

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2019

PRONOUNCED ON : 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.161 of 2016

M/s.Fuso Glass India Private Ltd.

(Formerly known as M/s.Mahaveer
safety Glass Co.Pvt. Ltd.)

Having its registered office at:

No.91, "Fuso House"

Poonamallee High Road,

Chennai - 600 084.

...Appellant/Respondent/Defendant

Vs.

L.Neelakantan

S/o.N.Lokanathan

Hindu, aged 37 years

Carrying on business as Proprietor

of M/s.Space Associates

"Shivakrupa", B-3, Shakthi Apartments,

Old No.17, New No.20, Cenotaph Road,

Teynampet, Chennai - 600 018.

...Respondent/Appellant/Plainfitt

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 25.06.2015 passed in A.S.No.352 of 2014 on the file of the II Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 02.07.2014 passed in O.S.No.4950 of 2010 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Murali Kumaran

for M/s.V.Govardhan

For Respondent: Mr.V.Bhiman

for M/s.Sampath Kumar Associates

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 25.06.2015 passed in A.S.No.352 of 2014 on the file of the II Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 02.07.2014 passed in O.S.No.4950 of 2010 on the file of the VII Assistant Judge, City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for recovery of money.

4.The case of the plaintiff in brief is that the plaintiff is an Interior Decorator by profession and the defendant placed a work order with the plaintiff on 19.02.2008 for Interior designing for its Corporate Office Complex and as per the terms and conditions of the contract entered into between the parties, the materials to be used for the interior designing were to be supplied by the defendant company, particularly, with respect to supply of tiles for Vitrified Flooring, plywood and Plumbing materials and later, the defendant said that it would only supply the Tiles and rest of the materials with respect to the project to be procured by plaintiff himself. The quality of work done as well as the completion of work will have to be certified by M/s.Sumana Dinesh Associates, a leading firm of Architects appointed by the defendant and M/s.Sumana Dinesh Associates was also authorised to levy penalty on the plaintiff, in the event of delay in the completion of the work beyond the stipulated period of 30 days. Any additional work could be carried out only with the prior approval of both the plaintiff and the defendant. A sum of Rs.50,000/- was agreed as Retention Money, which would be released after 6 months of handing over of the project subject to defects rectification if any arises in the project. The Defendant made part payments with respect to the progress of the work, which has been approved by M/s.Sumana Dinesh Associates and acknowledged by the plaintiff vide letter dated 26.05.2008. The plaintiff completed the interior decoration work and handed over the premises to the defendant company as early as September, 2008 and the plaintiff also requested the defendant to complete the joint measurement for the final bill as agreed upon by the parties. However, the defendant company was evasive and was purposely delaying the fixing of the date of the joint measurement and left with no other alternative, the plaintiff has to raise its running bill for an ad hoc amount. On 07.10.2008, the plaintiff raised a running bill for an ad hoc sum of Rs.5,00,000/-, which was duly approved by M/s.Sumanan Dinesh Associates and even then, the defendant company has failed to pay the same and delayed the matter in fixing the date of the joint measurement. The plaintiff sent an e-mail on 13.10.2008 requesting the defendant to pay the running bill raised by it. Again, the plaintiff sent two e-mails on 20.10.2008 and 22.10.2008, the defendant made the ad hoc payment of Rs.3,00,000/-, on 25.10.2008, as against the certified amount of Rs.5,00,000/- by the Architect and the plaintiff adjusted the earlier payments made and raised the final bill as per the joint measurement, which came to Rs.6,67,966/- excluding the retention money and therefore, the

defendant company is liable to pay Rs.7,17,966/- as approved by M/s.Sumana Dinesh Associates on 09.01.2009. On account of the delay caused by the defendant in making the payment, the plaintiff again sent e-mails on 20.01.2009, 22.01.2009 and 27.01.2009 but they were not responded and the plaintiff also contacted with the defendant and requested the payment on many occasions, however, the defendant company failed to pay the amount. The plaintiff sent a letter dated 22.09.2009 to pay the balance amount, the defendant did not comply with the same and again the plaintiff sent reminders on 29.10.2009, 13.11.2009, 08.12.2009 to expedite the payment. The defendant neither replied nor made any payment to the plaintiff and hence, according to the plaintiff, he has been necessitated to institute the suit against the defendant for the recovery of the suit amount with interest at the rate of 18% per annum from the date of the plaint till the date of the realisation in full.

5.The defendant resisted the plaintiff's suit contending that the defendant company issued a work order dated 19.02.2008 to the plaintiff to carry out interior decoration work in the defendant company. The total value of the work order is Rs.16,27,811/-. As per the terms and conditions, after the work is finished, a joint measurement has to be taken by the plaintiff and the defendant in the presence of M/s.Sumana Dinesh Associates viz., the Architects. No additional work was given to the plaintiff and the plaintiff has not even carried out the entrusted work to him completely and some of the works were incompletely done. For the work, the defendant had supplied glasses for panelling and the same were damaged by the plaintiff, while fixing the same and despite the assurance that he will replace, the plaintiff has not made replacement. The false ceiling was not properly done and there is leakage. The plaintiff has to finish his work and hand over the premises within 30 days and the possession was not handed over by the plaintiff within the agreed time and the possession was handed over only in September, 2008, without completing the entire decoration work and an advance amount of Rs.1,00,000/- was paid to the plaintiff on 08.02.2008 by way of cheque dated 08.02.2008 drawn on Indian Overseas Bank and another sum of Rs.3,88,343/- was paid by way of cheque dated 19.02.2008 drawn on Indian Overseas Bank and another sum of Rs.8,00,000/- was paid by way of cheque dated 20.06.2008 drawn on Indian Overseas Bank and further, a sum of Rs.3,00,000/- was paid by way of the cheque dated 25.10.2008 drawn on Indian Overseas Bank. On 31.03.2009, a sum of Rs.8,446/- was deducted towards TDS and the same was debited in the account of the plaintiff. The defendant, in toto, has made a payment of Rs.15,96,789/- to the plaintiff. The plaintiff has not disclosed the receipt of Rs.8,00,000/- paid to him as abovestated. At no point of time, the joint measurement was taken. The plaintiff has made excess payment and

accordingly, the final bill dated 09.01.2009 raised by the plaintiff was not accepted and the defendant has sent many communications to the plaintiff to carry out the defects and the plaintiff failed to comply with the same. There is no agreement to pay 18% interest as no final measurement had been taken as per the terms and conditions of the work order. Despite the final measurement not having taken as per the terms and conditions of the work order, the plaintiff concocted has some documents as final measurements, which is not accepted by the defendant, as the defendant is not a party to the same. The plaintiff has not carried out any work for Rs.23,06,309/- and hence, the plaintiff is not entitled to recover the suit amount as prayed for and the suit is liable to be dismissed.

6.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A20 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B9 were marked.

7.On a consideration of the materials placed on record and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. On appeal preferred by the plaintiff, the first appellate Court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial Court and determining that the plaintiff is entitled to recover the amount of Rs.8,86,501/- with interest at 12% per annum, on the sum of Rs.7,17,966/- from the date of the plaint till the date of the judgment of the first appellate Court and at the rate of 6% from the date of the judgment of the first appellate Court till realisation and accordingly, disposed of the plaintiff's suit. Impugning the same, the defendant has preferred the second appeal.

8.At the time of the admission of the second appeal, the following substantial questions of law were framed for consideration:

“(i).Whether the judgment and decree of the First Appellate Court is bade in the eye of law for non-compliance of the provision of Order XXXI Rule 31 of C.P.C., by framing necessary points for determination of the appeal while deciding the First Appeal?

(ii).Whether the First Appellate Court has applied its mind independently afresh on evidence adduced by the parties and has stated reasons for findings while reversing the well considered findings of the Trial Court?”

