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

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Reserved on: 07.09.2022

Pronounced on: 15.09.2022

+ **RFA 625/2015**

ASHOK RESERVATION AND
MARKETING SERVICES

..... Appellant

Through: Mr. Subhasish Mohanty, Advocate.

versus

M/S INSTANT HOST & ORS

..... Respondents

Through: Mr. Pramod Kant Saxena,
Advocate for R- 1 to 3.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present Appeal emanates from the Judgment and Decree dated 14.01.2015 passed by ADJ-04, New Delhi District, Patiala House Courts, New Delhi (“**impugned judgment**”) in C.S. No. 104/14 titled as **M/s Instant Host & Ors Vs M/s Ashoka Reservation & Marketing Services & Anr.** whereby, the learned Trial Court was pleased to decree the suit in favour of Respondent Nos. 1, 2 & 3 (Original Plaintiffs) and against the Appellant herein.

Facts relevant for the disposal of the present Writ Petition

2. The Appellant is a division of India Tourism Development Corporation (“**ITDC**”) and is registered as a Government Company under the Companies Act, 1956. The Appellant is into the business of



providing event management services to various organisations and events of national and international repute. Respondent nos.1& 2 are partners in Respondent No.3 and they are stated to be in the catering and hospitality business. Respondent No.4 is the Department of Rural Development, Ministry of Rural Development (NREGA Division), Union of India.

3. It is the case of the Appellant that the Appellant was appointed as the Event Manager by Respondent No. 4 herein for the NREGA Sammellan to be held on 02.02.2009 at IARI Ground, Pusa, New Delhi. The Appellant was required to provide best quality packed lunches/refreshments for the participants of the NREGA Sammellan. Based on a tendering process, Respondent No.3 was awarded the work of providing Morning Tea, Lunch Packets and Evening Tea for 4000 participants as per terms and conditions contained in the Work Order No. ARMS: NREGA Work Order: Catering: 09 dated 30.01.2009 (“**Work Order**”).
4. As per the said Work Order, packed lunches were required to be delivered at the venue by 8.30 a.m. and evening tea and snacks by 12 noon to avoid traffic delays on account of VVIP movements. It was also categorically mentioned that the food items should be freshly prepared and supplied at the venue in good condition. In the said Work Order, it was further clarified that the payment would be released by ITDC within 30 days of submission of the bill and shall be subject to receipt of food in good condition.



5. It is the case of Respondent Nos.1, 2 and 3 that they prepared and delivered 5000 packets of fresh food in good condition at the venue on 02.02.2009. However, Respondent No.3 faced a lot of inconvenience and problems as the security officials deployed at the Sammellan site did not allow Respondent No. 3's food vans to enter the venue as they were without authorisation passes. The Appellant did not issue any passes to Respondent Nos.1, 2 & 3 and hence, Respondent No.3's food vans were made to wait outside the venue since early morning. Respondent No. 3 admitted that there was a delay in supply of food but claimed that they delivered all 5000 food packets at the site in good condition. The delegates consumed the food packets after they were distributed to them.
6. It is the case of the Respondents that Respondent No.3 submitted the bill and even after repeated requests the same was not cleared. Owing to the non-payment, Respondent Nos. 1, 2 & 3 filed a suit for recovery for an amount of Rs.7,80,000/- with *pendente lite* and future interest @ 24% per annum with effect from 02.02.2009 till the realization of dues.
7. The Appellant filed the Written Statement, wherein it admitted the issuance of the said Work Order dated 30.01.2009 to Respondent No.3 for supply of packed food on 02.02.2009. However, it is the case of the Appellant that the delivery of food packets at the venue by Respondent No.3 was extremely delayed. As per the Appellant, Respondent No.3 delivered around 1000 packed lunches at 10.45 a.m. A second lot of about 1200 packed lunches was delivered at



1.00 p.m. after the time for lunch was over and some more packets were delivered at 3.00 p.m. The Appellant further alleged that the food supplied by Respondent No. 3 was of sub-standard quality and there were many complaints from the delegates regarding the quality of the food. It is the contention of the Appellant that due to the delay in serving of food and also due to the poor quality of the served food, their client Respondent No.4 had expressed its strong resentment/displeasure to the Appellant and the same was conveyed to Respondent No.3. The Appellant has also contended that the lapses on the part of Respondent Nos. 1, 2 & 3 have brought great embarrassment to ITDC in addition to jeopardizing the Appellant's relationship with the Ministry of Rural Development.

