

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 62 OF 2004**

Dr. G.P.S. Sarana, S/o Shri Prahlad Singh Sarana, Aged about 46 years R/o New Life Line Nursing Home, C-160, Shailendra Nagar, Katora Talab Road, Raipur (C.G.).

---- Appellant**Versus**

M/s Bagri Enterprises, Through Partner Nandkishore Bagri, S/o Late Mangal Chand Ji Bagri, Aged about 43 years R/o Near City Kotwali, Chhotepara, Raipur (C.G.).

---- Respondent

For Appellant	:	Mr. Navin Shukla, Advocate on behalf of Mr. Sham Suddin Mirza, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****18/01/2019**

1. By this instant appeal, appellant/defendant has challenged the legality, validity and propriety of the judgment and decree dated 01/01/2004 passed by 3rd Additional District Judge, Raipur (C.G.) in Civil Suit No.3-B/2003 whereby the learned trial Court decreed the suit filed by respondent/plaintiff for recovery of an amount of Rs.44,200/-.

- 2.** Brief facts for disposal of this appeal, are that, the respondent/plaintiff is a partnership firm and engaged in sale and supply of the instruments and machines. On 19/01/2002, the appellant/defendant had purchased one "M3928A Agilent A3 Bedside Monitor" (hereinafter called as 'the machine') having value of Rs.1,80,000/-. The said machine was installed by respondent/plaintiff on 19/01/2002 in presence of the appellant/defendant, which was also acknowledged by the defendant.
- 3.** As per the understanding, cost of the machine i.e. Rs. 1,80,000/- is to be paid within a period of 30 days, failure of which, lead to interest @ 21% as per the conditions of sale. The cost of the machine was not paid as per the terms of the sale within a period of 30 days. On repeated demand made by respondent/plaintiff, appellant/defendant had issued a cheque of Rs.1,00,800/- on 05/03/2002 and assured him to pay the balance amount. On 23/03/2002, an amount of Rs.18,000/- and on 25/03/2002, an amount of Rs.17,000/- were paid in cash, and thereby the total amount of Rs.1,35,800/- was paid out of Rs.1,80,000/- i.e. cost of machine. The remaining balance amount of Rs.44,200/- was not paid.
- 4.** On repeated demands being made, balance amount out of total sale consideration was not paid, then a notice through an Advocate was sent to the appellant/defendant on 30/01/2003 by registered post with

acknowledgment. The notice was received on 31/01/2003, but even then, the appellant/defendant had not paid the amount. He replied the notice on 13/02/2003 and denied for making payment of the balance amount on the ground that machine was not showing proper data.

5. Looking to the contents of reply of notice, respondent/ plaintiff had filed a suit for recovery of Rs.44,200/- along with interest @ 18% and thereby claimed Rs.53,300/- in total.
6. The appellant/defendant submitted his written statement and pleaded that the respondent/plaintiff has offered the machine showing that machine being useful for serious patients in assessing Pulse, Blood Pressure, ECG and it may also assess the percentage of Oxygen in the blood. It has been further pleaded that after installation, when machine was being used on patient, the machine did not work as explained and projected prior to the date of purchase, and thereby the respondent/plaintiff had cheated him. It has been denied that there was term fixed with respect to payment of total sale consideration within a period of 30 days from the date of instillation. It has been further pleaded that in the month of January 2002, when the machine was used for first time, at that relevant time, it detected that machine was not working and it was a defective machine, which was immediately intimated to the respondent/plaintiff on Telephone. It

has been further pleaded that the appellant/defendant was assured that the Engineer of the Company will visit but plaintiff failed to do so and appellant himself made complaint to the Philips Company and Engineer had visited to Nursing Home from Calcutta, but even then, no progress has been shown in the machine. It has been lastly pleaded that he has also made a demand for refunding of amount paid by him towards cost of machine, but it has not been refunded and subsequently, on false and fabricated ground, the notice through an Advocate for recovery of the balance amount of Rs.44,200/- has been sent to him and the suit has been filed only to harass the appellant/defendant.

