

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

+ **RFA No. 992/2018**

% **7th December, 2018**

M/S. SCOPIC INTERNATIONAL

..... Appellant

Through: Mr. Harsh Vardhan Sharma,
Advocate (M. No.9999897692).

versus

SURENDER RASTOGI

..... 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. 51417/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No. 51418/2018(for condonation of delay of 383 days)

2. Though there is no valid reason for condonation of delay

of 383 days in filing of the appeal, but since I have heard the counsel

for the appellant/defendant on merits of the appeal, therefore only for this reason this application is allowed.

C.M. stands disposed of.

RFA No. 992/2018 and C.M. No. 51416/2018(stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908(CPC) is filed by the defendant in the suit impugning the Judgment of the trial court dated 11.08.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs.3,52,097/- alongwith interest @ 12% per annum. The amount which has been decreed is towards electrical work done by the respondent/plaintiff for a project of the appellant/defendant.

4(i) The facts of the case are that a Letter of Intent dated 26.06.2006 was issued by the appellant/defendant to the respondent/plaintiff for doing electrical works at site SV-40 and IP-IV in Rajasthan, inasmuch as the appellant/defendant was awarded a contract for doing work at various sites of M/s Kalaptaru Power Transmission Limited in Rajasthan. The approved rate list formed part of the Letter of Intent dated 26.06.2006. The respondent/plaintiff was

doing the work at site when on 10.11.2006 the contract was abruptly cancelled. The appellant/defendant told the respondent/plaintiff to get the measurement of the actual work done and get payment thereof. Accordingly, respondent/plaintiff stopped the work and got the measurements done and subsequently raised the following bills:-

<i>S. No.</i>	<i>Site Name</i>	<i>Date</i>	<i>Amount(Rs.)</i>
1.	SV-39	24.10.2006	83,412.50
2.	SV-40	24.10.2006	38,603.00
3.	IP-4	24.10.2006	57,553.50
4.	IP-4(Ex. Work)	24.10.2006	80,162.50
5.	IP-4	10.11.2006	12,713.00
		Total Amount	2,72,444.50

4(ii) Under Clause 13 of the contract, the appellant/defendant was entitled to 15% of the amount of the bills which was to be released after three months of completion of work, and therefore, this 15% amounting to Rs. 79,651/- was also claimed by the respondent/plaintiff. Thus the total amount of Rs. 3,52,097/- was claimed by the respondent/plaintiff from the appellant/defendant.

5. The appellant/defendant contested the suit by filing the written statement. The receipt of the bills was not denied. It was also not denied by the appellant/defendant that the respondent/plaintiff did the work. The defence of the appellant/defendant was that the bills were highly inflated and were not in terms of the approved rate list. It was also pleaded that the bills were not approved by the duly authorized person at site, namely Mr. Vijay Tyagi.

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

- “(i) Whether the plaintiff is entitled for a decree of recovery of Rs.4,50,847/- against the defendant? OPP.
- (ii) Whether the plaintiff is entitled for interest, if so, at what rate and for which period? OPP.
- (iii) Whether there is any cause of action to file the present suit against the defendant? OPD.
- (iv) Relief.”

7. The relevant issues were issue nos.1 and 2, and while dealing with these issues, the trial court has crystallized the four defences of the appellant/defendant as under:-

- “(a) That alongwith the bills, the plaintiff had not filed proof of deposit of provident fund of its employees, as contemplated under clause 6.6 of the contract;*

(b) That the plaintiff had not taken the approval from EIL (Engineers India Limited) before quoting the rates mentioned in the bills;

(c) That the measurement sheets and bills were not certified by the duly authorized official of the defendant, i.e Shri Vijay Tyagi;

(d) That the plaintiff instead of charging the agreed rates had submitted bills on the basis of highly inflated rates.”

8. The trial court has held the first defence against the appellant/defendant by noting that during the course of the suit, the respondent/plaintiff had filed the necessary proof of deposit of provident fund of its employees. As regards the second defence that approval was not taken from Engineers India Limited (EIL), the trial court has rightly rejected this defence by holding that there is no requirement in the contract for bills of the respondent/plaintiff to be approved by the EIL. So far as bills being submitted by the respondent/plaintiff of not being in accordance with the approved rates is concerned, the trial court has in para 22 of this impugned judgment referred to the admissions made by the DW-1 in cross-examination that the bill Ex.PW1/18 being a previous bill for which there is no dispute was as per the settled rate and subject bills which were under question in the suit are those where DW-1 could not tell as to which bill was inflated. The trial court in para 11 of the impugned judgment

has observed that with respect to the work already done, for which the bills were proved as Ex. PW- 1/30 to 1/39, were as per the approved rates and contract, and were cleared by the appellant/defendant without any demur, and therefore the trial court has held that it cannot be validly argued by the appellant/defendant that the bills were raised at inflated rates.

