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

+ RFA(OS) 92/2016 & CM Nos.43745-46/2016

KALA GENSET PVT LTD

..... Appellant

Represented by: Mr.Manoj Kumar Rai, Advocate with
Mr.K.B.Upadhyay, Advocate

versus

M/S C & S ELECFTRIC LTD

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **25.11.2016**

1. We propose to pass a common order in the appeal as also in the two above captioned applications.
2. There is a delay of 562 days in filing the appeal and 35 days in re-filing the appeal, which is prayed to be condoned.
3. Impugned judgment and decree is dated March 09, 2015 and the SLP thereagainst was filed on July 18, 2016.
4. Being a decree, no SLP could be filed directly before the Supreme Court. In any case limitation to file SLPs is 90 days.
5. A word on the merits of the decree.
6. Respondent filed a suit praying decree in sum of ₹39,43,147/-. As per the plaintiff/respondent it had supplied electrical equipment to the appellant

on purchase orders placed upon it by the appellant. As per the invoices raised after goods were supplied, 60 days credit was given. For delayed payment interest stipulated was @ 24% per annum.

7. Goods worth ₹24,75,410/- were supplied vide e-mail dated January 02, 2010, the appellant confirmed acknowledging outstanding liability and pursuant thereto made payment in sum of ₹4,00,000/- on March 13, 2010.

8. Suit amount was therefore ₹20,75,410/- together with interest as per invoices totalling ₹18,67,737/-.

9. Served with summons in the suit, the appellant instructed a lawyer to enter appearance who filed a Vakalatnama on June 29, 2013. No written statement was filed within 30 days. None was filed with the extended time granted. An application under Order 7 Rule 11 was filed along with an application seeking extension of time to file written statement. This was on January 28, 2014. On March 28, 2014 the application under Order 7 Rule 11 CPC was dismissed. 30 days further time was granted to the appellant to file a written statement. None was filed. No further extension was prayed for.

10. Respondent filed an application under Order 8 Rule 10 of the CPC. Noting aforesaid facts, the learned Single Judge decreed the suit and we agree.

11. In the appeal it is stated that the goods supplied were defective. There are no pleadings in the appeal as to when were the goods supplied and when was rejection intimated. Section 42 of the Sales of Goods Act reads as under:-

“42. Acceptance – The buyer is deemed to have accepted the

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goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.”

12. It is apparent that as per law goods if not up to the specifications have to be rejected under intimation to the supplier within a reasonable period.

13. It is apparent that the appellant is simply trying to gain time.

14. Highlighting that the appellant was served before June 29, 2013 and counsel filed Vakalatnama on June 29, 2013 we find that no written statement was filed till March 09, 2015 when the impugned decree was passed. There is no merit in the appeal.

15. The appeal is dismissed on merits as well as on account of no sufficient cause shown entitling the appellant for delay to be condoned.

16. No costs.

CM No.43744/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

NOVEMBER 25, 2016

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