

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

+ **RFA No.826/2018**

% **1st October, 2018**

JALANDHAR PANDIT

..... Appellant

Through: Mr. Triloki Pandit,
Advocate(M. No.9810569536).

versus

DSC LIMITED

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.40430/2018(exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No.40431/2018(for condonation of delay)

2. For the reasons stated in the application, delay of 110 days in re-filing the appeal is condoned subject to just exceptions.
C.M. stands disposed of.

RFA No.826/2018

3. 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 17.07.2017 whereby trial court has dismissed the suit for recovery of moneys filed by the appellant/plaintiff. By the suit the appellant/plaintiff claimed an amount of Rs. 7,38,060/- alongwith interest for civil works done said to be done by the appellant/plaintiff for the respondent/defendant.

4. The facts of the case are, that the three work orders are pleaded to have been awarded to the appellant/plaintiff by the respondent/defendant for doing the work of concreting, shuttering and scaffolding, water bar fixing, PCC, RCC and other miscellaneous works. The three work orders issued by the respondent/defendant to the appellant/plaintiff are dated 11.01.2010, 16.03.2010 and 08.06.2010. The works which were to be done were for the project awarded to the respondent/defendant, being the Main Drain at Pochanpur/Sector 23, Dwarka, New Delhi. The appellant/plaintiff claimed that it has done work of Rs. 12,39,530.33/- for the work order dated 11.01.2010, Rs.75,852.80/- for the work order dated 16.03.2010

and Rs. 1,20,960/- for the work order dated 08.06.2010. The total amount of work done was therefore for Rs. 14,36,343.13/-. After the respondent/defendant made certain deductions, which were admitted by the appellant/plaintiff, the appellant/plaintiff claimed that a sum of Rs. 4,42,012.93/- remained due from the respondent/defendant to the appellant/plaintiff, and this amount alongwith interest was claimed in the suit after serving the Legal Notice dated 23.06.2014.

5. The respondent/defendant contested the suit and pleaded that the appellant/plaintiff did not complete the work assigned under the work orders and in fact had abandoned the work. It was pleaded that at the time of abandoning the work, the appellant/plaintiff had with him various materials issued from the store of the respondent/defendant on use and return basis. The said material was appropriated by the appellant/plaintiff without giving the details of the use of the same. It was also pleaded by the respondent/defendant that the value of work pleaded to have been done by the appellant/plaintiff has actually not been done. The suit was therefore prayed to be dismissed.

6. After the pleadings were complete, the trial court framed the issues and parties led evidence. These aspects are recorded in paras 7 to 9 which read as under:-

“7. Thereafter the case proceeded for framing of issues. On the pleadings of the parties, following issues were framed:-

ISSUES

1. Whether the suit is bad for mis-joinder of cause of action? OPD
2. Whether the plaintiff is entitled to decree in the sum of Rs. 7,38,060, along with interest? OPP
3. Relief.
8. Plaintiff has examined himself as PW-1 as sole witness and has proved on record following documents:-
 1. Work order dated 11.01.2010 as Ex.PW1/1;
 2. Certified copy of his bank statement as Ex.PW1/2;
 3. Certificate given by SBI Ex.PW1/3;
 4. Legal notice dated 23.06.2014 is Ex.PW1/4;
 5. Speed postal receipts are Ex.PW1/5 (colly);
 6. Internet tracking report Ex.PW1/6;
 7. Envelope containing legal notice Ex.PW1/7.
9. On behalf of the defendant, one Sh. S.K. Gupta was examined and he was duly cross examined by defendant and thereafter defendant closed its evidence vide separate statement recorded on 09.05.2017. After that, case was proceeded for final arguments.”

7. The trial court has dismissed the suit by holding that the plaintiff had to prove the value of work done by him, as also the measurements of the work done by him, but the plaint is totally vague as to the details of how the appellant/plaintiff did the work and that

what are the measurement of the work done. The trial court notes that the appellant/plaintiff only stated that measurement copies were kept by the respondent/defendant and the said measurement were not given to the appellant/plaintiff and that it was upon the appellant/plaintiff to give the details of the works which are done by him. Counsel for the appellant/plaintiff does not dispute before this Court that the appellant/plaintiff did not file the measurement of the work done and nor summoned the measurement details which were alleged to be with the respondent/defendant. In the record of the suit, there is no other proof with respect to the value of the work done and as claimed to have been done by the appellant/plaintiff for the respondent/defendant. Further, there is no proof that the respondent/defendant had acknowledged the value of the work which was done by the appellant/plaintiff for the respondent/defendant. The trial court accordingly by making the following observations in para 18 of the impugned judgment has dismissed the suit:-

“18. The plaintiff in order to prove his version has examined himself as PW-1 and he has relied upon the work order dated 11.01.2010 Ex.PW1/1, certified copy of bank statement of plaintiff Ex.PW1/2, certificate given by SBI Ex.PW1/3, legal notice dated 23.06.2014 is Ex.PW1/4, two speed post receipts dated 23.06.2014 Ex.PW1/5(colly), internet tracking report Ex.PW1/6 and envelope containing legal notice Ex.PW1/7.

Though the plaintiff is seeking recovery of the payment of money under three work orders, he has not placed on record the other two work orders under which he has rendered his services to the defendant. The plaintiff has not given any detail as to what work has been performed by him under three work orders and how much payment was liable to be made by the defendant. The plaintiff has also failed to adduce evidence to the effect under which work order, the payment of Rs.1,45,239/- in cash and further sum of Rs.8,00,018/- by way of various cheques were received by him. The pleadings of the plaintiff are lacking in material particulars with regard to the work performed by him and the payment made to him and the payment outstanding against the defendant. In fact in his cross examination conducted on 28.11.2016 he admitted that separate work orders were issued by the defendant and he executed the work using his own material. He deposed that payment used to be made after the completion of the work and the measurements used to be done by one Ashok Kumar Jha of defendant company in his presence and used to be counter signed by him. He further deposed that said measurement was kept with Sh. Prajapati of defendant company and no duplicate copy thereof was given to him. He further deposed that he used to note in his personal copy regarding measurement however the said note book is not available with him. The plaintiff never made any effort directing the defendant to produce the measurement of the work performed by him. He has also not produced any the personal note book which he used to kept detailing the work performed by him with the defendant.”

8. In view of the above discussion, I do not find any illegality in the impugned judgment for interference in the first appeal.

Dismissed.

OCTOBER 01, 2018
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VALMIKI J. MEHTA, J