9. So far as the main defence of the appellant/defendant that the bills Ex.PW-1/10 to Ex.PW-1/14 were not certified by the duly authorized person, namely Mr. Vijay Tyagi, the trial court has referred to the fact that the bills were duly received by the persons who are the Site In-Charge of the appellant/defendant, and who have duly verified the measurements in the bill and certified them for payment. The trial court has also held that the contention of the appellant/defendant that Mr. Vijay Tyagi was the only authorized person is not established because nowhere in Ex.PW-1/6 it is stated that Mr. Vijay Tyagi was the only authorized person. The relevant findings of the trial court in this regard are contained in para 24 of the impugned judgment and this para 24 reads as under:-

“24. Further, on the point that the disputed bills were not certified or measured by the authorized person namely Shri Vikas Tyagi, it is noted that:

(a) *It is not mentioned in the agreement Ex.PW1/6 that it was only Vikas Tyagi who had to certify or measure the work mentioned in the bill;*

(b) *All the disputed bills were handed over to the officers of the defendant, i.e Shri Deepak Kumar, Shri Vijay, Mr. Mehra @ Mr. Mourya and Shri Vikas Tyagi, whosever was available at the site or office, the bills were handed over to him. It is absolutely wrong that Vikas Tyagi was the only person to receive the bills. As mentioned above, it is not mentioned in the contract or in any letter and the said fact was never notified to the plaintiff.*

(c) *That the defendant never produced their employees' register to show that Shri Deepak Kumar, Mr. Mehra @ Mr. Mourya were not the officers of defendant.”*

10. In my opinion, no fault whatsoever can be found with the thorough and exhaustive reasoning and discussion given by the trial court for decreeing the suit and which are contained in paras 14 to 26 of the impugned judgment. Since para 24 is already reproduced above, paras 14 to 23, 25 and 26 are reproduced as under:-

“14. It is clearly evident that the defendant has not specified the articles/work done by the plaintiff for which he had filed inflated bill. The documents filed on record by plaintiff with regard to payment of provident fund to his employees by the plaintiff have been admitted by the defendant. The approval of EIL was nowhere required under the contract. The issue now remains with regard to the fact as to whether the bills Ex.PW1/10 to Ex.PW1/14 were certified by the duly authorized officer(s) of the defendant or not. In this regard, clause 13, 15 and 18 of the contract are relevant, which are reproduced as under:

XXXXX

13. Payment Terms:

13.1 85% of approved unit rates on pro-rata basis against running bills shall be paid after certification by Engineer-In-Charge of SI/Kalpataru and against submission of certificate by contractor that all statutory payment/compliance in respect of labour wage payment, PF payments etc., till then have been met and nothing is outstanding. You can submit maximum two RA bills per month. The bills should be raised on 5th and 50th of every month.

13.2 10% payment shall be released against completion of entire job of erection, testing, commissioning work and balance 5% after 3 months from the date of completion handing over to SI/Kalpataru. Balance 5% after three months from the date of completion and handing over.

XXXXX

XXXXX

15. RA Bill and Final Bill:

15.1 Documents required with every RA Bill

15.1.1 RA bill – 3 copies

15.1.2 Joint measurement sheet – 3 copies

15.1.3 Proof of PF deposit

15.1.3 Approval of EIL

15.2 Documents required with final bill:

15.2.1 Final joint measurement sheet – 3 copies

15.2.2 Final reconciliation statement for all the materials (free issue items) issued by SI/Kalpataru & EIL

15.2.3 Documents as a proof of fulfillments of statutory requirement

15.2.4 Store clearance certificate from SI/Kalpataru

15.2.5 As built drawings -1 set

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xxxxx

18. *Inspection:*

All the relevant IS, technical specifications and FQP shall be carried out by you in the presence of Engineer-In-Charge and 05 sets of inspection report to be submitted to SI/Kalpataru immediately. No extra charges shall be paid to you by SI/Kalpataru for arranging inspection at site.

xxxxx

15. Now, let us analyse the bills Ex.PW1/10 to Ex.PW1/14.

16. Ex.PW1/10 was submitted by the plaintiff on 10.11.2006 to the Incharge of the site namely Mr. Mehra @ Mr. Maurya, whose signatures appear on the Work Measurement Sheet as well as the invoice. The defendant has disowned said Mr. Mehra @ Mr. Maurya to be the authorized person to certify the work measurement sheets.

