

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

+ **RFA No. 958/2017**

% **14th November, 2017**

FIBER HOME INDIA PRIVATE LIMITED Appellant

Through: Mr. Puneet Jaiswal, Mr. Nakul
Chaudhary and Ms. Aranya
Moulick, Advocates.

versus

RAKESH KUMAR GARG Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 41128/2017 (for exemption)

1. Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. Appl. No. 41129/2017 (for delay)

2. This is an application seeking condonation of delay of 55 days in re-filing the appeal.

3. For the reasons stated in the application the same is allowed and the delay is condoned.

C.M. stands disposed of.

RFA No. 958/2017 and C.M. Appl. No. 41130/2017 (for stay)

4. This Regular First Appeal is filed under Section 96 Code of Civil Procedure, 1908 (CPC) impugning the judgment of the trial court dated 8.5.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for recovery of a sum of Rs.3,84,724/- along with interest at the rate of 9% per annum. Suit is decreed on account of non-payment by appellant/defendant of the balance due to the respondent/plaintiff under the subject purchase order dated 17.2.2014 placed by the appellant/defendant upon the respondent/plaintiff.

5. The facts of the case are that the appellant/defendant placed upon the respondent/plaintiff a purchase order dated 17.2.2014 for installation and commissioning of ODN material (home connection) along with operation and maintenance (O&M) for six months. Contract was in three parts with the third part being of operation and maintenance for six months. Respondent/plaintiff pleaded that he completed the entire work but payment was made only for the first two parts but not for the third part of O&M. Respondent/plaintiff pleaded that it raised a bill upon the

appellant/defendant dated 11.8.2015 but the appellant/defendant failed to pay the same and hence the subject suit was filed after serving a legal notice by e-mail on 12.9.2015.

6. Appellant/defendant contested the suit and denied its liability. It was pleaded by the appellant/defendant that the respondent/plaintiff had failed to complete the work in accordance with the subject purchase order and hence respondent/plaintiff was not entitled to payment. It was pleaded by the appellant/defendant that since the respondent/plaintiff did not do the work under the third part of the contract hence the respondent/plaintiff is not entitled to the suit amount.

7. After pleadings were complete, the trial court framed the following issues:-

- “1) Whether the plaintiff is entitled for recovery of Rs.3,91,324/- as claimed for? OPP
- 2) Whether the plaintiff is entitled for pendent-lite and future interest, if yes, at what rate? OPP
- 3) Relief.”

8. Evidence was led by the parties and this evidence which has been led by the parties is referred to in paras 7 and 8 of the impugned judgment and these paras read as under:-

“7. The plaintiff has examined himself as PW1 and in his evidence by way of affidavit, he has reiterated and reaffirmed the stand as taken by the plaintiff in the plaint. He has filed on record his evidence by way of affidavit as Ex.PW1/A, the copy of rent agreement marked as mark P1, the unsigned copy of the draft agreement as mark P2, the service contract (20 pages) and supply contract (22 pages) along with appendix 1 to 4 (running into 34 pages) as Ex.PW1/1, the copy of purchase orders PO no. 008 A, no. 008-B and No. 008-C dated 17.02.2014 received with annexures on e-mail duly accepted by the plaintiff at point A are collectively exhibited as Ex.PW1/2, the bill dated 14.08.2015 and its postal receipt as Ex.PW1/3 and Ex.PW1/4 respectively, the copy of e-mail dated 12.09.2015 as Ex.PW1/5, the certificate on affidavit for compliance U/s 65B of Indian Evidence Act as Ex.PW1/2 and Ex.PW1/5 is Ex.PW1/3, the copy of legal notice dated 22.09.2015, reply to the legal notice dated 16.10.2015 and rejoinder to the reply dated 17.11.2015 are Ex.PW1/6, Ex.PW1/7 and Ex.PW1/8 collectively.

8. The defendant no. 1 has examined its Authorized Representative Sh. Madhvendra Pratap Shahi as DW1 and in his evidence by way of affidavit Ex.DW1/A on record, he has reiterated and reaffirmed the stand as taken by the defendant in the written statement. This witness has filed on record his affidavit as Ex.DW1/A, the copy of certificate of incorporation issued by Registrar of Companies, NCT of Delhi and Haryana as Ex.DW1/1, copy of Memorandum and Articles of Association of the defendant company as Ex.DW1/2 and the Extracts of Board Resolution as Ex.DW1/3 and Ex.DW1/4.”