7. The learned trial Court on the basis of pleadings, evidence and other material available on record arrived at a conclusion that the appellant/defendant failed to prove his plea that the machine supplied and installed in his Clinic by respondent/plaintiff was defective.
8. After considering the evidence and material available on record, learned trial Court held that there was no dispute with respect to supply, installation, cost and part payment of the machine as also the fact that respondent/plaintiff has proved the case for non-payment of balance amount of Rs.44,200/-, out of total cost of Rs.1,80,000/- and accordingly, decreed the suit of the respondent/plaintiff by holding that respondent/plaintiff is entitled to recover an amount of

Rs.53,300/- along with interest @ 6% per annum from the appellant/defendant.

9. Learned counsel appearing for appellant/defendant submitted that the machine, which was supplied by respondent/plaintiff was a defective machine and it even did not work on the first patient. He further submitted that he had made several complaints, but even then, proper service through technician or Engineer has not been provided. He further submitted that the technician who visited to the Nursing Home neither prepared the service report nor rectified the defect of the machine. He lastly submitted that the Engineer of the Company has not visited to the Nursing Home to check the machine or verify whether it is properly working or not.
10. I have heard learned counsel appearing for appellant/defendant and perused the records carefully.
11. It is not disputed by learned counsel appearing for appellant/defendant that the appellant/defendant had purchased one "M3928A Agilent A3 Bedside Monitor" having value of Rs.1,80,000/- on 19/01/2002. It is also not disputed that the appellant/defendant had issued a cheque of Rs.1,00,800/- for first demand on 05/03/2002, and thereafter on 23/03/2002 and on 25/03/2002 as also

with respect to balance towards cost of machine i.e. amounting to Rs.44,200/-.

- 12.** Perusal of records would show that Ex. P-1 is a bill of the machine dated 19/01/2002. Exs. P-2 & P-3 are the Installation Reports, which are counter signed by the appellant/defendant. Ex. P-4 is a notice through an Advocate dated 30/01/2003 and Ex. P-7 is reply to the legal notice for recovery of the balance amount dated 13/02/2003. Ex. D-1 is a letter written by the Philips Company dated 23/05/2002 to the appellant/defendant.
- 13.** From perusal of the written statement submitted by appellant/defendant, it is evident that he himself has pleaded that on his making direct complaint to the Philips Company, the Philips Company sent Engineer from Calcutta, which itself makes the argument of learned counsel for the appellant/defendant unreliable that no Engineer of the Company visited to verify and test the machine to rectify the complaint or defect pointed out by him.
- 14.** It is evident from Ex. D-1, which is a letter written by Philips Company, manufacturer of "M3928A Agilent A3 Bedside Monitor", that the machine was installed in the Nursing Home of the appellant/defendant and on the complaint made by appellant/defendant, the Engineer of the Company visited and in

presence of the appellant/defendant himself, the machine was tested by another machine putting in its place, which also showed the same results.

- 15.** From the above evidence, particularly, the pleadings made by the appellant/defendant and the documents placed on record clearly reveals that the Engineer of the Company had visited the Nursing Home of the appellant/defendant where the machine was installed and after testing the machine, he did not find any technical defect in it.
- 16.** In view of the above, the grounds and arguments raised by learned counsel for the appellant/defendant that the complaint made by him was not being properly taken care of and no Engineer was sent for verifying and repairing the machine, is not sustainable. The fact pleaded by appellant in his written statement could not be proved by him as he failed to bring any clinching evidence on record in support of his pleadings.
- 17.** So far as the payment of balance amount of Rs.44,200/-, out of total cost of Rs.1,80,000/- is concerned, there is a Credit Memo. No.1194 (Ex. P-1) showing an amount of Rs. 1,80,000/- as well as Ex. P-7, which is reply of the appellant/defendant to the legal notice of demand clearly shows that the cost of machine was Rs. 1,80,000/-

and the part payment of the cost amount made in three installments was admitted. He had not refuted or denied the balance amount of Rs.44,200/- out of total sale consideration in fact in reply to the notice (Ex. P-7) cost price of machine i.e. Rs. 1,80,000/-and payment of Rs. 1,35,800/- was admitted by the appellant. He further admitted payment of Rs. 1,35,800/- in evidence. From the aforementioned evidence and material available on record, this Court is satisfied that the plaintiff has proved his case before trial Court.

- 18.** In view of the above discussions, in the considered opinion of this Court, the learned trial Court has not committed any error or illegality in passing the impugned decree, I do not perceive any merit in the appeal and, accordingly, the same stands dismissed without any order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge