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A.S.No.666 of 2016 &
Cross Objection No.91 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2022

Pronounced on : 25.01.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.No.666 of 2016 &
Cross Objection No.91 of 2022
and
C.M.P.No.20339 of 2016

A.S.No.666 of 2016 :

M/s.Fine Handling & Automation,
Ghat No.804,
Pune Bangalore Highway,
Khed Shivapur,
Pune – 205.

... Appellant

Vs.

M/s.Tussor Machine Tools India Pvt. Ltd.
Represented by its Director Ganesh Parthasarathy
P.S.G.Foundry Premises,
1/247, Avinashi Road, Neelambur,
Coimbatore – 641 014.

... Respondent



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Prayer : Appeal Suit filed under Section 96 r/w. Order 41 Rule 1 of Code of Civil Procedure against the judgment and decree dated 27.04.2012 in O.S.No.157 of 2010 on the file of the Additional District Court, Fast Track Court No.III, Coimbatore.

For Appellant : Mr.V.Lakshminarayanan
for Mr.A.K.Balaji

For Respondent : Mr.P.R.Ramakrishnan
for Mr.R.Bharath Kumar

Cross Objection No.91 of 2022 :

M/s.Tussor Machine Tools India Pvt. Ltd.
Represented by its Director Ganesh Parthasarathy
P.S.G.Foundry Premises,
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... Cross-Objector

Vs.

M/s.Fine Handling & Automation,
Ghat No.804,
Pune Bangalore Highway,
Khed Shivapur,
Pune – 205.

... Respondent

Prayer : Cross Objection filed under Section 96 r/w. Order 41 Rule 22 of Code of Civil Procedure in A.S.No.666 of 2016 against that the judgment



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and decree dated 27.04.2012 in O.S.No.157 of 2010 on the file of Additional District Court (Fast Track Court No.III), Coimbatore, with regard to declining to award interest for the suit claim.

For Cross-Objector : Mr.P.R.Ramakrishnan
for Mr.R.Bharath Kumar

For Respondent : Mr.V.Lakshminarayanan
for Mr.A.K.Balaji

COMMON JUDGMENT

S.S. SUNDAR, J.

The defendant in the suit in O.S.No.157 of 2010 on the file of the Additional District Court (Fast Track Court No.3), Coimbatore, is the appellant in the above appeal and the plaintiff in the suit is the cross-objector regarding the interest which was disallowed while decreeing the suit.

The respondent in this appeal filed the suit in O.S.No.157 of 2010 for recovery of a sum of Rs.58,25,430/- with subsequent interest on Rs.49,79,000/- @ 12% p.a.



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2.The respondent/plaintiff is a company incorporated under the Companies Act and carrying on business in Coimbatore in machine tools required for industrial purposes. On 09.02.2007, the respondent/plaintiff placed an order with the defendant under Order No.345 for supply of 7 Nos. of basic equipment Fine Lift FH 160 with gripper for sheet metal components and 7 Nos. of aluminium rack total overhead trolley with air supply kit and rack. The total value of all the equipments as admitted by the plaintiff is Rs.61,74,000/-.

3.It is the specific case of the plaintiff that the plaintiff made it clear to the defendant even while placing the order that the equipment should lift a minimum of 160 kg of material at all angles. From the case of the plaintiff, it is understood that the plaintiff placed order to purchase equipment which was expected to lift up to 160 kg of material with a capability of tilting at all angles. It is also the case of the plaintiff that the defendant should install the lifts at the site of the plaintiff and the defendant also agreed to deliver and install the lifts in twelve weeks and to give one year warranty.



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4.After placing the order, the plaintiff started remitting amounts and it is now on record that a sum of Rs.49,79,000/- was paid by the plaintiff between 22.02.2007 and 04.03.2007 towards cost of equipments. Except a sum of Rs.6,50,000/- paid on 01.11.2007, the entire amount was paid even before the equipments were erected. The defendant delivered the equipments at the site of the plaintiff on 22.08.2007.

5.It is the case of the plaintiff that, at the time of testing the equipments at its place, the equipments supplied by the defendant failed to lift the minimum guaranteed weight. It is then stated that the defendant attempted certain modifications to the equipments and succeeded only in making one equipment to lift up to 90 kg. It is specifically pleaded in the plaint that the other equipments could lift only upto 60 kg. The plaintiff also stated that the defendant guaranteed that all equipments could lift atleast 130 kg, but the defendant failed to accomplish its promise. Thereafter, there were exchange of communications from the plaintiff to defendant and defendant to plaintiff on several occasions. Finally, the defendant demanded further payment before going for further demonstration and testing to satisfy



the plaintiff as to the actual capacity of the equipments supplied by the defendant. Thereafter, the plaintiff issued suit notice, not only for return of price paid by the plaintiff but also for compensation @ Rs.4,000/- per day. It is seen that the plaintiff rejected the equipments/goods on the ground that the equipments supplied by the defendant did not confirm to the specifications mentioned in the purchase order and that the equipments supplied to the plaintiff were useless to them. Even in the notice, the plaintiff requested the defendant to take back the equipments after paying the amounts which have been paid by the plaintiff to the defendant towards the equipments. Thereafter, the suit was filed for refund of price paid by the plaintiff along with interest @ 12 %. p.a. from 02.10.2008 till the date of plaint, i.e., 28.02.2010, namely a sum of Rs.58,25,430/-. Prayer is also for subsequent interest @ 12 % p.a. on the price paid by the plaintiff, i.e., Rs.49,79,000/-.

6.The suit was contested by the appellant/defendant and the case of the defendant as seen from the written statement is as follows :

(a) The plaintiff is well aware that weight lifting machines like Fine Lift



FH 160 would only mean that the carrying capacity of the equipment without the gripper is 160 kg. Since the weight of the gripper is 60 kg, the equipment with the gripper attached should be capable of lifting 100 kg and the equipments erected were capable of lifting 100 kg as per purchase order.

- (b) The delay in supplying the equipments was due to the negligence of the plaintiff to send lathe machine covers to facilitate trials of the equipments and also on account of non-cooperation to send the specifications of the same.
- (c) The defendant did achieve and accomplish lifting of 130 kg of weight by the equipments by incurring extra cost which was agreed to be compensated by the plaintiff.
- (d) There was no specific demand made by the plaintiff for lifting 160 kg in the purchase order, as the order was placed by referring to FH 160 equipment and therefore, the goods supplied by the defendant are completely as per the purchase order.
- (e) The defendant never admitted that the equipments supplied by the defendant would lift weight of 160 kg exclusive of gripper.



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- (f) The aluminium racks worth Rs.17,22,000/- have been accepted by the plaintiff and the plaintiff, under the guise of rejecting the basic equipments, cannot dispute its liability towards the supply of aluminium racks.
- (g) The plaintiff, through its then Managing Director by name Ravi Sonalkar, met the defendant at an exhibition in Bangalore. Taking into account the details of the machines and after satisfying himself about the working of the machines, the then Managing Director of the plaintiff company asked for a quotation in relation to basic equipment Fine Lift FH 160 with gripper for sheet metal components and aluminium rack, total overhead trolley with air supply kit and rack.
- (h) One Mr.Pinaco from the plaintiff company and Mr.Nayan Samani from the plaintiff company visited the defendant's workshop and physically inspected the equipments and its working.
- (i) The defendant has specifically informed the plaintiff's representative that the lifting capacity of the equipment along with the metal gripper is 160 kg and thereafter, the plaintiff confirmed the order fully satisfying with the weight lifting capacity of the proposed



manipulators.

(j) The unit price of the manipulators is Rs.6,36,000/- and the cost of 7 Nos. of manipulators works out to Rs.44,52,000/-. The price of aluminium rack per unit was stated to be Rs.2,46,000/- and the total cost of 7 such aluminium racks was worked out to Rs.17,22,000/-. Therefore, the price of the manipulators and the aluminium racks was fixed at Rs.61,74,000/-.

(k) As per the purchase order dated 09.02.2007, the sales tax @ 4% and the packing charges were to be paid by the plaintiff apart from the cost.

