

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

+ **RFA No.630/2017**

% **18th July, 2017**

M/S CAMBRIDGE PUBLIC SCHOOL Appellant

Through: Mr. Anand Sanjay M. Nuli,
Advocate and Mr. Anubhav
Dubey, Advocates.

versus

M/S HCL LEARNING LTD. Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.24905/2017 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM Nos. 24904/2017 (delay of 99 days) and 24906/2017 (delay in re-filing of 25 days)

For the reasons stated in the applications, delay in filing and re-filing is condoned.

CMs stand disposed of.

RFA No.630/2017

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant impugning the judgment of the trial court dated 14.10.2016 decreeing the suit for a sum of Rs.9,78,850/- along with interest.

2. The subject suit was filed by the respondent/plaintiff which was engaged for providing education services to schools such as the appellant/defendant through HCL Digi-school E-Learning Programme. The respondent/plaintiff pleaded that an agreement was entered into between the parties in November 2011 whereby the respondent/plaintiff undertook to set up the HCL Digi-school E-Learning programme at the premises of the appellant/defendant in terms of the agreement. Appellant/defendant also pleaded to have made an advance payment of Rs.16,000/- for which a bank receipt was issued on 15.2.2012. Respondent/plaintiff pleads that it installed the necessary hardware and knowledge bank of HCL Digi-school E-Learning programme at the appellant/defendant school and the appellant/defendant school issued its acceptance certificate on 31.3.2012. It is further pleaded in the plaint by the

respondent/plaintiff that appellant/defendant agreed to make payment in 20 equated quarterly installments of Rs.1,20,000/- each but these installments were not paid and hence respondent/plaintiff issued the Demand-Cum-Termination notice dated 15.5.2014 asking the appellant/defendant to pay the outstanding amount. Since the notice failed to yield the desired result, the subject suit was filed.

3. Appellant/defendant was served in the suit. Time was granted to the appellant/defendant to file written statement but since no written statement was filed the right to file written statement was closed vide order dated 11.12.2015. Admittedly, this order has not been challenged by the appellant/defendant and it has become final. Appellant/defendant also thereafter stopped appearing in the matter and hence was proceeded *ex-parte* vide order dated 24.8.2016.

4. Respondent/plaintiff thereafter led evidence and proved its case, and consequently, the impugned *ex-parte* judgment and decree was passed on 14.10.2016 decreeing the suit.

5. The relevant paras of the trial court referring to the evidence led by the respondent/plaintiff and also containing the discussion as to how the respondent/plaintiff proved its case are paras

4,5,8 and 9 of the impugned judgment, and which paras read as under:-

“4. Thereafter, in order to prove its case the plaintiff examined Sh. Akshay Lal, who is working as an Associate Manager (Legal) with the plaintiff bank as PW-1, who filed his evidence by way of affidavit which is Ex.PW1/1, wherein he reiterated the averments made in the plaint. During his deposition, PW-1 has exhibited the following documents:-

Ex.PW1/A (Colly)	:	<i>Certified copy of resolution passed by Board of Directors of plaintiff company dated 29.03.2016.</i>
Ex.PW1/B	:	<i>Certified copy of Power of Attorney dated 01.08.2016</i>
Ex.PW1/B	:	<i>Original copy of ACO</i>
Ex.PW1/C	:	<i>Original Acceptance certificate dated 31.03.2012 issued by the defendant</i>
Ex.PW1/D	:	<i>Bank receipt dated 15.02.2012 in respect of payment of Rs.16,000/- made by the defendant</i>
Ex.PW1/E	:	<i>Copy of Demand-Cum-Termination notice dated 15.05.2014</i>
Ex.PW1/F	:	<i>Copy of statement of account of defendant maintained by the plaintiff bank</i>

5. The plaintiff has also examined Sh. Yogesh Kumar who is working with the plaintiff company as Executing Accounts as PW-2 who filed his evidence by way of affidavit as Ex.PW2/1. He has deposed that he is responsible for the statement of accounts which is already Ex.PW 1/F generated from the computer systems and during the relevant period the computer and the printer from which the statement of account Ex.PW1/F is generated were operating properly and there have been no such operational problems as to affect the accuracy of the electronic record. He has also placed on record the certificate u/s 65 of the Indian Evidence Act as Ex.PW2/A.

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XXXXX

XXXXX

8. From the un-rebutted and un-challenged testimony of PW-1 and the documents placed on record by him, it stands proved vide Power of Attorney Ex.PW1/A & B that he has been duly authorized to file the present suit on behalf of the plaintiff company. It further stands proved vide Ex.PW1/B that an agreement for Digischool Programme called as Digi-school-Agreement-cum-Order (ACO) was executed between the plaintiff

and defendant. As per the agreement Ex.PW1/B, the plaintiff was to set up the HCL Digischool E-Classroom and conduct of HCL Digischool E-Learning Programme at the premises of the defendant and the defendant was to make the payments in lieu of said services provided by the plaintiff. The defendant while making an advance payment of Rs.16,000/- placed order the plaintiff company for availing HCL E-Learning Programme and its premises. The plaintiff also issued bank receipt Ex.PW1/D acknowledging the receipt of advance payment of Rs.16,000/- and in accordance with the ACO, delivered the hardware and knowledge bank of HCL Digischool E-Learning programme at the premises of the defendant, which was also acknowledged by the defendant vide acknowledgement/acceptance certificate Ex.PW1/C. From the un-rebutted testimony of PW-1, it also stands proved that the defendant failed to make the payment as agreed upon vide ACO Ex.PW1/B and accordingly plaintiff vide Demand-Cum-Termination Notice dated 15.05.2014 Ex.PW1/E terminated the ACO and demanded the outstanding amount from the defendant.

9. Perusal of the ACO Ex.PW1/B shows that the defendant had opted to make the payment in 20 Equated Quarterly Installment (EQI). The tenure of the agreement was 60 months and the defendant was liable to make quarterly payment of Rs.87,000/- towards the hardware setup and Rs.30,000/-towards the Knowledge Bank. Perusal of ACO Ex.PW1/B further reveals that, it was agreed upon between the parties that in the event of termination of the ACO, the defendant shall be liable to pay to the plaintiff all the unpaid EQIs along with interest accrued thereon @ 24% per annum plus EQI for the remaining term of the installment period. On the basis of aforesaid formula, since the ACO was terminated, the plaintiff is claiming an amount of RS.9,78,850/- from the defendant. PW-1 has also placed on record the statement of account maintained by the plaintiff bank Ex.PW1/F which is duly certified u/s 65B of Indian Evidence Act vide certificate Ex.PW2/1 showing installment due and the payment made by the defendant and the un-billed amount of Rs.5,25,580/-for 11 quarters.”

(underlining added)

6. Once the respondent/plaintiff proves its case by leading *ex-parte* evidence, and there is no evidence of the appellant/defendant, I fail to understand as to how this Court can in any manner set aside the impugned judgment and decree. As already stated above, and by reproducing paras of the impugned judgment, it is seen that

respondent/plaintiff had proved its case, and which resulted in decreeing of the suit.

7. There is therefore no merit in the appeal. Dismissed.

JULY 18, 2017/ib

VALMIKI J. MEHTA, J

