

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

% **Date of decision: 21st August, 2018.**

+ **RSA 48/2018**

SANJAY KUMAR GOEL **Appellant**

Through: Mr. Pawan K. Behl, Adv.

Versus

PARADEEP PHOSPHATES LTD. **Respondent**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.11509/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

RSA 48/2018 & CMs No.11510/2018 & 11511/2018 (for condonation of 168 days delay in filing and 45 days in re-filing the appeal respectively)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 17th April, 2017 in RCA No.61395/2016 (Old No.05/2010) of the Court of Additional District Judge-06 (Central)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 12th July, 2010 in Suit No.1107/06/96 of the Court of Senior Civil Judge (Central)] in a suit filed by the appellant/plaintiff for recovery of Rs.1,19,960/- jointly and severally from the respondent/defendant as well as from six others.

4. This appeal came up first before this Court on 23rd March, 2018 and has thereafter been adjourned from time to time on the request of the counsel for the appellant/plaintiff.

5. The appeal is accompanied with applications for condonation of delay of 168 days in filing and 45 days in re-filing thereof. However, the question of considering the grounds for condonation of delay would arise only if on merits there were to be any need to entertain this Regular Second Appeal, the *sine qua non* for entertaining which is, whether it raises a substantial question of law.

6. The counsel for the appellant/plaintiff has been heard and the copies of the Trial Court record annexed perused.

7. The judgment of the Suit Court shows the same to have been passed, besides the respondent/defendant, against the other six defendants also, against all of whom the suit was filed. However, the judgment of the First Appellate Court shows the respondent/defendant as the sole respondent in the appeal.

8. I have enquired from the counsel for the appellant/plaintiff, as to what happened to the other respondents/defendants who were parties to the suit.

9. The counsel for the appellant/plaintiff has drawn attention to the findings of the Suit Court under Issue No.5, recording that, (i) the suit stood dismissed against defendants No.2&3 Union of India; (ii) the defendant No.4 was the Managing Director of the respondent/defendant; (iii) the defendant No.5 Government of Nauru had already been dropped; (iv) the defendants No.6&7 A.K. Aggarwal and S. Shivramkrishnan were employees of the respondent/defendant and were proper parties to the suit.

10. It is thus quite obvious that in the suit, besides the respondent/defendant, the Managing Director of the respondent/defendant and A.K. Aggarwal and S. Shivramkrishnan, employees of the respondent/defendant, were parties. There is no explanation as to why they were not impleaded in the First Appeal or have not been impleaded in this Regular Second Appeal.

11. All parties to a suit are necessary parties to appeals arising therefrom and this appeal is liable to be rejected on this ground alone.

12. A reading of the judgment of the Suit Court shows the same to be a typed copy and probably not compared with the original.

13. This is yet another lacuna in this appeal.

14. The Suit Court, on the basis of evidence led, passed a decree in favour of the appellant/plaintiff and against the respondent/defendant and the other defendants who have not been impleaded as parties to this appeal, of recovery of Rs.5,290/- and amount of NSC of face value of Rs.15,000/- along with interest @ 10% from the date of termination of contract from January, 1991 and 31st March, 1990 respectively, till date of realisation. It was further held that the appellant/plaintiff had failed to prove the claim for the remaining amount.

15. The First Appellate Court has dismissed the appeal, reasoning (i) that for the appellant/plaintiff to be entitled to the remaining amount claimed in the suit, the appellant/plaintiff was required to prove delivery to the respondent/defendant of systems, for recovery of price whereof the remaining amount had been claimed; (ii) that the appellant/plaintiff in this regard had relied on a letter Ex.PW1/G to contend that the systems were