9.It is not in dispute between the parties that the defendant company had entrusted the Interior Decoration work of its company to the plaintiff and it is found that according to the plaintiff, he has completed the work as per the terms and conditions agreed to between the parties and further, according to the plaintiff, the bills raised by him for payment due to him had also been certified by M/s.Sumana Dinesh Associates, as agreed to by the defendant and despite several reminders, the defendant has not come forward for any joint measurement and inasmuch as the defendant has been continuously failing to pay the amount due to the plaintiff, despite the repeated reminders sent through e-mails and letters, according to the plaintiff, he has raised the ad hoc bill as well as the final bill for the payment due to him and despite the requests made by the plaintiff, according to the plaintiff, the defendant has failed to honour of the same, even though the abovesaid bills had been certified by M/s.Sumana Dinesh Associates and hence, according to the plaintiff, he has been necessitated to institute the suit against the defendant.

10.The defendant would contend that the plaintiff has not done the work entrusted to him properly and in time and even the agreed work has not been performed and completed by the plaintiff and there were many defects and shortcomings in the work done by the plaintiff and furthermore, according to the defendant, no additional work was entrusted other than the work entrusted to him by way of the work order and further according to the defendant, it has paid the amounts to the plaintiff as detailed in the written statement and no amount is due to the plaintiff and on the other hand, it is only the plaintiff, who is liable to pay the amount to the defendant for the unsatisfactory work done by him and furthermore, according to the defendant, no joint measurement was taken as agreed to between the parties and therefore, the bills raised by the plaintiff without any joint measurement cannot be accepted and accordingly, the defendant is not liable to pay the bills raised by the plaintiff and hence, sought for the dismissal of the plaintiff's suit.

11.The work order, in question, has been marked as Ex.A1 and the same is found to be signed by the parties and the defendant has not disputed the entrustment of the work in question to the plaintiff. Now, according to the plaintiff, he has submitted the various bills to the defendant and contended that he has submitted a certificate of payment as per the work done under the work order and the same has been marked as Ex.A3 dated 10.06.2008 and on a perusal of Ex.A3, as rightly put forth by the plaintiff, it is found that it has been signed by M/s.Sumana Dinesh Associates and the same has also been accepted by DW1 examined on behalf of the defendant during the course of

cross examination and Ex.A4 is the final bill submitted by the plaintiff for a sum of Rs.23,06,309/- and on a perusal of the same, it is found that on behalf of the defendant company, it's signatory has signed the same as well as signed by the plaintiff and the same has been marked as Ex.A4 and claiming the abovesaid amount, it is found that the plaintiff has sent the various e-mails marked as Exs.A6 to A8. On a perusal of the e-mails sent by the plaintiff to the defendant, it is found that the plaintiff had been repeatedly calling upon the defendant to make the payment for the work done by him and the defendant has not repudiated the acknowledgement of the e-mails. According to the plaintiff, the defendant has neither repudiated the demand made by way of the abovesaid e-mails nor complied with the demand under the same. Furthermore, DW1 examined on behalf of the defendant had admitted that the e-mails abovestated had been received by the defendant. If really the amounts claimed by the plaintiff by way of the abovesaid e-mails and the final bill marked as Ex.A4 are not proper and that the plaintiff has not completed the work satisfactorily as now sought to be made out by the defendant, as rightly put forth by the plaintiff's counsel, the defendant should have responded to the abovesaid e-mails as well as the final bill submitted by the plaintiff marked as Ex.A4. Though DW1 has disputed that Ex.A4 final bill has not been acknowledged by the defendant, however, it is found that DW1 examined on behalf of the defendant is not directly aware of the work entrusted to the plaintiff and the nature of the work to be completed by the plaintiff and the defendant's authorised signatory has not been examined. Furthermore, the authorised signatory of the defendant had not entered into the witness box disputing that the signature available in Ex.A4 on behalf of the defendant is not the signature of their authorised signatory and therefore, the defendant cannot be allowed to feign ignorance about the final bill submitted by the plaintiff marked as Ex.A4.

