination that it is correct that whenever defendant received any letter from anywhere then a seal of receiving is put on the said letter. He admitted that Ex. D1/3 (colly) do not have any such seal. He further admitted that the complaints Ex. D1/3 (colly) pertains to Barauni Terminal. He further admitted that they had not demanded in writing the replacement of any defective goods from the plaintiff. So in these circumstances first of all the defendant failed to prove by cogent evidence that the complaints Ex. D1/3 (Colly) were received in the office of the defendants. The defendant have not examined any of the alleged complainant in support of its case for the reasons best known to the defendant and when the goods were defective why it was not communicated to the plaintiff in writing. The another reason cited by the defendant for not making the payment of invoice No.681 dated 13.01.2009 is that HPCL engineer made a remark that the bill not to be paid and also that performance was not satisfactory. DW-1 was confronted with this bill Ex. DW1/P1 and he admitted that no remarks have been made on this bill by the HPCL engineer. So in these circumstances, it cannot be said that the HPCL engineer made adverse comments on the bill and advised that the payments be not made. Therefore, the plaintiff has been able to prove that the goods were supplied to the defendant vide invoice No.681 dated 13.01.2009, and the goods supplied were not defective and the payment was not asked to be stopped and no adverse remark was made on the bills in question. This

issue is, therefore, decided in favour of the plaintiff and against the defendants.

Findings on issue No.1(a)

Whether hose-pipes supplied by the plaintiff to the defendant were defective and defendant sought replacement of those hose pipes from the plaintiff any point of time? OPD

30. The onus to prove this issue is on the defendants. In order to prove its case the defendant examined Sh. Vijay Kumar, who admitted the bill Ex. DW1/P1 in support of his averments that the HPCL engineer made a remark on the bill submitted by the plaintiff company “not to be paid” stating “performance not satisfactory” and “in house test report not submitted”. But when this bill was put to this witness in the cross examination, he admitted that the bill did not contain any such remark. As already observed hereinabove DW-1 has admitted in his cross examination that there is no document to show that the defendant corporation sent any written intimation to the plaintiff company whereby the plaintiff company was informed about substandard or defective quality of the goods supplied by it and any replacement of any substandard or defective items was demanded from the plaintiff company at any point of time. The defendant have failed to discharge the onus that the plaintiff company was intimated about substandard or defective hose-pipes supplied to it by the defendants. The issue is, therefore, decided in favour of the plaintiff and against the defendants..”

3.2 The learned counsel for the appellants / defendants submitted that the bill in issue was made in triplicate, and, therefore, inadvertently, the relevant part of the bill bearing the endorsement that performance was not satisfactory was not produced before the trial court. For this purpose, the learned counsel places reliance on an application filed under Order 41 Rule 27 of the CPC, being: CM No.21292/2015.

3.3 According to me, the said evidence cannot be entertained at this

stage, as pre-requisites of Order 41 Rule 27 of the CPC are not fulfilled. Notwithstanding the above, what has emerged clearly is that the goods have been utilized by the appellant / defendant no.1 and the complaints allegedly received qua quality of the supplies made could not be proved.

4. In these circumstances, willy-nilly, the appellant / defendant no.1 has to pay for the supplies made. No interference is called for with the impugned judgment. The appeal and the captioned applications are accordingly, dismissed.

RAJIV SHAKDHER, J

SEPTEMBER 29, 2015

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