

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

+ **RFA No. 505/2018**

% ***14th December, 2018***

M/S WINDSOR SPECIALTY RESINS PVT. LTD. Appellant
Through: Mr. Nitin Soni and Mr. Deepjyot
Singh, Advocates (Mobile No.
9810434067).

versus

HRUSHIKESH SHETHY Respondent
Through: None.

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 the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 25.01.2018 by which the trial court has decreed the suit filed by the appellant/plaintiff for the amounts of only three out of the four invoices. The appellant/plaintiff impugns the judgment for claiming the amount due

under the fourth Invoice dated 07.02.2014 for the amount of Rs. 7,58,646/-.

2. The facts of the case are that the appellant/plaintiff pleaded that it supplied chemicals known as ABS H1 121H Natural and SD-0150W to the respondent/defendant under four supply Invoices dated 26.12.2013, 31.12.2013 and two dated 07.12.2014. These invoices were proved before the trial court as Ex. PW1/5 to Ex.PW1/8. The trial court has disbelieved the case of the appellant/plaintiff with regard to the invoice Ex.PW1/8 by giving various reasons. The first reason is that why should there be two invoices of the same date of 07.02.2014. The trial court then has reasoned that because there is a signature with stamp of the respondent/defendant company on receipt Ex.PW1/7 dated 07.02.2014 but on the second invoice of the same date Ex.PW1/8, though there is a stamp of the respondent/defendant company but there is no signature of receipt of the goods which exists in the other invoices Ex.PW1/5 to PW1/7. Accordingly, the trial court held that since the appellant/plaintiff was not able to prove the supply of material under

invoice Ex.PW1/8, the suit has not been decreed for this invoice Ex.PW1/8 for an amount of Rs. 7,58,646/-.

3. In my opinion, the impugned judgment of the trial court is illegal and the Ld. counsel for the appellant/plaintiff is justified in arguing that there is nothing strange if a buyer who buys different material from the supplier, such as the appellant/plaintiff, receives the material under two separate invoices of the same date. This is all the more so, and rightly argued on behalf of the appellant/plaintiff that the material supplied under both the invoices was different i.e. the material supplied under invoice Ex.PW1/7 is ABS H1 121H Natural whereas the material supplied under invoice Ex.PW1/8 is SD-0150W. Also, the Ld. counsel for the appellant/plaintiff is justified in arguing that there is no discrepancy if the materials under two invoices are loaded on the same truck, inasmuch as, the time of loading of the trucks is admittedly separated by 15 minutes i.e. 7:15 pm & 7:30 pm. Also, on Ex. PW1/7 and Ex. PW 1/8 there appears the same mobile number of the person who received the material and writing is in the hands of the same person.

4. In my opinion, if the respondent/defendant in fact had a valid case, then there was no reason why the respondent/defendant would

be *ex parte* in the suit and would have chosen to not contest the suit and lead evidence.

5. In view of the aforesaid discussion, this appeal is allowed and the impugned judgment and decree dismissing the suit so far as the fourth invoice Ex.PW1/8 is set aside and the suit is also decreed for the invoice Ex. PW1/8 dated 7.02.2014 for a sum of Rs.7,58,646/- along with interest. The appellant/plaintiff will be entitled to interest on the principal amount of invoice of Rs.7,58,646/- at 6% per annum simple from 07.02.2014 till the date of filing of the suit, and *pendente lite* and future also at the same rate thereafter.

6. In my opinion, in the facts of the present case, there is no reason to modify the rate of interest granted by the trial court for a higher rate as is claimed by the appellant/plaintiff in this appeal.

7. The appeal is accordingly allowed and disposed of as stated above. The appellant/plaintiff will be entitled to costs of the appeal. Decree sheet be prepared accordingly.

DECEMBER 14, 2018

VALMIKI J. MEHTA, J