(l) As per the terms and conditions of purchase order, the plaintiff has to pay 10% of the value of equipments as initial payment to confirm the order and agreed to pay 85% after trials with proforma invoice and the balance 5% is payable on receipt of material before installation.

7. In the written statement, it is repeatedly stated by defendant that the total capacity to lift 160 kg of weight is inclusive of the weight of the gripper. In other words, the defendant reiterated that the equipments to be



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supplied by the defendant would have a carrying capacity of only 100 kg job weight and that 60 kg weight of the gripper was also added while describing the carrying capacity of the equipment as FH 160. Referring to various communications between the parties, it is contended by the defendant that, at the stage of trials, the defendant requested the plaintiff for the sample of the job material, namely lathe machine covers, for the purpose of such trials. It is further stated that the plaintiff failed and neglected to supply the lathe machine covers to facilitate the conduct of trials and that therefore, the defendant had to procure sample lathe machine covers by incurring extra expenses.

8.The defendant further stated that the defendant called the plaintiff to defendant's factory for a pre-dispatch inspection and trials before dispatching the equipments and that the plaintiff did not come for such trials. It is also pleaded by the defendant that the defendant, on being satisfied about the total weight lifting capacity, i.e., 100 kg job weight plus 60 kg of gripper and efficient working of the manipulators, intimated the same to the plaintiff and that the plaintiff, instead, called the defendant to



forthwith deliver and install the machineries at their place. It is also stated by the defendant that the defendant is entitled to get 85% of the total amount of the purchase order after trials. Stating that the plaintiff insisted the defendant to first deliver and install the equipments before making payment contrary to the payment terms, it is contended by the defendant that the defendant packed the equipments with the required quality of packing and shipped the equipments to the plaintiff's place at its own cost. Therefore, the defendant pleaded that the plaintiff has failed to honour its commitment by making payment of 85% of the value after the trials which works out to Rs.55,05,337/-. It is alleged that the plaintiff even after getting the equipments installed paid only a sum of Rs.30,00,000/- in breach of terms and conditions of purchase order.

9.It is then contended that the defendant despite clarifying the position that the manipulators could not lift 160 kg of job weight, the plaintiff emphasized that the weight lifting capacity of a manipulator as per purchase order should be 160 kg. It is further stated that the plaintiff demanded that the defendant should enhance the capacity of manipulator to 130 kg and that



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it was then decided by defendant to try his best to increase the capacity of the manipulators in the hope of getting his payments. It is the further case of defendant that he found a way out to enhance the job weight lifting capacity of the equipment by reducing the weight of the gripper to 30 kg by designing a special aluminium gripper with 30 kg weight. It is further stated that when the modified system was ready at the defendant's place, the plaintiff did not send anyone to defendant's place and hence sent video CDs showing successful completion of trials. It is then stated that the plaintiff did not come forward to pay the balance despite demonstration of successful trials of the equipment at defendant's place. The defendant has admitted the payment of a sum of Rs.49,79,000/-. Ultimately, the defendant also demanded the balance after the assessment of the total cost incurred by the defendant at Rs.67,94,225/-. Therefore, the defendant has pleaded that the defendant is entitled to a sum of Rs.18,15,225/- towards supply of equipments.



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10.It is to be pointed out that the defendant have narrated events by referring to communications unmindful of the sequence or chronology which assumes more importance in the present case.

11.Before the trial Court, the plaintiff examined P.W.1 and P.W.2, who are the persons in-charge of the plaintiff company in relation to the suit transactions at various stages. Exs.A1 to A14 were marked on the side of the plaintiff. Mr.Nilesh Jayant Karandkar, the Proprietor of defendant, was examined as D.W.1 and Exs.B1 to B11 were marked on behalf of the defendant.

12.The trial Court, after extracting the pleadings, framed the following issues :

- i. *“Whether the plaintiff is entitled for the amount of Rs.58,25,430/- and the interest at the rate of 12% for the amount Rs.49,79,000/- till realization ?*
- ii. *Whether the plaintiff is entitled for any other relief ?”*

The trial Court has also framed the following additional issue :



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“Whether this Court has got jurisdiction to entertain the suit ?”