9. Trial court has dealt with the relevant issue nos. 1 and 2 and held the same in favour of the respondent/plaintiff by observing that in the written statement filed by the appellant/defendant there is effectively no denial of the purchase order being placed upon the respondent/plaintiff and also as to the purchase order being in three parts. Appellant/defendant has also not denied payment for the first two parts but has only denied its liability to pay for the third part with respect to which invoice Ex.PW1/3 was raised upon the

appellant/defendant. Trial court has referred to the fact that never has the appellant/defendant complained to the respondent/plaintiff of non-completion of the third part of the purchase order and more importantly appellant/defendant in his written statement had pleaded that the third part of the work was got completed by the appellant/defendant from Bharti Airtel Limited as the same was allegedly not done by the respondent/plaintiff, but no evidence whatsoever was filed of any contract with Bharti Airtel Limited or any payment by the appellant/defendant to Bharti Airtel Limited to establish the fact that it was Bharti Airtel Limited which allegedly did the O&M/third part of the purchase order .

10. I, therefore, do not find any illegality in the impugned judgment as the subject purchase order is admitted, the subject purchase order being in three parts is admitted, first two parts were done by the respondent/plaintiff and paid for is also not disputed, and the appellant/defendant though pleaded that the third part of the purchase order was not done by the respondent/plaintiff but was done by Bharti Airtel Limited but the appellant/defendant failed to prove that the third part of the work was got done by the appellant/defendant

from Bharti Airtel Limited. Some of the relevant paras of the impugned judgment holding the issue nos. 1 and 2 in favour of the respondent/plaintiff are paras 12 to 14 and 17 and these paras read as under:-

“12. The factual controversy, involved in the present suit is within a narrow compass. If the written statement filed on record by the defendant is carefully gone through, it becomes apparently clear that the defendant has tacitly admitted the issuance of purchase order bearing no. ODN-2014-FHDEL-008-C to the plaintiff. It is also not in dispute that the abovesaid purchase order was to be completed in three parts ie Part A, Part B and Part C.

13. The case of the plaintiff is that all the three parts were completed by him upto the satisfaction of the defendant but the plaintiff received the payment only in respect of first two parts. The plaintiff has alleged that on account of performance of Part C ie on account of O & M Service, the plaintiff has not received any payment despite the fact that he raised the invoice Ex.PW1/3 and despite the fact that he issued the demand notice.

14. Whereas on the other hand, the defendant in the written statement has taken the stand that the third part was completed by Bharti Airtel Limited. The defendant has further taken the stand that the third part was never completed by the plaintiff and infact, the plaintiff was not asked to perform Part C of the contract. However, the defendant has not denied in clear cut and irrevocable terms that the plaintiff has received the payment on account of first two parts of the contract ie purchase order dated 17.02.2014.

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17. Whereas on the other hand, Sh. Madhavendra Pratap Singh, the authorized representative of the defendant, who has examined himself as DW1, in his cross-examination has stated that the purchase order dated 17.02.2014 Ex.PW1/2 was issued by the defendant company. DW1 has further stated that the purchase order Ex.PW1/2 (Part A, B and C) are separate from each other and work is also different in each of the purchase orders. DW1 further states that a separate information is given for O & M work in advance. DW1 further states that the information might have been given for not continuing the O & M work. DW1 further states that information in this case was given by the defendant through e-mail Ex.PW1/5. DW1 admits it to be correct that there is no letter except Ex.PW1/5 on record regarding non continuation of operation and maintenance work. DW1 further states that all the works are supposed to

be performed as per the purchase order Ex.PW1/2. DW1 further states that the purchase order also contains the terms and conditions in between the parties. DW1 further states that he does not know whether any information was given to the plaintiff for not performing the work of Part C of the purchase order after completing Part B of the purchase order Ex.PW1/2. DW1 further states that he has not filed any documents which can prove that Part C of the purchase order was completed by Bharti Airtel Limited. DW1 admits it to be correct that all the three different purchase orders are contained in three parts namely Part A, Part B and Part C. DW1 admits it to be correct that after completion of Part A, Part B was to be complied with and after the completion of Part B, Part C was to be complied with. By way of volunteer, DW1 states that not automatically. DW1 further states that he does not have any documentary proof in writing to show that the plaintiff was intimated prior to the commencement of Part B. DW1 further states that he does not have any documentary proof in writing to show that the plaintiff was restrained from performing Part C but the plaintiff himself have been informed telephonically to the said effect. DW1 further states that he does not have any documentary proof in writing to show that Bharti Airtel Limited had refused the defendant to do the work of Part C. DW1 further states that he does not have any documentary proof to show that the job of Part C was done by Bharti Airtel Limited.” (underlining added)

11. In view of the above discussion, I do not find any merit in the appeal and the same is hereby dismissed.

NOVEMBER 14, 2017

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VALMIKI J. MEHTA, J