

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

+ **RFA No. 594/2017**

% **7th July, 2017**

DELHI INSTITUTE OF TOOL ENGINEERING Appellant
Through: Mr. Visheshwar Srivastava,
Adv.

versus

K.P.SINGH Respondent

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

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit against the impugned judgment dated 28.3.2017 dismissing the suit for recovery of Rs.45,01,609/-. The suit for recovery was filed by the appellant/plaintiff against the respondent/defendant which had provided security guards to the appellant/plaintiff. The case of the appellant/plaintiff as per the plaint is that there was a theft in the premises of the appellant/plaintiff in the years 2001 to 2003 as also a major theft in 2004-2005 of articles worth Rs.45 lacs, and therefore, respondent/defendant should be held liable for the value of the goods stolen on account of the negligence of the respondent/defendant.

2. The facts of the case are that the appellant/plaintiff filed the subject suit for recovery of Rs.45,01,609/- pleading that the respondent/defendant was engaged to provide security guards, but inspite of security guards being provided yet thefts took place, and consequently, the respondent/defendant is liable on account of negligence to pay for the value of the goods which have been stolen. The relevant paras pleading cause of action in the plaint are paras 13 to 19 and these paras read as under:-

“13. That after the agreement, the Defendant started providing security cover and initially everything went on smooth. However, in the year 2001-2003, there were thefts of various items, as detailed below:-

SL.NO	REFERENCE NO. AND DATE	BEIEF DESCRIPTION OF THE ITEMS STOLEN
1.	16(42)/2001-2002/HTVTC/2927 dated 01.02.2001	Theft of items stored at the basement of the centre.
2.	16(42)/2001-2002/HTVTC/4587 dated 11.10.2002	Theft of three CPUs of the computer of electrical installation lab.
3.	16(42)/2001-2002/HTVTC/5451 dated 31.05.2003	Theft of 19 nos. of aluminum windows frames, along with fitted handle and glass panel.
4.	16(42)/2001-2002/HTVTS/372-375,dated 30.10.2004	The in the premises of HTVDC Okhla Indl. Area Phase II New Delhi. Goods valuing Rs.44,93,600/- are stolen.
5.	16(42)/2001-2002/HTVTC/608, dated 16.02.2005	Theft in the premises of HTVDC Okhla Indl. Area Phase II New Delhi.

14. That the present suit is only qua the thefts which took place in the year 2004-2005.

15. That in the 2004, a major theft took place on 29.10.2004 and goods and articles worth more than Rs.45.00 Lacs approximately were stolen while under the charge of the Defendants. The Plaintiffs though lodged a complaint to the effect, but due to absence of any clue, the Police filed its Un-Trace Report on 27.12.2005.

16. That surprisingly with in a time frame of 20 days, another theft took place, which was discovered on 17/18.01.2006 and a report was lodged with the Police. The Defendants were called upon to give heir explanation. However much to the surprise they denied their responsibility.

17. That thereafter, this loss of Rs.1.40 Lacs from the theft in the year 2005 was adjusted from the security charges amounting to Rs.1,33,991/- and still there is a balance of Rs.8,009/- to be payable to the Plaintiffs.

18. That the Defendant in order to overcome his deficiency of service and negligence, got a false notice sent by his Advocate, claiming enhanced wages which was never agreed to by the Plaintiff at any stage. Hence, a reply was sent to this notice pointing out the deficiency of services.

19. That the Plaintiff as per the terms of the agreement, subsisting between the parties is entitled to the loss of goods worth Rs.44,93,600/- together with a balance of Rs.8,009/- from the Defendant and hence, prefers this Plaint before this Hon'ble Court. The Plaintiff is also entitled to an interest @ 18% p.a.”
(underlining added)

3. In the security agency agreement dated 1.7.2000 Ex.P-1, there is a Clause-7 which states that respondent/defendant will bear the loss caused on account of theft which may occur due to negligence on the part of the security guards of the respondent/defendant.

