

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 18-01-2019

Judgment delivered on 15-03-2019

FIRST APPEAL NO. 48 of 2005

Gangashree Computers through Proprietor Arun Jaiswal aged about 37 years, son of Shri Jamunalal Jaiswal, resident of Lind road, Bilaspur Tahsildar & District Bilaspur (CG).

---- Appellant/defendant.

Versus

Cybernetic Technologies through Proprietor Asfaaq A.Khan aged about 31 years s/o. Shri N.A. Khan near Chhattisgarh School Bilaspur, Tahsil & District Bilaspur (CG)..

---- Respondent/plaintiff.

For appellant : Mr. Anand Gupta, Advocate.
For respondent : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 25-10-2004 passed by 5th Additional District Judge, Bilaspur (CG) in Civil Suit No. 42-B/04 wherein the said court decreed the suit filed by the appellant/plaintiff partially to the tune of Rs.29,073/- with interest.

2) Respondent/plaintiff installed six computer systems at the premises of the appellant/defendant on 28-12-1997. The appellant

served legal notice dated 6-3-1998 to the respondent alleging that the computers system installed at his premises had stopped working, therefore, he is suffering loss. In his notice he also requested the plaintiff to remove the errors occurred in computers system and take balance amount or return the amount of advance and get back the computer system. Respondent/plaintiff filed a suit for balance amount of computer and interest and in the same suit the appellant filed counter claim for compensation to the tune of Rs.1,00,000/-. Admittedly, the total price of computers is Rs.1,42,073/- out of which Rs.1,13,000/- was paid and balance amount is Rs.29,073/- for which decree has been passed in favour of the respondent and the counter claim of the appellant was dismissed.

3) Learned counsel for the appellant would submit as under:

- I) The trial court ought to have seen the fact that the errors occurred in the computer systems installed at the premises, therefore, compensation ought to have been granted to the appellant.
- ii) The trial court has not appreciated the fact that the computers system cannot be opened by an unauthorised person and respondent was under obligation to cure the same that is not done, therefore, dismissal of the counter claim is erroneous.

- 4) I have heard learned counsel for the appellant and perused the record in which judgment and decree has been passed.
- 5) The core issue for consideration of this court is whether the computers in question were under warranty/guarantee period and whether the respondent wilfully did not cure the fault occurred in the said system. In Ex.P/1 the appellant endorsed that he received the computers in working condition and signed the papers.
- 6) Pramod Kumar (DW/2) deposed before the trial court that no written guarantee was given to him by the respondent. No written notice was served to respondent to cure the defect in the computer. When no complaint was made in writing, the trial Court opined that there is no deficiency in service on the part of the respondent. The respondent was under obligation to cure the defect only when there is notice in writing, but that is not done in present case. Again no warranty was given in writing to appellant, therefore, in absence of notice, respondent was not under obligation to cure the defect. As the computers system has been received in working condition there is nothing on record to say that any civil wrong was committed by the respondent. Appellant can be compensated only when civil wrong is committed or any tortuous act is committed, but that is not the case here. Therefore, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

7) Accordingly, decree is passed against the appellant and in favour of respondent as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of the respondent through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju