

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

+ **RFA No. 1010/2017**

% **4th December, 2017**

THE DIRECTOR AIIMS Appellant
Through: Mr. R.K. Gupta, Advocate.

versus

M/s AMTRAK TECHNOLOGY PVT. LTD. & ANR.Respondents

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. 43692/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 43691/2017 (for delay)

This is an application seeking condonation of delay of 4 days in filing the appeal.

For the reasons stated in the application, the delay of 4 days in filing the appeal is condoned, subject to just exceptions.

C.M. stands disposed of.

RFA No. 1010/2017

1. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the defendant no.2/sole contesting defendant, impugning the judgment of the trial court dated 28.7.2017 by which the trial court has decreed the suit for recovery of Rs.15,34,866/- along with interest at the rate of 6% per annum. Suit amount was claimed towards interest on account of delay in release of the payment by the appellant/defendant no.2 with respect to computer hardware and peripherals which were purchased by the appellant/defendant no.2 from the respondent no.1/plaintiff.

2. The facts of the case are that two purchase orders dated 5.9.2006/Ex.P-1 and 15.11.2006/Ex.P-2 were placed upon the respondent no.1/plaintiff by the appellant/defendant no.2. These contracts for the computers and peripherals were with respect to designated parameters and admittedly the supply was made as per the designated parameters/technical specifications. The supply in terms of the purchase orders Ex.P-1 and P-2 were made upon the appellant/defendant no.2 vide invoices dated 13.12.2006 and 29.12.2006 for a total amount of Rs.95,10,283/-. Respondent

no.1/plaintiff only on 11.4.2008 received the cheque for Rs.95,10,283/- *qua* the subject invoices of November and December, 2006 i.e after a lapse of 16 months and 14 months, and therefore respondent no.1/plaintiff claimed a sum of Rs.10,05,031/- towards interest up to the period 30.4.2007. Respondent no.1/plaintiff pleaded that it had taken a loan from its banker to pay to its distributors. Subject suit was therefore filed for claim of interest for delayed payment after serving the legal notices dated 5.6.2008 and 9.6.2008.

3. Appellant/defendant no.2 contested the suit and pleaded that the computers which were supplied were obsolete and hence the respondent no.1/plaintiff was not entitled to payment of the subject goods. It was pleaded by the appellant/defendant no.2 that bills for payment were due only after upgradation of the systems which was not done. It was however pleaded that the payments were made in March, 2008 and therefore respondent no.1/plaintiff is not entitled to the suit amount.

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

- "1. Whether there is any privity of contract between the plaintiff and the defendant no. 2? OPP
2. Whether the plaint does not disclose any cause of action? OPD
3. Whether the plaintiff is entitled for decree of Rs.35,87,418/- in favour of the plaintiff against the defendants no. 1 and 2? OPP
4. Whether the plaintiff is entitled for interest @ 18% per annum as claimed in the suit? OPP
5. Relief."

5. As regards issues framed, whereas the respondent no.1/plaintiff led evidence, the appellant/defendant no.2 led no evidence when in spite of opportunities no evidence was led by the appellant/defendant no.2, hence the right to lead evidence of the appellant/defendant no.2 was closed on 21.3.2017. These aspects are noted in paras 6 to 6.3 of the impugned judgment and these paras read as under:-

"6. In order to prove its case, the plaintiff has examined only one witness i.e. Sh. Sandeep Arya as PW1.

6.1 PW1 Sandeep Arya tendered evidence by way of affidavit as Ex. PW1/A and made statement in consonance with the averments made in the pleadings and also produced the documents i.e. purchase order dated 05.09.2006 Ex.P-1, purchase order dated 15.11.2006 Ex. P-2, Receipt dated 31.03.2008 Ex. P-3, legal notice dated 05.06.2008 Ex. P-4, legal notice dated 09.06.2008 Ex. P-5, letter dated 30.03.2007 Ex. P-6, copy of affidavit dated 25.02.2008 Ex. P-7, copy of affidavit dated 25.02.2008 Ex. P-8, Rate contract Ex. P-9, letter Ex. P-10, Resolution dated 15.09.2008 Ex. P-11, copy of authorization letter Ex. P-12, copy of invoice dated 29.12.2006 Ex.P-13, letter dated 14.05.2007 Ex.P-14, correspondences/demands of different dates are Ex. P-15 to Ex. P-22.

6.2. This witnesses were subjected to cross-examination wherein PW1 which is reproduced as follows:-

"The specifications of the supplied items are given in the purchase order Ex. P-1 and P-2 itself. It is wrong to suggest that the computers supplied by us were outdated or that utility of those computers became zero. It is wrong to suggest that the outdated computers were violating the warranty as given by us.

We have supplied the computers as per specifications given in the purchase order Ex. P-1 and P-2.

We have not received any letter dated 24.03.2007 from the defendant no. 2.

It is wrong to suggest that the defendant no. 2 suffered losses due to supply of outdated computers. It is correct that a suit has been filed by AIIMS against the plaintiff wherein. Vol. The same has been filed after filing of the present suit. It is wrong to suggest that the plaintiff company has not chosen to repair the computers despite being told by the defendant no. 2/AIIMS. It is correct that we had promised to upgrade the system but it was subject to the condition that payment would be made by the defendant no. 2 within time but we received payment after 14 months. It is wrong to suggest that the defendant no. 2 made payment within one month of submission of invoice. It is wrong to suggest that defendant no. 3 had not authorized the plaintiff company and therefore they are arrayed as defendant in the present suit. It is wrong to suggest that the bill was submitted in February 2008 and payment was made in March 2008. Vol. The first bill was submitted in December 2006 and the same is also mentioned in the inspection note..”