8. It is the case of the Appellant that vide letter dated 03.02.2009, it sought explanation from Respondent No.3 which did not elicit any response. The Appellant further states that Respondent No.4 withheld an amount of Rs.7,43,623/- from the Appellant's bill due to poor quality of food supplied by Respondent No. 3 at the venue.
9. The ITDC ARMS Division vide letter dated 08.06.2009 again sought an explanation to which Respondent No.3 replied vide its letter dated 11.06.2009. In its reply, Respondent No.3 admitted that there was a delay in supplying the food packets. Respondent No.3 also admitted that some of the guests complained about foul smell emanating from the food. However, it stated that the smell was due to the 'pickle' served in the Lunch Packets. Dissatisfied with the explanation provided by Respondent No.3, Respondent No.4 sought further



clarification from the ITDC ARMS Division vide their letter dated 30.07.2009. It is the case of the Appellant that Respondent No. 4 never released the amount to the Appellant.

10. Respondent Nos. 1, 2 & 3 subsequently amended their suit and made Department of Rural Development, Ministry of Rural Development (NREGA Division) as Defendant No. 2. However, there was no representation from their side and hence they were proceeded *ex-parte*.

11. Based on the pleadings, the learned Trial Court framed the following issues:

- (i) *Whether plaintiff violated the terms and conditions of the work order dated 30.1.2009 in supply of material as alleged?*
- (ii) *Whether this suit has been properly valued for the purpose of court fee and jurisdiction?*
- (iii) *Whether plaintiff is entitled for recovery of suit amount as prayed?*
- (iv) *Whether the plaintiff is entitled for the interest over the suit amount, If so, at what rate and for what period?*
- (v) *Relief*

12. In order to prove their case, Respondent Nos. 1, 2 & 3 examined Mr. Vineet Wadhwa as PW-1 and the Appellant herein examined Mr. Sunil Kumar Tulsiani as DW-1.

13. Based on the evidence adduced by the parties, the Learned Trial Court examined the case and passed a money decree of Rs. 7,80,000/- in favour of Respondent Nos. 1, 2 & 3 and against the Appellant



along with cost and interest @ 6% per annum from the date of filing of the suit till its realization.

14. Being aggrieved by the impugned Judgement and Decree, the Appellant has filed the present Appeal.

Submissions on behalf of the Appellant

15. Learned counsel for the Appellant argued that the learned Trial Court erroneously proceeded on the basis that DW-1 admitted that the service of Respondent No. 3 was satisfactory and food supplied by them was consumable. Learned counsel drew the attention of this Court to the evidence adduced by the parties to substantiate that DW-1 never made any such admission. Learned counsel further submitted that as per the said Work Order dated 30.01.2009, Respondent Nos. 1, 2 & 3 were required to strictly adhere to the timelines as specified therein. Respondent No. 3 in their letter dated 11.06.2009 (**Exh. DW1/5**) admitted that there was a delay in delivering the food packets. It was further submitted by the counsel for the appellant that Respondent No. 3 also admitted that some of the delegates complained to them that there was a foul smell emanating from the supplied food. Counsel for the Appellants further submitted that despite the said admissions, the learned Trial Court erroneously decided Issue No. 1 in favour of Respondent Nos. 1, 2 & 3.

16. Learned counsel for the Appellant further submitted that Respondent No. 4 withheld an amount of Rs. 7,43,623/- from the Appellant's bill due to the abysmal quality of food supplied at the venue. Despite this



fact being brought to its notice, the learned Trial Court decreed the suit in favour of Respondent Nos.1, 2 & 3.

17. Learned counsel for the Appellant concluded his argument by submitting that it was specifically mentioned that the bills will be cleared subject to the food being delivered in good condition. There was a clear breach of the terms of the said Work Order and hence Respondent Nos.1, 2 & 3 were not entitled for payment as claimed by them.

Submissions on behalf of Respondent Nos. 1, 2 & 3

18. Learned counsel for Respondent Nos.1, 2 & 3 submitted that the learned Trial Court rightly decreed the suit based on the evidence adduced by the parties. It was alleged by the Respondents that the Appellant failed to prove that there was deficiency on the part of Respondent Nos.1, 2 & 3. It was submitted by the learned Counsel for the Respondents that Respondent Nos.1, 2 & 3 delivered 5000 Lunch Packets at the venue and all the lunch packets were in good condition. The food was consumed by the delegates and hence the Appellant was required to make payment to Respondent Nos.1, 2 & 3 as per the terms of the said Work Order.

19. Learned counsel for Respondent Nos. 1, 2 & 3 further submitted that the Appellant failed to issue passes to Respondent No. 3 and hence the food delivery vans of Respondent No. 3 were not allowed entry inside the venue due to the high security coverage. The food delivery vans were made to wait outside the venue since morning resulting in



delay in delivering of food. It was thus argued by the learned counsel for the Respondents that the delay could not be attributed to Respondent No. 3 as such delay was on account of the Appellant.

Legal Analysis based of the facts of the present case

20.This Court has heard the learned counsels for the parties and also examined the documents placed on record.

21.From perusal of the records, it emerges that the appeal can be disposed of by deciding the issue as to whether there was a violation of the terms and conditions of the Work Order dated 30.1.2009 by the Respondents in supply of material as alleged.

22.It is an admitted position that the Appellant awarded the Work Order dated 30.01.2009 (**Exh. DW1/1**) to Respondent No. 3 for providing Morning Tea, Lunch Packets and Evening Tea for 4000 persons as per terms and conditions as contained in the said Work Order.

23.To decide the afore-stated issue, it is important to examine the Work Order. As per the said Work order dated 30.01.2009, Morning Tea (4000 in nos.) was to be provided from 8.00 a.m. to 10.00 a.m., Lunch Packets (4000 in nos.) were to be provided at 11 a.m. and Evening Tea (4000 in nos.) were to be provided at 3.30 p.m. Other terms and conditions included a specific term that the food (Packed Lunch) should reach at the venue positively by 08.30 a.m. sharp so as to avoid traffic delays due to VVIP arrivals at the venue and Evening Tea with snacks must reach the venue by 12.00 noon. It was also



categorically mentioned that all the food items were to be prepared fresh and supplied at the venue in good condition.

24. It is the case of the Appellant that Respondent No. 3 delayed the delivery of the food at the venue. As per the Appellant, Respondent No. 3 delivered around 1000 Lunch Packets at 10.45 a.m. Second lot of about 1200 Lunch Packets was delivered at 1.00 p.m. after the time for lunch was over and some more packets were delivered at 3.00 p.m. In order to prove the said fact, the Appellant placed on record the following documents:

- (i) Letter dated 03.02.2009 written by the Appellant to Respondent No.3 (**Exh. PW1/D1 & DW1/2**). Vide this letter, on the very next day of the event, the Appellant informed the Respondents about their displeasure regarding the food supply. However, Respondent Nos.1, 2 & 3 failed to respond to the said letter.
- (ii) Show cause notice dated 08.06.2009 issued by ITDC to Respondent No.3 (**Exh. PW1/D1 & DW1/4**)
- (iii) Reply submitted by Respondent No.3 to the ITDC (**Exh. DW1/5**). A perusal of Exhibit DW1/5 shows that Respondent No.3 admitted that there was some delay in the supply of the food, although Respondent No. 3 attributed the delay to the heavy security deployed at the site. Respondent No.3 further admitted that some of the delegates complained about the foul smell emanating from the food and according



to Respondent No.3, it was from the pickle which was part of the lunch packet.

- (iv) Letter dated 04.06.2009 written by Respondent No.4 to the ITDC ARMS Division (**Exh. DW1/3**). Exhibit DW1/3 categorically shows that Respondent No. 4 withheld the amount from the Appellant due to their failure to supply the food packets on time.
- (v) Letter dated 30.07.2009 issued by Respondent No.4 to ITDC ARMS Division (**Exh. DW 1/6**). Vide this letter, Respondent No.4 justified the short payment made to ITDC. They categorically mentioned that the food supply was delayed.

25.From a perusal of these documents, it is clear that Respondent No. 3 failed to supply the food at the venue on the scheduled time. This fact was admitted by Respondent No 3 in Exh. DW1/5.

26.It was the contention of Respondent No.3 that the delivery of food was delayed due to the heavy security deployed at the site. However, a perusal of the said Work Order (dated 30.01.2009, **Exh. DW1/1**) shows that the Appellant anticipated this issue and hence a condition was specifically added in the form of '*other terms and conditions*' which stated that '*the food (packed lunch) should reach at the venue positively by 8.30 a.m. sharp so as to avoid traffic delays due to VVIP arrivals at the venue and the evening snacks by 12 noon*'. Even with this specific condition having been stipulated in the said Work Order, Respondent No. 3 failed to deliver the food packets at the



venue on time. Hence, the Appellant cannot be faulted for such delay.

27.A perusal of the impugned Judgment of the learned Trial Court shows that it proceeded on the erroneous basis that DW1 has already admitted that the items supplied by Respondent No. 3 were consumable and thus the services provided by Respondent No. 3 were not deficient. However, a perusal of the records reveals that there is no such admission on behalf of DW-1. A rather consistent stand of the Appellant which can be gathered from the documentary evidence is that the delivery of food by the Respondent No. 3 was extremely delayed.

