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

\+ **RFA No.489/2006**

% ***10th October, 2018***

M/S KUMAR INDUSTRIES ..... Appellant

Through: Mr. Pradhuman Gupta, Advocate (M. No.9650546383).

versus

SURESH KUMAR MITTAL ..... Respondent

Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the Trial Court dated 05.04.2006 by which the trial court has decreed the suit filed by the respondent/plaintiff seeking a decree for a sum of Rs. 6,72,331/-, for an amount of Rs. 4,48,359/- alongwith interest @ 12% w.e.f. 17.09.2001.

2. The facts of the case are that the respondent/plaintiff pleaded that he supplied to the appellant/defendant aluminum wires

vide Bill nos. 01, 07 and 011 dated 15.05.2000, 10.07.2000 and 30.09.2000 for a total sum of Rs. 5,38,247/-. To this amount of Rs. 5,38,247/-, a further sum of Rs. 10,112/- was the amount due to the respondent/plaintiff for the job work done by the respondent/plaintiff for the appellant/defendant and for which the respondent/plaintiff had issued its Bill dated 15.09.1999 hence making the unpaid amount to be Rs. 5,48,359/-. The appellant/defendant thereafter had paid Rs. 1,00,000/- on 17.09,2001 and the balance amount of Rs. 4,48,359/- remained unpaid. Pleading that the respondent/plaintiff is also entitled to interest @ 20% which came to Rs. 1,99,149/- and which was added to the principal amount of Rs. 4,48,359/-, the subject suit was filed for recovery of Rs. 6,72,331/- alongwith interest. The amount of Rs. 6,72,331/- claimed by the respondent/plaintiff included the sales tax amount of Rs. 21,523/-.

3. The appellant/defendant contested the suit and pleaded that the goods sent by the respondent/plaintiff under the three bills were defective. Under the Bill no.01 dated 15.05.2000, goods of an amount of Rs. 29,500/- were defective for out of the total amount of Rs. 1,32,720/-. So far as the Bill nos. 07 and 011 for Rs. 1,55,925/-

and Rs. 2,49,602/- respectively, the case of the appellant/defendant was that the goods supplied were found to be defective entirely. The appellant/defendant did not deny issuing of the ST-35 Form to the respondent/plaintiff on account of the goods being supplied. The suit was, therefore, prayed to be dismissed.

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

> "(i) Whether the goods worth Rs.29,500/- supplied vide bill no.01 were defective and were returned by the defendant to the plaintiff, as alleged in the written statement? OPD
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> (ii) Whether the entire goods against bill no.07 worth Rs.1,55,925/- were defective and were returned by the defendant to the plaintiff, as alleged in the written statement? OPD
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> (iii) Whether the entire goods worth Rs.2,49,602/- received against bill no.011 were defective and were returned by the defendant to the plaintiff as alleged in the written statement? OPD
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> (iv) To what amount, if any, the plaintiff is entitled? OPP
>
> (v) Whether the plaintiff is entitled to interest, if so at what rate and on what amount and from which period? OPP
>
> (vi) Relief."

5. The documents which have been proved by the respondent/plaintiff for his case have been referred to by the trial court in para 12 of the impugned judgment and this para 12 reads as under:-