4. In terms of the pleadings, and the security agency agreement, the appellant/plaintiff led evidence by filing affidavit of evidence of one Mr. B.N. Tiwari and this affidavit of evidence reproduces word by word and coma by coma the aforesaid paras 13 to 19 of the plaint which have been reproduced above.

5. The issue before the court below was that whether the appellant/plaintiff had proved negligence by the respondent/defendant so as to be compensated in view of Clause-7 of the security agency agreement dated 1.7.2000. The issue in this regard being issue number

(ii) has been dealt with by the trial court in paras 27 to 29 of its impugned judgment and these paras read as under:-

“27. The onus of proving this issue was on the plaintiff. It is argued on behalf of plaintiff that defendant was given the contract to provide security guards round the clock at the Okhla Unit/Institute of the plaintiff w.e.f. 01.07.2000 onwards. While the security was under the charge of defendant, various thefts took place at the plaintiff’s unit Okhla out of which one major theft had taken place in which goods worth Rs.45 lacs (approximately) had been stolen and such, the defendant is liable to make good the losses caused to the plaintiff. On the other hand, defendant has submitted that it is correct that defendant was providing security to the plaintiff when the alleged theft took place, however, there was no agreement to this effect that in case of any theft the defendant shall be responsible. Ld. Counsel for defendant has further argued that as per clause 7 of agreement Ex.P-1, the defendant’s liability for any theft would be come into being only where there is any negligence on the part of security guard. Clause 7 of Ex.P-1 is reproduced hereunder:-

“7.That the second party will bear any loss due to theft/pilferage which may occur due to negligence on the part of their security guards.”

28. It is argued on behalf of defendant that it is clear from the above mentioned clause that the defendant was under obligation to bear any loss due to any theft/pilferage only if there was any negligence on the part of its security guards.

29. I have gone through the entire plaint and the testimony of witnesses. Nowhere in the plaint or in the testimony, it has been stated that the theft had taken place due to negligence of the security guards. Even in the inquiry conducted by the police, no clue could be found and untrace report was filed by the police on 27.12.2005. Nothing has come on record which can be attributed to the negligence of the security guards which had led to alleged theft of Rs.45 lacs. Plaintiff has filed to bring any fact on record which could point out any negligence on the part of security guards which resulted in the theft in question. Hence, the defendant cannot be held liable for the alleged theft which had taken place. Accordingly, this issue is decided against the plaintiff and in favour of the defendant.” (underlining added)

6. A reference to the aforesaid paras of the impugned judgment clearly show that the court below has dismissed the suit inasmuch as the appellant/plaintiff had failed to prove any negligence of the respondent/defendant or his security guards.

7. In law proof of negligence is proof of fact. Proof of fact of negligence has to be by detailed evidence as to how negligence is committed by the security guards of the respondent/defendant. For example it may be that instead of the requisite particular number of guards a lesser number of guards were posted on the date when theft took place or it is shown that the guards were sleeping on duty or it is shown that guards were negligent in some other manner etc etc, however, just one word in the pleading and one word in the affidavit of evidence that the respondent/defendant is guilty of negligence cannot be said to be discharge of onus of proof by the appellant/plaintiff that the respondent/defendant is guilty of negligence.

8. A security agency provides guards. Liability of such a security agency is not the liability of an insurance company. Merely and simply because theft is committed hence on account of this fact of theft only the security agency is not liable to indemnify the appellant/plaintiff who has utilised the services of the guards of the security agency. Both in terms of law, as also in view of para 7 of the security agency agreement, the appellant/plaintiff only by proving detailed facts and leading evidence to that effect would have proved that the theft has occurred on account of negligence only then would the respondent/defendant be liable, but as stated above, only flimsy

evidence has been led with respect to negligence, and such evidence cannot amount to discharge of onus of proof of respondent/defendant having committed negligence.

9. There is no ground to interfere with the impugned judgment. Dismissed.

JULY 07, 2017/ib

VALMIKI J. MEHTA, J