17. Ex.PW1/11 was submitted by the plaintiff on 24.10.2006, the same was received by the Site Incharge on 27.10.2006, whereupon the site supervisor asked one Shri Raghvinder to verify the measurements on 10.11.2006 and after verification of the measurement, the bill was submitted to Shri Vijay Tyagi on 21.11.2006.

18. Ex.PW1/12 was submitted by the plaintiff on 24.10.2006, the same was received by the Site Incharge, whereupon the site supervisor asked one Shri Raghvinder to verify the measurements on 10.11.2006 and after verification of the measurement, the bill was submitted to Shri Vijay Tyagi on 21.11.2006.

19. Ex.PW1/13 was submitted by the plaintiff on 24.10.2006, the same was received by the Site Incharge on 27.10.2006. Shri Mehra @ Maurya duly verified the measurement of work, as his signature appear on all the pages thereof.

20. Ex.PW1/14 was submitted by the plaintiff on 24.10.2006, the same was received by the Site Incharge on 27.10.2006. This bill was in respect of extra work done by the plaintiff.

21. Defendant has miserably failed in establishing as to in respect of which article mentioned in the aforesaid bills, the inflated rates have been quoted by the plaintiff. A comparison of the articles in the bills with the approved rate list does not justify the objection of the defendant. In his evidence, the DW-1 has disowned Mr. Mehra @ Mr. Maurya and Shri Deepak Kumar as authorized persons of defendant to certify the measurement of the work at the site. The defendant has,

however, not disowned the other two persons, one of whom is Shri Raghvinder, who was directed to verify the measurements. By merely denying the authority of aforesaid persons will not justify the stand of defendant.

22. The defendant has duly admitted that there was a contract Ex.PW1/6 between the parties. The approved rate list was also part of contract. Some of the articles with regard to which the approved rate list had not provision were mutually agreed vide subsequent letter Ex.PW1/8. In this regard, the relevant part of the cross-examination of DW-1 is as under:

xxxxx

“(a) It is correct that agreed rates are at page 137 to 140.”

xxxxx

xxxxxx

“(b) It is correct that Ex.PW1/18 are the rates settled.”

xxxxx

xxxx

“(c) I have seen the bills and I cannot tell which one is inflated.”

xxxxx

xxxxx

“(d) It is correct that on the basis of Ex.PW1/6, the bills were produced by the plaintiff and he had made part payment.”

xxxxx

xxxxx

“(e) Admitted that all disputed bills were received by him.

xxxxx”

23. On the point of deposit of provident fund of the employees of plaintiff and approval of EIL (Engineers India Limited) of the work done, it is noted:

(a) That no cross-examination on the point of provident fund and EIL was made by the defendant of the plaintiff PW-1;

(b) EIL has nothing to do with the present contract nor EIL is a party in the present contract, ie. Ex.PW1/6;

(c) The defendant had never issued any notice or complaint to the plaintiff regarding deposit of provident fund or regarding the approval of EIL;

(d) In the previous bills which are Ex.PW1/30 to Ex.PW1/39 and which have been paid by the defendant to the plaintiff, no approval of EIL or any objection of provident fund was taken or raised by the defendant;

(e) The EIL has already made all the payments of the defendant and has never raised any objections to the defendant in this aspect. The defendant has admitted the said fact in his cross-examination.

(f) Even otherwise, the plaintiff has filed the receipt of provident fund of his employees on the judicial file.

XXXXX

25. If we go to the admitted documents which are the payment certificate Ex.PW1/15 and Ex.PW1/16, it is absolutely clear that the defendant is liable to pay the retention amount of Rs.79,651/-.

26. On the point of inflated bills, the defendant no.1 in his cross-examination has stated:

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"I have seen the bills but I cannot tell which one is inflated."

XXXXX"

(Underlining Added)

11. In view of the aforesaid discussion, it is seen that the respondent/plaintiff did the work for the appellant/defendant, and also raised bills which were proved as Ex.PW1/10 to Ex.PW1/14 and these bills were duly verified by the officers of the appellant/defendant and no evidence was led by the appellant/defendant that the persons who verified the bills were not their employees or how they were not justified in verifying the bills. The bills were not inflated because bills were given at the same rates as per the earlier paid bills proved as

Ex.PW1/30 to Ex.PW1/39 and these bills were for the same work order. Also, the EIL was never required as per the contract to certify the bills. The respondent/plaintiff had filed documents to prove the deposit of provident fund of its employees. The trial court was hence completely justified in decreeing the suit for the bills Ex.PW1/10 to Ex.PW1/14 alongwith interest thereon.

12. There is no merit in the appeal. Dismissed.

DECEMBER 07, 2018
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VALMIKI J. MEHTA, J

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