13.From the issues framed by the trial Court, this Court is of the view that the trial Court ought to have framed appropriate issues having regard to the nature of factual disputes between the parties. However, the trial Court has considered every pleadings in relation to every issues raised by the parties. On the issue raised by defendant as to the jurisdiction of trial Court, it was held that the Court has got jurisdiction to entertain the suit.

14.After hearing the different versions of plaintiff and defendant, the trial Court has agreed with the plaintiff that the equipments supplied by the defendant were not to the satisfaction of technical specifications as regards the quality of equipments supplied. The specific contention of defendant that the number indicates only weight lifting capacity of the machine with gripper weight is rejected by the trial Court. Even the evidence of P.W.2 as regards the actual capacity was held insignificant as there is no dispute with regard to weight lifting capacity of the equipment. The trial Court also



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found that the defendant has admitted that the capacity of the machines supplied by the defendant is not in terms with the requirements of the plaintiff. While considering whether the goods are supplied as per specifications, the trial Court did not accept the case of defendant that as per trade practice, the description with regard to weight lifting capacity of machine should be understood by deducting the gripper weight. The trial Court further held that Section 16 of Sale of Goods Act will not come to the aid of defendant. However, the trial Court observed that there was a misunderstanding as regards the specifications of the equipment and that there was a mutual mistake. Therefore, the trial Court, while granting a decree for recovery of principal amount of money which had been paid by the plaintiff to the defendant, held that the plaintiff is not entitled to interest from 02.10.2008, as pleaded in the plaint.

15. Aggrieved by the judgment and decree of the trial Court, the main appeal is preferred by the defendant, whereas, the Cross-Objection is filed by the plaintiff challenging denial of interest.



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16.Learned counsel appearing for the appellant/defendant contended that the purchase order was silent regarding the weight lifting capacity of manipulators and that the plaintiff has just taken advantage of the attitude of the defendant to satisfy the plaintiff on all aspects, even though the defendant had in fact supplied the equipments as per the specifications required by the plaintiff at site as expected by the plaintiff as per the purchase order. Learned counsel submitted that the weight lifting capacity of the manipulators as per the purchase order would only mean that the actual carrying capacity is 100 kg and that 60 kg was to indicate the weight of gripper.

17.Learned counsel for the appellant relied upon several precedents for the proposition that the plaintiff, who has accepted the supply as one in accordance with the purchase order, cannot insist changes or modifications to be carried out and that the modifications suggested by the plaintiff at the time of installation cannot be the basis for the suit claim complaining that the equipments supplied by the defendant are liable to be rejected. In other words, the learned counsel tried to convince this Court by referring to the



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communications that the equipments which are supplied by defendant and installed at the premises of the plaintiff do satisfy the specifications that were accepted by the plaintiff at the time of placing purchase order. Learned counsel also relied upon the Minutes recorded during the process of installation of the equipments and pointed out that the promise that was made by the defendant at the time of installation was satisfied, as regards the carrying capacity of the machines at 100 kg.

18.On the other hand, Mr.P.R.Ramakrishnan, learned counsel appearing for the respondent/plaintiff, would refer to a series of communications between the parties to point out that the equipments supplied by the defendant were not as per the specifications mentioned in the purchase order. Referring to the Brochure issued by some other manufacturer, the learned counsel pointed out that Number 160 refers to the weight carrying capacity of the equipment or the actual carrying capacity of the equipment as a whole and the contention of the defendant that the Number 160 would refer to 100 kg of job carrying capacity plus 60 kg weight of gripper is not supported by any document. Learned counsel



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appearing for the respondent/plaintiff also relied upon several precedents to support their claim.