6.3 The defendant no. 2/contesting has not examined any witness despite various opportunities given, defence of the defendant no. 2 was closed on 21.03.2017.”

6. In my opinion, no fault can be found with the impugned judgment and decree because the admitted fact is that the goods which were supplied were in terms of the specifications as stated in the purchase orders Ex.P-1 and Ex.P-2. The change of parameters took place only on account of subsequent changes of the DGS & D Rate Contract for orders placed after 9.2.2007 whereas the subject orders under the supplies were made by the respondent no. 1/plaintiff prior to 9.2.2007 as the orders in question were dated 5.9.2006 and 15.11.2006. Appellant/defendant no. 2 therefore cannot lay any blame at the door of

respondent no. 1/plaintiff. Trial court has also, in my opinion, rightly relied upon Section 61 of the Sale of Goods Act, 1930 which provides that in case of delay of making of payment the seller is entitled to interest for the delay in payment. These aspects are noted by the trial court in paras 7.3 to 7.8 of the impugned judgment and these paras read as under:-

“7.3. The admitted fact between the parties is that the defendant no. 2 issued purchase orders for above mentioned desktops to Hewlett Packard (I) Sales Pvt. Ltd., Tower D, 6th Floor, global business Park, Mehrauli Gurgaon road, Gurgaon (hereinafter referred to as HP in short). Copies of these purchase orders are exhibited as Ex. P-1 and Ex. P-2. Both these exhibits (purchase orders) contain elaborate and detailed description of the goods to be supplied and the amount agreed between the parties.

7.4. The above mentioned purchase orders were passed on by the defendant no. 3 to the plaintiff on back-to-back basis and intimation for the same was given to the defendant no. 2 through letter dated 28/11/2006 which has been exhibited as Ex P-12. In this letter, it has been clarified that the payment for purchase of goods has to be made to the plaintiff. It is matter of record that in the written statement filed by the defendant in paragraph 4, it is admitted that the above mentioned desktop was supplied to the defendant no. 2 by the plaintiff in the months of October and November 2006.

7.5. It transpires from the contents of letter dated 24/03/2007 Ex. D-1 issued by the defendant no. 2 to the plaintiff stating that the payment in respect of supplied computers is under consideration of a committee set up by the defendant no. 2 which has reported that the processor of the supplied computers need to be updated from PD 820 to PD 915. In fact, the genesis of the problem is that at the time of issue of the purchase order in accordance with DGS&D Government of India, the rates were provided for the computers with the processor PD 820 but these configurations were changed with effect from 09/02/2007. It is the case of the plaintiff that the purchase order and goods were delivered prior to this date. The above-mentioned letter of the defendant no. 2 was responded by defendant no. 3 in letter dated 30/03/2007 exhibited as Ex P-6, thereby explaining the entire factual matrix to the defendant no. 2. The relevant extract is reproduced as under:-

“We would also like to bring to your notice that the processor upgrade on the DGS&D Rate Contract has happened only for orders being placed after 9 February, 2007. Hence we and all other vendors, as per DGS&D amendment issued on 9 February 2007, are supposed to supply PD915 processor for all orders placed after 9 February 2007. For orders placed before 9 February 2007 we are to supply PD820 processors as per the DGS&D Rate Contract.”

7.6. Thereafter, the plaintiff through letter dated 14th May 2007 written to the defendant no. 2 demanded the payment towards the goods supplied along with the interest of Rs. 10,05,031/- till that time. This letter is exhibited as Ex. P-14 and finally cheque of Rs.95,10,283/- dated 31.03.2008 was issued by the defendant no. 2 in favour of plaintiff but with delay.

7.7. In a case where goods have been supplied but the price is not paid, it might be useful to refer to Section 61 of the Sale of Goods Act which is reproduced as under:

"61. Interest by way of damages and special damages. -

(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest of special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price-

(a) **to the seller in a suit by him for the amount of the price - from the date of the tender of the goods or from the date on which the price was payable;**

(b) to the buyer in a suit by him for the refund of the price in a case of breach of the contract on the part of the seller -from the date on which the payment was made.

Section 61 incorporates a rule of equity, Justice and sound logic and lays down that the buyer should not unduly benefit by holding the goods bought in one hand and yet retaining in the other hand the money equivalent to the price or goods due and payable by him to the seller. Similarly, the seller should not unjustly enrich by retaining the money received in advance as price in full or part of the goods forming subject matter of the contract, and retaining in the other hand the goods legitimately due for delivery to the buyer.

7.8. Section 61 of the Sale of Goods Act can also be read in conjunction with Section 3 of the Interest Act, the Court can allow interest on equitable consideration as payment of interest is basically a compensation payable on account of denial of the right to utilize the money due during the period in which the same could have been made available to the claimant which has been, in fact, utilized by the person withholding the same.”

(underlining added)

7. In view of the aforesaid discussion I do not find any merit in the appeal because respondent no. 1/plaintiff was entitled to interest for delayed payment in view of the Section 61 of the Sale of Goods Act. There is no dispute and doubt that the payment of the invoices were made with delay and the issue before the trial court was only for claim of interest for delayed payment of the invoices raised by the respondent no. 1/plaintiff for the goods supplied.

8. Dismissed.

C.M. Appl. No. 43693/2017 (for stay)

Since the present appeal is dismissed, this application is also dismissed.

DECEMBER 4, 2017

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VALMIKI J. MEHTA, J