28.At this point, it would be relevant to refer to the observations of the Hon'ble Supreme Court in the case of *M/S. Arosan Enterprises Ltd vs Union Of India & Anr* reported as (1999) 9 SCC 449 at Para 27. The Court observed:

*“Mere fixation of a period of delivery or a time in regard thereto does not by itself make the time as the essence of the contract, but **the agreement shall have to be considered in its entirety and on proper appreciation of the intent and purport of the clauses incorporated therein.** The state of facts and the relevant terms of the Agreement ought to be noticed in its proper perspective so as to assess the intent of the parties. The Agreement must be read as a whole with corresponding obligations of the parties so as to ascertain the true intent of the parties.”*

(emphasis supplied)

29.In the same vein, the observations of the Hon'ble Supreme Court in the case of *Swarnam Ramachandran and Anr. v. Aravacode*



Chakungal Jayapalan reported as (2004) 8 SCC 689 regarding the factors to be considered before concluding that time is of essence to the contract become pertinent. The Court has observed:

“10. ..This question does not depend only upon express stipulation made by the parties, but it also depends upon the intention of the parties. Notwithstanding that a specific date was mentioned in the agreement, one has not only to look at the letter but also at the substance of the contract. Whether time is of essence is a question of fact and the real test is intention of the parties. It depends upon facts and circumstances of each case.

11. According to Pollock & Mulla: Indian Contract & Specific Relief Acts [(2001) 12th Edition page 1086], the intention can be ascertained from:

- i) the express words used in the contract;*
- ii) the nature of the property which forms the subject matter of the contract;*
- iii) the nature of the contract; and*
- iv) the surrounding circumstances.”*

30. It is to be noted that upon careful consideration of the Work Order keeping in mind the aforementioned discussion, it can be gathered that time has been made of the essence of the contract. Since the Appellant did not receive the food in good condition within the stipulated time, they are well within their rights to withhold the release of the amount. The action of the Appellant can therefore be said to be in accordance with the specific terms of the said Work Order.

31. Further, the learned Trial Court proceeded on the basis that the failure of the Appellant to take action against the Respondent Nos.1,



2 & 3 for breach of terms of the Work Order disentitles them from withholding the amount due to the Respondents. However, a perusal of the records shows otherwise. The said Work Order stipulated that release of payment by ITDC within 30 days of the receipt of the bill was subject to the receipt of the food in good condition. Since the same condition was not fulfilled by the Respondents, the Appellant made short payment to ITDC.

32. On this point, it becomes pertinent to quote the observations of the Hon'ble Supreme Court in the case of ***K. Simrathmull v. S. Nanjalingiah Gowder*** reported as ***1962 Supp (3) SCR 476 at Para 5***. The Court has observed:

"It is true that equity relieves against penalties when the intention of the penalty is to secure payment of a sum of money or attainment of some other object, and when the event upon which the penalty is made payable can be adequately compensated by payment of interest or otherwise. ... But there is a well-recognised exception to this rule which is enunciated in Halsbury's Laws of England Vol. 14 TIT Edition page 622 paragraph 1151, as follows: "Where under a contract, conveyance, or will a beneficial right is to arise upon the performance by the beneficiary of some act in a stated manner, or at a stated time, the act must be performed accordingly in order to obtain the enjoyment of the right, and in the absence of fraud, accident or surprise, equity will not relieve against a breach of the terms". "

(emphasis supplied)

33. Based on the above discussion, this Court is of the considered opinion that Respondent No. 3 was in breach of the terms and conditions of the said Work Order dated 30.01.2009 and are therefore

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not entitled to the recovery of the suit amount or the interest claimed thereon in the suit.

34. Further, the Appellant placed on record documents showing that Respondent No. 4 withheld an amount of Rs.7,43,623/- from the Appellant owing to Respondent No. 3's non-satisfactory performance (**Exh. DW 1/3**). Keeping in view this piece of evidence, the Appellant cannot be held liable for making the payment which it has not received.

35. In view of the reasons as stated herein above, this Court is of the considered opinion that Respondent No. 1, 2 & 3 were in breach of the terms and conditions as mentioned in the Work Order dated 30.01.2009, and therefore Respondent Nos. 1, 2 & 3 are not entitled to recover the suit amount or the interest thereon from the Appellant. The finding of the Learned Trial Court on this issue is contrary to the evidence adduced by the parties.

36. The impugned Judgment dated 14.01.2015 is hereby set aside. The amount deposited by the Appellant with the Registrar General of this Court in pursuance of the orders of this Court dated 23.09.2015 may be released to the Appellant with the interest accrued thereon. There shall be no order as to costs.

GAURANG KANTH, J.

SEPTEMBER 15, 2022

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