19. Having regard to the pleadings of the respective parties and the documents produced before this Court, this Court has to decide the following issues for the disposal of the appeal and the Cross-Objection on merits :

- i. *Whether the equipments supplied by defendant to the plaintiff satisfy the specifications mentioned in the purchase order ?*
- ii. *Whether the Number 160 found in the basic equipment Fine Lift FH 160 refers to weight lifting capacity of the equipment or it refers to the total weight of the gripper as well the job carrying capacity of the basic equipment ?*
- iii. *Whether the plaintiff has acknowledged supply of equipments as per the specifications and in accordance with the purchase order and failed to pay balance amount as per the contract ?*
- iv. *Whether the plaintiff is justified in rejecting the equipments which were supplied by defendant to the plaintiff as per the purchase order under Ex.B1 dated 09.02.2007 and filing the suit for recovery of money ?*
- v. *To what relief, the plaintiff is entitled to ?*



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Issue Nos.(i) and (ii) :

20.The purchase order issued by the plaintiff to defendant, dated 09.02.2007, is marked as Ex.B1. As per the purchase order, the plaintiff wanted 7 Nos. of basic equipment Fine Lift FH 160 with gripper for sheet metal components at the cost of Rs.6,36,000/- per equipment and 7 Nos. of aluminium rack total overhead trolley with air supply kit and rack at the rate of Rs.2,46,000/- per unit. The purchase order clearly indicates that the plaintiff has agreed to pay 10% as advance and pay 85% after trials with proforma invoice and 5% on receipt of the entire material before installation. As per the terms, the installation of equipments is free of cost and the shipment to Coimbatore is agreed to be as per the actuals. The sales tax and packing charges are extra. It is surprising to note that the Number 160 is not defined or explained in the purchase order or in any other communication that was sent by defendant prior to the purchase order.

21.It is admitted before this Court that the then Managing Director of plaintiff company had an occasion to meet the defendant in the venue of an



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Exhibition meant for displaying, promoting and dealing with several equipments. While it is the case of the plaintiff that they placed order to purchase basic equipment to handle objects which are upto 160 kg, the defendant's specific case is that the equipment suggested to the plaintiff was to lift 100 kg, as the gripper was an additional component to enhance the efficiency of the equipment. Stating that the capacity (160 kg) was inclusive of the weight of the gripper, i.e., 100 kg job weight and 60 kg gripper weight, the defendant has denied its liability on the ground that the defendant had supplied the equipments as per the specifications and the understanding of the plaintiff while placing order. This Court is unable to accept the case of the defendant that the specification indicating the carrying capacity of the machine should be understood that it would carry actual weight less the weight of gripper.

22.Ex.B10 is a Brochure issued by a different manufacturer for three different types of equipments, namely PB 80/PB 160/ PB 250. This



document is filed by defendant. For the equipments with capacity PB 80/PB 160/PB 250, it is mentioned in the Brochure as follows :

“The pneumatic balancers POSIMAT ® PB 80/PB 160/PB 250 are designed for medium load weights of up to 375 kg. They have various applications and manage demanding handling tasks without any effort on the part of the operator. The automatic weight counterbalance enables precise, nearly weightless manipulation of a wide variety of handling goods.

POSIMAT ® PB 80/PB 160/PB 250 from LISSMAC offer :

- *highest productivity and reliability*
- *ergonomic, rational operation without strain*
- *precise and exact positioning of components*
- *weightless, non-swinging handling due to automatic weight counterbalance*
- *individual gripper systems*
- *easy operability*
- *optional load-control directly on the goods being handled*
- *optional lifting/lowering function for absolutely load-free lifting and lowering*
- *high safety standard*
- *upright, suspended or movable version*



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- *comprehensive accessories for optimal configuration*
- *connectable backlash reduction on rotation axes 1 and 2”*

23.From the specifications mentioned in the Brochure, it is seen that the number mentioned would show the minimum weight lifting capacity of the equipment. Since it is stated that the equipments with Numbers PB 80/PB 160/ PB 250 are designated for medium load weights upto 375 kg, this Court is unable to find any explanation from the defendant on whose behalf the Brochure is marked. For reasons, the defendant has not marked the Brochure which they have published or given to their clients at the time when the plaintiff placed order to purchase 7 Nos. of basic equipments, i.e., FH 160. Though the learned counsel appearing for the appellant/defendant has now produced before this Court the printed Brochure, this Court is unable to rely upon the said document. The attempt of appellant to convince this Court with the Brochure, existence of which is not admitted during trial, should fail. The appellant has not even taken steps for reception of additional documents at the appellate stage. This Court, having regard to



the documents, is unable to accept the case of the defendant that the Number 160 indicates the lifting capacity inclusive of gripper weight.