handed over to Mr. Srinivasan; (iii) however, Ex.PW1/G mentioned only seven items and there was no mention that systems were handed over to Mr. Srinivasan; (iv) that the appellant/plaintiff had not stepped into the witness box and his attorney only was examined; (v) that the said attorney, during cross-examination admitted that M/s Computers & System Technology was the sole proprietary concern of the appellant/plaintiff and that the attorney did not know with whom the appellant/plaintiff as proprietor of the said firm used to deal for the purposes of the contract; (vi) that the attorney also admitted that he was not working with M/s Computers & System Technology in the relevant year and that he had in fact never worked with M/s Computers System Technology; (vii) that the said attorney also admitted that the agreement, in pursuance to which the money claim was made in the suit, had not taken place in his presence; (viii) that the attorney further admitted that no transaction subject matter of the suit had taken place in his presence; (ix) that the attorney also admitted that he had no authority to deal on behalf of M/s Computers & System Technology in any manner whatsoever; (x) that as per the dicta in ***Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd.*** AIR 2005 SC 439 and ***Man Kaur Vs. Hartar Singh Sangha*** 2010 X AD SC 304, no credence could be given to the testimony of the said attorney; (xi) that the appellant/plaintiff had failed to prove the case and the judgment of the Suit Court did not require any interference.

16. The counsel for the appellant/plaintiff has drawn attention to the letter dated 3rd January, 1991 of the respondent/defendant to M/s Computers System Technology, wherein it is stated as under:

“Please refer to your letter dated 5.11.90 regarding processing of financial accounts and payroll of Delhi office, As

your are aware that our corporate office has been shifted from Delhi to Bhubaneswar and salary for the months of November 90 was processed at Bhubaneswar office. Salary for the months of December 1990 could not be processed with your system could not work in Bhubaneswar. Moreover your letter dated 5.11.90 indicated that you are not interested to visit to Bhubaneswar for operating the systems on the agreed terms and conditions.

Hence, your salary programme could not work at Bhubaneswar and we have to get the salary processed with the other consultants.

During the past, it has been bitter experience with you to operate the systems at our Paradeep office also and finally your system at Paradeep could not work and we had to engage other consultant in addition to the services charges has been paid to you.

Moreover, your system of financial accounts at Bhubaneswar will also not be workable as experience we had with you when your system at our paradeep office could not work.

Viewing the situation as mentioned above irrespective of the fact that the notice is not required to be given by us as per the agreement, we hereby give a three months' notice in respect of the financial accounts process only. By that our agreement will terminate on March 1991 i.e. the end of the current financial year.

You are, therefore, requested to completes the processing of financial accounting for the current financial year for the period covering from April 90 to March 1991 as per the agreed terms and conditions.

Your payment will be made immediately after completion of the job month-wise.

Please acknowledge receipt.”

17. The counsel for the appellant/plaintiff wants the said letter to be treated as an admission of delivery of systems.

18. Being unable to decipher any unequivocal admission as claimed, I have enquired from the counsel for the appellant/plaintiff, whether the appellant/plaintiff in cross-examination of the witness of respondent/defendant put the said letter to the witness or suggest that there was an admission of receipt of systems in the said letter.

19. The counsel for the appellant/plaintiff fairly states that nothing of the sort was done.

20. The counsel for the appellant/plaintiff has next drawn attention to the letter dated 22nd November, 1990 of the appellant/plaintiff to the respondent/defendant, bearing the endorsement “received & understood the procedure” dated 22nd November, 1990 in hand, with signatures claimed to be of Mr. Srinivasan of the respondent/defendant.

21. The counsel for the appellant/plaintiff, on enquiry, whether the aforesaid document was put to the witness of the respondent/defendant, states that it was so put but the witness has deposed that the acknowledgement if any of Mr. Srinivasan, was without authority.

22. The appellant/plaintiff though impleaded several of the officers of the respondent/defendant by name as defendants in the suit, did not implead the said Mr. Srinivasan.

23. On enquiry, it is also said that the said Mr. Srinivasan was not summoned as a witness of the appellant/plaintiff.

24. In the aforesaid facts and circumstances, this Regular Second Appeal does not raise any substantial question of law.

25. Dismissed.

No costs.

AUGUST 21, 2018

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RAJIV SAHAI ENDLAW, J.



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