> "12. **ISSUE NO.4 & 5**

In support of the issue the plaintiff need only to prove that goods were sent to the defendant of which amount was not received by the plaintiff except the amount of Rs.1 lakh paid by cheque dated 17.9.2001. The plaintiff deposed and proved the documents Ex.PW1/A the job work of Rs.10,112/- done by the plaintiff vide bill dated 15.9.1999. He also proved purchase of aluminum wire of Rs.1,32,720/- vide bill no.01 proved as Ex.PW1/B, another bill no.7 dated 10.9.2000 as Ex.PW1/C for aluminum wire of Rs.1,55,925/- bill no.011 dated 30.9.2000 Ex.PW1/D of Rs.2,49,602/- of which total amount comes to Rs.5,48,359/- out of which only Rs.1 lakh was paid as per statement of account of the defendant with the plaintiff from 1.4.99 to 31.3.02 proved as Ex.PW1/E, F and G. The plaintiff also proved computer copy of his account with the defendant for the period 1.4.02 to 31.12.02 as Ex.PW1/H. He also deposed that defendant had not supplied him sales tax form 35 so he send letter dated 10.2.2000 to the defendant of which copy is proved as Ex.PW1/J of which certificate of posting is Ex.PW1/K. The plaintiff also proved the legal notice sent through counsel as Ex.PW1/L of which certificate of posting is Ex.PW1/M. Postal receipt is Ex.PW1/N and the returned envelope is Ex.PW1/O. The receipt of the courier is also proved as Ex.PW1/P. The plaintiff also deposed that as per bills Ex.PW1/A to D he is entitled for 30% interest p.a of which interest is claimed as Rs.1,99,149/- on the amount of Rs.4,48,359/- up to the date of filing of the suit. The plaintiff also claimed Rs.3300/- as notice fee from the defendant. The defendant also claimed an amount of Rs.21,253/- which was paid by the plaintiff to the sales tax office for non supply of sales tax form 35 by the defendant to the plaintiff for the purchase of goods worth Rs.5,38,247/- although the same was to be paid to the plaintiff by the defendant. In this regard the plaintiff proved notice Ex.PW1/Q received from the sales tax officer on which basis letter Ex.PW1/R was written to the defendant of which postal receipt is Ex.PW1/S and despite that the defendant did not supply the ST 35 Form to the plaintiff. Nothing material was elicited by the defendant out of the deposition of the plaintiff as discussed above as the focus of the defendant was on proving issue no.1 to 3 which they failed as already decided as above."

6. The trial court has rejected the defence of the appellant/defendant, praying for dismissal of the suit, while holding

that the appellant/defendant has failed to prove that the said defective goods were returned as the Challan documents/Ex.DW1/1 and Ex.DW1/2 did not bear any signatures on the receipt of the respondent/plaintiff of the alleged defective materials which were claimed to have been returned by the appellant/defendant, owing to the fact that Section 42 of the Sale of Goods Act, 1930 provides that goods are deemed to be accepted if rejection of the goods is not communicated in reasonable period of time. It is noted that for the first Bill no.01 dated 15.05.2000, the reasonable period would be one month i.e. up to 15.06.2000, and for the Bill no.07 dated 10.07.2000 the period of one month would expire on 10.08.2000 and for the third Bill no.011 dated 30.9.2000 the period would expire on 30.10.2000. Admittedly, in these periods of 30 days after receipt of the goods, no intimation has been proved by the appellant/defendant which they have served upon the respondent/plaintiff in terms of Section 42 of Sale of Goods Act about the goods supplied by the respondent/plaintiff to the appellant/defendant of being defective. Even the so-called Challans Ex.DW1/1 and Ex.DW1/2 which in any case have not been proved to show the return of goods by the appellant/defendant to the respondent/plaintiff with the fact that these Challans are dated 30.03.2001, and the date of 30.03.2001 is not a reasonable period as per Section 42 of the Sale of Goods Act, and therefore, the trial court in my opinion has rightly held that the appellant/defendant is deemed to have accepted the goods.

7. In view of the aforesaid discussion, I do not find any merit in the appeal. The trial court has rightly decreed the suit for the principal amount of Rs. 4,48,359/-, and the trial court has also granted interest rightly only @ 12% per annum from the due date of payment of 17.09.2001 instead of 20% per annum as claimed by the respondent/plaintiff. Appeal is accordingly dismissed.

8. The amount deposited by the appellant/defendant in this Court be released to the respondent/plaintiff in appropriate satisfaction of the impugned judgment and decree.

OCTOBER 10, 2018 **VALMIKI J. MEHTA, J**
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