24. One more factor which we should take note of is that the defendant has never made an attempt to demonstrate before the trial Court that the weight of gripper is 60 kg. D.W.1, in the Proof Affidavit, has stated that the capacity was inclusive of weight of gripper, i.e., 100 kg job weight plus 60 kg gripper weight. During cross-examination, D.W.1 has admitted that FH 160 is to indicate that the lifting capacity is 160 kg. P.W.2, in his Proof Affidavit, has stated that he is a qualified Chartered Engineer and Valuer and he has an experience of 12 years in the field. He has given a report after examining the capacity of the equipment supplied by the defendant to the plaintiff. In his report, which is marked as Ex.A14, he has mentioned that the average weight of the gripper is only 31.5 kg and not 60 kg. Though his evidence and the report under Ex.A14 were not relied upon by the trial Court, it is to be noted that the defendant has not even given any suggestion to discard the evidence of P.W.2 as regards his evidence that the weight of gripper is just 31.5 kg and not 60 kg as it was projected by the defendant.



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The Proprietor of the defendant company was examined as D.W.1. During his evidence, he gives an explanation to FH 160 to prove his case in the written statement. However, even D.W.1 has not controverted the statement of P.W.2 as regards the weight of gripper. Despite the fact that the plaintiff has obtained a report from P.W.2 and marked the same as Ex.A14, no steps have been taken by the defendant to obtain a report from an Advocate Commissioner atleast to prove their case that the weight of the gripper is 60 kg and that therefore, FH 160 should be understood to mean that the equipment is capable of handling job weight of 100 kg and the weight of gripper is 60 kg. Since the defendant has not made any attempt to prove the actual weight of gripper to prove his theory, this Court finds some lacuna in the case of defendant as regards the mutuality of the contract. It is admitted that an application during trial for appointment of an Advocate Commissioner was dismissed on the objection of defendant referring to the fact that there is no dispute as to the actual lifting capacity of equipments supplied by defendant.



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25.This Court then considered the continuous correspondence between the parties. The following sequence of events and correspondence would tell us the actual understanding between the parties and their conduct in fulfillment of their obligations under the contract. The plaintiff placed the purchase order for 7 Nos. of manipulators with gripper and aluminium rack, etc., on 09.02.2007. The defendant sent the invoice under Ex.A3 to the plaintiff on 22.08.2007. It is to be noted that the plaintiff has paid a sum of Rs.49,79,000/- between 22.02.2007 and 01.11.2007. It is evident that there was enormous delay on the part of the defendant, even though the defendant agreed to ship the equipments within twelve weeks. As per the purchase order, 10% of the value should be paid as advance and 85% after trials with proforma invoice and the final payment of 5% will be on receipt of material by the plaintiff. Therefore, the invoice that refers to 7 Nos. of basic equipments with gripper and aluminium racks, etc., dated 22.08.2007, would only indicate that the defendant have not even procured the required materials to supply the equipments in terms of the purchase order. In the invoice, it is stated that, as per the new terms, 10% is payable as advance and 60% of value immediately after receipt of goods and balance on



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installation. However, there is material to show that the plaintiff also agreed for payment of 60% of value even before trial. The reason to alter the terms of the purchase order is not known. We are unable to find any negotiation or an agreement regarding the unilateral deviation by defendant after confirmation of purchase order and payment of substantial amount towards supply of equipments. However, the new terms are admitted. With the substantial payment of Rs.5,00,000/-, Rs.30,00,000/- and a further sum of Rs.6,50,000/- on 01.11.2007, the plaintiff has by then paid more than 78% of the invoice amount, which cannot be disputed. However, even before successful installation, the defendant was insisting further amount.

26.The first communication was sent by defendant to plaintiff by mail on 05.08.2007. In this communication, the defendant has tendered its apology for the delay and informed the plaintiff that the equipment is developed using very costly imported materials. On the next day, the plaintiff expressed their disappointment for the delay in delivery of materials. Stating that the credibility of the defendant is very low, the plaintiff ensured release of 60% of purchase value and also ensured that the



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balance will be released when the units are functional. The defendant was asked to load the material immediately so that they will release the payment once material is received. It appears that the equipments were transported and the shipment was on 22.08.2007. From the communication, the defendant has promised installation in three weeks' span, i.e., from 1st September, 2007 to 20th September, 2007.

27.The Minutes recorded by the defendant is marked as Ex.B9. It was recorded by the authorized representative of the defendant that, during testing, the equipments were capable of lifting only 50 kg instead of 100 kg. It is also to be noted that, by no other communication, it is brought to the notice of this Court that the plaintiff had never accepted the equipments with a carrying capacity of 100 kg. It was also admitted by the defendant that, out of 7 systems, only 5 equipments were brought into function and 2 equipments were not in function and the equipments were capable of lifting just 50 kg. Thereafter, the subsequent visit by defendant's men was planned by 4th October, 2007. After the subsequent visit, it is recorded by the defendant that, all 7 systems were brought into function, and operation and



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maintenance manual was handed over to the plaintiff's staff, apart from giving training for operation, setting and maintenance of machines to members of plaintiff company. It is to be noted that the defendant have admitted that the issue regarding weight capacity could not be attended, as the systems required additional equipments to enhance their performance. Again, as recorded in the Minutes, the defendant ordered 14 new Vacuum Cups, which were procured from Sweden. It is further recorded that, additional structural member was manufactured, and Assembly of two additional cups to each equipment to increase the capacity to 100 kg, was also recorded in the Minutes dated 25.10.2007.

28. Thereafter, on 13.11.2007, the plaintiff received a message with the following contents from the defendant's side :

“everytime we choose the right model out of the standard to suit the job. In this case it was necessary to choose FH160 with load capacity of manipulator as 160 kg – Gripper and job weight together – adds to 160 kg.

It is similar as in case of specification of a Robot. The gripper weight is around 60 kg in our case and the job weight lifted is



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100 kg. Hence it is a FH160 Fine Lift and job weight is 100 kg (Gripper approx 60 kg).

Mr.Anotonio did visited our company (along with you) where it was discussed for a lighter manipulator since most components are within 50 kg range.

Mr.Sonalkar also had checked the possibility to go for a lighter version of the manipulator since the job needs lighter construction. However since we had progressed quite far in the project we kept the heavier load capacity manipulator. The heavier version was also decided for keeping some future scope possible.

The manipulators supplied can now lift upto 100 kg (we have done the necessary additions for that as you are aware) and can tilt upto around 50 kg job (heavier jobs and odd jobs propose Centre of Gravity shiftings and hence can be tilted only by around 45 degrees). However if higher air pressure is supplied to the system (~10~11 bar), more weight of job can also be tilted.

We would have hence appreciated for a pre-dispatch trials on your components in presence of your member(s).

Since the manipulators are mounted on overhead rails (which we have supplied of Aluminium material for lighter weights), we have tried to device an optimal weight of the system. The



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supplied equipment serves the purpose for which it is intended.”

29. Therefore, for the first time, the defendant has come up with an explanation for the Number 160 found in the specification. Immediately, on 13th November, 2007, the authorized representative of the plaintiff company has sent a mail in the following lines :

“Its very simple. According to the Contract, it has to lift min 160kg without fixture, necessarily at all angles. This we are very specific, keeping future scope in mind. Kindly work for this and revert back to us very immediately. Payment will be taken care automatically once this problem solved.”

30. Thereafter, repeated communications from defendant to plaintiff and plaintiff to defendant would only show that the parties were at loggerheads on the performance of the equipments supplied by defendant to the plaintiff earlier. While defendant kept on saying that they have supplied Fine Lift FH 160 manipulators with gripper, having job capacity of 100 kg, the plaintiff kept on insisting the carrying capacity to be not less than 160



kg. In every communication, the plaintiff has also referred to the fact that the machines did not lift even the weight of 100 kg and they do not perform well when the object is required to be tilted. A clarification was also given by the defendant to the plaintiff in the subsequent communication dated 16.11.2007 that the load capacity of manipulators was firmly decided keeping 100 kg weight of sheet in mind, as per the discussions the parties had before placing the purchase order.