12.The plaintiff has further submitted Ex.A5 final bill dated 07.10.2008 for Rs.23,26,740/- and the same is found to be a bill certified by M/s.Sumana Dinesh Associates and it is not disputed by the defendant that the work completed by the plaintiff has not been certified for payment by M/s.Sumana Dinesh Associates. Accordingly, when it is seen that Ex.A5 bill submitted by the plaintiff had been duly certified by M/s. Sumana Dinesh Associates and even the same had been acknowledged by the defendant, despite the same, it is seen that the defendant had not endeavoured to repudiate the abovesaid sum claimed by the plaintiff one way or the other, however has not come forward to honour the final bill above submitted by the plaintiff. In addition to that, the plaintiff has also submitted another bill dated 09.01.2009 marked as Ex.A10 for a sum of Rs.23,06,309/- and M/s.Sumana Dinesh Associates has

certified the due amount to the plaintiff in the same and in such view of the matter, when it is seen that the various bills submitted by the plaintiff for the amount due to it, as disclosed therein had been duly certified by M/s.Sumana Dinesh Associates and all the bills had also been acknowledged by the defendant and furthermore, when DW1 has also admitted that Ex.A10 bill had been certified by M/s.Sumana Dinesh Associates and further, when by way of Ex.A7, the plaintiff has also called upon the defendant to fix the date and time to carry out the joint measurement and the defendant, without responding to any of the emails and also not coming forward to fix the date of the joint measurement, had been keeping mum and in such view of the matter, it is found that failure to carry on the joint measurement is not due to the fault of the plaintiff and on the other hand, the same had resulted only on account of the inaction of the defendant to fix the date for the joint measurement, despite the plaintiff calling upon the defendant to fix the time for the same. In such view of the matter, the defendant cannot be allowed to resist the plaintiff's suit mainly on the footing that the bills raised by the plaintiff could not be honoured as no joint measurement had been done concerning the work done by the plaintiff in accordance with the terms and conditions of the work order. As to why the defendant has not come forward to fix the date and time for the joint measurement, absolutely, there is no explanation on the part of the defendant and when it is seen that DW1 examined on behalf of the defendant has no personal knowledge of the transaction entered into between the parties and not disputing the availability of the authorised signatory viz., Ashok, the defendant having not endeavoured to examine the said Ashok to explain as to in what manner the work completed by the plaintiff is unsatisfactory and why the defendant had not responded to the various e-mails and letters sent by the plaintiff for the payment and in such view of the matter, the defendant, without giving any plausible explanation on its part for its failure to fix the date for joint measurement, cannot now come forward and complain that the bills raised by the plaintiff cannot be accepted on account of the failure of the joint measurement of the work done by the plaintiff. When the bills raised by the plaintiff as abovestated had been certified by the Architects nominated by the defendant and if according to the defendant, the bills had not been certified by M/s.Sumana Dinesh Associates, nothing prevented the defendant from examining them in support of their case. Furthermore, DW1 has admitted that M/s.Sumana Dinesh Associates is their agent and admitted that the bills raised by the plaintiff and projected in the matter had been certified by M/s.Sumana Dinesh Associates. Therefore, when the bills projected by the plaintiff clearly pointed out the amount due to it, after deducting the amount already paid by the defendant and the same had been certified by M/s.Sumana

Dinesh Associates, in such view of the matter, as rightly put forth by the plaintiff's counsel, the defendant cannot be allowed to refuse to make the payment by keeping mum and furthermore, without pointing out as to in what aspects, the work done by the plaintiff is not in accordance with the work order and in what aspects, the plaintiff is not entitled to raise the bills for the payment due to it.

13. When from the materials placed on record, it is found that though the original work order is only for Rs.16,27,811/- it is found that it has been enhanced subsequently for Rs.23,26,740/- and the same had been duly accepted by the defendant as well as by M/s. Sumana Dinesh Associates, as could be seen from the bills raised by the plaintiff for the payment due to it.

14. As abovenoted, when the plaintiff has been making repeated requests to the defendant to make the payment and also sending various e-mails and submitting the same along with the measurement book, despite the abovesaid position, the defendant has not replied to any of the e-mails and as rightly put forth by the plaintiff's counsel, even for the claim of the plaintiff to make the ad hoc payment of Rs.5,00,000/-, it is found that the defendant has made the ad hoc payment of a sum of Rs.3,00,000/- only and the same could be evidenced from Ex.A10 bill and accordingly, the amounts paid by the defendant had been duly accounted by the plaintiff, in such view of the matter, the defendant cannot be allowed to contend that the plaintiff has failed to give credit to the amounts paid by the defendant. Considering the claim made by the plaintiff, it is found that the plaintiff has given clear draft about the total amount paid by the defendant due to it and accordingly, by way of the letter dated 22.09.2009 marked as Ex.A13 pointed out that the sum of Rs.7,17,966/- is due to him from the defendant and in such view of the matter, it is found that the defendant, without coming forward to carry out the joint measurement and also without repudiating the claim of the plaintiff made in the various e-mails and letters projected in the matter, cannot be allowed to contend that no additional work had been entrusted to the plaintiff and the work done by the plaintiff is not satisfactory, particularly, when the materials placed on record go to show that the work order had been enhanced to a further sum than the original sum agreed to and accordingly, it is found that the plaintiff has also raised the necessary bills and as the bills raised by the plaintiff reflected the correct position, it is found that the same had been duly certified by M/s. Sumana Dinesh Associates and in such view of the matter, it is found that the first appellate Court is found to be justified in holding that the plaintiff is entitled to the amount as determined by it and I do not find any valid reason to interfere with the same.

15.The trial Court is found to have dismissed the plaintiff's suit mainly on the footing that the defendant has made a counter claim in the suit, however, as could be seen from the materials placed on record, it is found that no counter claim, as such, had been made by the defendant and therefore, the abovesaid determination of the trial Court for disbelieving the plaintiff's case is unacceptable. Furthermore, the trial Court has found fault with the plaintiff for not filing a re-joinder to the written statement of the defendant and also found fault with the plaintiff for not filing supporting documents other than the e-mails put forth by him. However, considering the version put forth by the defendant in the written statement and when the plaintiff in the plaint itself has come forward with the clear picture as to the amount due to it deducting the amount already paid by the defendant, in such view of the matter, on the fact and circumstances of the case, there is no necessity on the part of the plaintiff to file any re-joinder. Furthermore, when the e-mails sent by the plaintiff give a clear picture as to on what basis, the plaintiff has raised the bills and also the plaintiff has been making repeated demands to the defendant to come forward for the joint measurement, the defendant having not responded to the same in any manner, in such view of the matter, there is no question of finding fault on the plaintiff for the failure on the part of the defendant in not coming forward to conduct the joint measurement. Furthermore, the trial Court is also found to have disbelieved the plaintiff's case as if the plaintiff has failed to examine Architects namely M/s.Sumana Dinesh Associates. When according to the plaintiff, the various bills raised by him had been duly certified by M/s.Sumana Dinesh Associates and the same has also been admitted by DW1 examined on behalf of the defendant and when the abovesaid Architects has been nominated by the defendant, if the bills raised by the plaintiff had not been certified by the Architects concerned, nothing prevented the defendant from examining Architects in support of their version. However, the defendant has not come forward to examine the Architects and not even endeavoured to examine its authorised signatory in support of its defence.

16.In the light of the abovesaid discussions, when the issues involved between the parties concerned in the matter are based on the factual matrix and not requiring the determination of any question of law, as such and when the first appellate Court is found to have considered the issues involved between the parties, in all aspects under the point for determination formulated by it and had independently applied its mind on the materials projected by the parties and also given the reasons for setting aside the judgment and decree of the trial court and when the reasonings and conclusions of the first appellate Court are found to be cogent, clear and acceptable and not suffering

from any perversity or irrationality in any manner, in such view of the matter, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiff.

17. In support of his contentions, the plaintiff's counsel placed reliance upon the decisions reported in 2002 (5) CTC 517 (Rattan Dev Vs. Pasam Devi), LAWS(MAD)2012 240 (M.Karthikeyan Vs. Tamil Nadu News Print and Papers Limited) and 2007 AIR SCW 3060 (Adivekka and Ors V. Hanamavva Kom Venkatesh (deceased by LRs.) and another. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sms

To

1. The II Additional Judge,
City Civil Court, Chennai.

2. The VII Assistant Judge,
City Civil Court, Chennai.

Copy to

The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.V.Govardhanan, Advocate, S.R.No. 72452
+2cc to Mr.Sampath Kumar, Advocate, S.R.No. 72418

S.A.No.161 of 2016

NRL(CO)
GN(12/11/2019)