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

Date of Decision : 7th February 2018

\+ **RFA 836/2015**

TRIMAX IT INFRASTRUCTURE & SERVICES LTD. ..... Appellant

Through: Mr. Rohit Arora, Advocate. (M:9717949628)

versus

KALAKRITI INTERIORS ..... Respondent

Through: Mr. Rajan Chaudhary, Advocate. (M:9312052152)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. **(Oral)**

1. This is an appeal against the impugned judgment and decree dated 28th August, 2015 by which the suit of the Respondent/Plaintiff (*hereinafter 'Plaintiff'*) has been decreed for the principal amount of Rs.7,12,096/- along with interest @ 12% per annum.

2. The suit was filed under Order XXXVII of the Code of Civil Procedure, 1908 (*hereinafter, 'CPC'*). The Plaintiff was a sub-contractor of the Appellant/Defendant (*hereinafter 'Defendant'*) for the project in the name of Himachal Pradesh State Co-operative Bank Ltd. (*'HPSCBL'*) at Shimla. It is the Plaintiff's case that he has executed the entire work which was to be undertaken without any complaint or defect whatsoever and has also raised bills from time to time. The project was completed in 2013. Out of the total invoices raised for a sum of Rs.30,60,517/-, the payment which was made as per the Plaintiff was Rs.23,48,421/- and there was a balance of

Rs.7,12,096/-. For this sum, the Plaintiff filed a suit under Order XXXVII of the CPC.

3. Defendant sought unconditional leave to defend by filing an application under Order XXXVII Rule 3 of CPC. The contention of the Defendant is that there was another project for LIC India Ltd *(hereinafter `LIC project')*. Various interior jobs were assigned to Plaintiff for the LIC project. It is the allegation of the Defendant that the Plaintiff deliberately started mingling up various accounts of one project with another, despite which Defendant continued to release the huge payments to Plaintiff. It is the allegation of the Defendant that the Plaintiff has been paid excess amounts of Rs.10,37,333/- and hence the amount under HPSCBL project is not payable. Defendant however annexed with the application a statement of account reproduced in the leave to defend application which shows that out of the total invoices raised for Rs.30,60,517/- the amount of Rs.52,213/- is not payable. Defendant admitted that the balance amount outstanding is Rs.6,46,729/-.

4. From the stand in the leave to defend, it appears that Defendant does not dispute that the Plaintiff did not execute the works and it is also admitted that there was no grievance in respect of the work undertaken. The transactions in relation to the LIC project are not relevant to the present case. Leave to defend was rejected by the Trial Court on the ground that the suit is based upon the written contract dated 21st November 2012. Invoices are admitted and the amount paid also stands admitted. None of the facts being disputed, there is no defence which the Defendant can raise for non-payment. Accordingly, the Trial Court has decreed the suit.

5. This Court has perused the pleadings in the suit as also the judgment

of the Trial Court. A perusal of the leave to defend application as also the reply to the legal notice which was sent by the Defendant clearly shows that there is hardly any dispute between the parties and a transaction which is totally unconnected cannot be raised as a defence in this suit. In reply to the legal notice, the Defendant clearly admitted that the amount outstanding on account of HPSCBL is Rs.7,12,096/-. The Supreme Court in ***TVC Skyshop Ltd. v. Reliance Communication and Infra Ltd. (2013) 11 SCC 754***, explained the scope of Order XXXVII of the CPC as under:

> *"An analysis of Order XXXVII shows that the provisions contained therein are applicable to the suits specified in Rule 1(2). Rule 2(1) prescribes the particulars to be incorporated in the suit. Sub-rule (3) of Rule 2 lays down that the Defendant shall not defend the suit unless he enters appearance and in default of his appearance, the allegations contained in the plaint shall be deemed to be admitted and the Plaintiff shall be entitled to a decree for a sum not exceeding the sum specified in the summons together with interest at the specified rate, if any. Rule 3 contains the procedure for the appearance of the Defendant. Sub-rule (5) prescribes time limit of ten days from the service of summons for judgment within which the Defendant can apply for leave to defend. The concerned Court can grant leave to defend unconditionally or conditionally. First proviso to this sub-rule lays down that leave to defend cannot be refused unless the Court is satisfied that the facts disclosed by the Defendant do not indicate that he has substantial defence or that the defence is frivolous or vexatious. Second proviso to Sub-rule (5) lays down that if the Defendant admits part of the amount claimed by the Plaintiff then he shall not be granted leave to defend unless the admitted amount is deposited in the Court. Sub-rule (6) provides for the consequences of the Defendant's*

failure to apply for leave to defend or refusal of prayer for leave to defend. In such an eventuality, the Plaintiff is entitled to judgment forthwith. Sub-rule (7) lays down that if the Defendant is able to show sufficient cause, the Court can excuse the delay in entering of appearance or in making an application for leave to defend. Rule 4 gives power to the Court to set aside the decree provided special circumstances exist for doing so. The Court can also stay or set aside execution and grant leave to the Defendant to defend the suit."

6. Further, in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd. AIR 2016 SC 5321***, the Supreme Court upheld the guidelines with respect to leave to defend under Order XXXVII Rule 3 of the CPC as laid down in ***Milkhiram (India) (P) Ltd. v. Chamanlal Bros. AIR 1965 SC 1698*** and held as follows:

*"18. Accordingly, the principles stated in paragraph 8 of **Mechelec's case** will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in **Milkhiram's case**, as follows:*

a. If the Defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit;

b. if the Defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is not entitled to sign judgment, and the Defendant is ordinarily entitled to unconditional leave to defend;

c. even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment

into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;
d. if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.
e. if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith;
f. if any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court."

7. The Plaintiff's case is based on purchase orders and invoices, receipt is which is not disputed, except qua one invoice. The payments made are broadly admitted and the amount due is also admitted. Thus, this is a fit case for a decree under Order XXXVII of CPC. Leave to defend has rightly been rejected. The impugned judgment and decree is accordingly upheld.

8. Defendant had deposited the decretal amount in this Court. The amount lying may be released in favour of Plaintiff. Plaintiff's counsel under instructions submits that the amount lying in this Court can be treated

as full and final settlement of judgment and decree and no further sum would be payable in respect of transaction in issue.

9. In view of this submission, it is directed that upon release of payment in favour of the Plaintiff of the sum lying deposited along with the interest accrued thereon, the impugned judgment and decree shall be deemed to be satisfied. No further claims would be maintainable. Decree shall be drawn up accordingly. Payment in favour of Plaintiff be released within two weeks.

10. Appeal is dismissed with no order as to costs. *Dasti*.

PRATHIBA M. SINGH, J.
Judge

FEBRUARY 07, 2018/*dk*