31.Though the defendant keeps on telling the plaintiff that the lifting capacity of the equipment was increased to 100 kg and that the defendant had demonstrated by showing lifting of 100 kg sheet, this Court is able to see a change in the attitude of the defendant in insisting that the modification suggested by the defendant to lift 100 kg component will be in accordance with the purchase order. The defendant further assured that the performance can be enhanced to handle heavier sheets by increasing pressure by 10 Bar. While the defendant was in the process of convincing the plaintiff by going on giving promises to increase the possibility or enhance the performance of the equipments, the defendant started



demanding payments on the ground that the equipments have been installed.

This shows how the defendant was never willing to satisfy the plaintiff regarding the performance of equipments as per the specifications.

32.It is surprising to note that the requirement as per the specifications was never demonstrated by the defendant at the site of plaintiff. The defect that the machines were not capable of handling sufficient weight at all angles was never attended by the defendant. As per the terms of invoice, 10% was payable as advance, 60% upon delivery of equipments, and the balance was supposed to be paid only upon successful installation of all equipments. In the communication from the plaintiff to defendant dated 13.11.2007, the defendant was asked to work towards achieving the lifting capacity of 160 kg without fixtures at all angles. It was thereafter, both parties have stuck to their stand. It is to be noted that, at this point of time, the defendant demanded payment without undertaking or completing trials which was indicated during the correspondence. The specific grievance of the plaintiff is that the machines did not even lift a weight of 100 kg during test and it was impossible to get the performance of 100 kg at all angles. Therefore, in



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all subsequent communications, the defendant have expressed their view in unambiguous terms that, nothing more is required at the end of the defendant to ensure performance citing enhancement. The defendant was also firm in demanding the balance amount towards value of equipments without any promise or undertaking thereafter to make any inspection or correction, accepting certain defects in the equipments supplied by defendant to the plaintiff. However, the defendant tried to convince the plaintiff by making a promise that the defendant would erect one equipment completely with new grippers, take trials on the covers made as per the drawing of plaintiff. Surprisingly, that was not done, admittedly.

33.The defendant wanted the plaintiff to send Vaccum Cups so that they can conduct test to assess the performance of similar equipments at the factory site of defendant. Therefore, there were series of correspondences. There was also a delay in sending Vaccum Cups. Even though the plaintiff has proved that they have sent the Vaccum Cups to the defendant the defendant could acknowledge the receipt of Vaccum Cups on actual delivery. It appears that the defendant, thereafter, sent a CD to the plaintiff to satisfy



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the plaintiff as to the performance of equipments by handling the sheet as per the specifications of plaintiff. After seeing the CD sent by the defendant, the plaintiff appreciated the work undertaken by defendant, but expected the defendant to bring their materials directly to the plaintiff's location and to prove the performance of the equipments. Even though the defendant was trying to pacify the plaintiff as regards the specifications and performance of the equipments to the satisfaction of the plaintiff, the parties, to some extent, agreed that the job weight to be achieved by the equipments cannot be less than 130 kg. Thereafter, the plaintiff was asking the defendant to demonstrate performance of equipments to lift 130 kg of job weight at all angles. However, the defendant was not willing to spend any additional money to give demonstration to the plaintiff. The defendant, once again, wanted the plaintiff to settle the balance before anything is done by the defendant to demonstrate the actual performance of the equipments as promised by the defendant. It is thereafter, the plaintiff issued a legal notice on 02.10.2008 and thereafter, a reply notice through Advocate was sent by the defendant to the plaintiff's counsel.



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34.From the communications exchanged between the parties, this Court is surprised to find that the defendant, who had promised to demonstrate the functioning of equipments with a carrying capacity of 130 kg, did not come forward to fulfill their promise. The defendant, at one stage, felt disappointed and insisted only payment. It is now established that the defendant, who has undertaken to successfully install the machines before the release of final payment, started demanding payment, which is not required as per the revised terms as mentioned in the invoice. The communications that were sent by defendant would only show that the defendant was more keen in collection of balance without showing any respect to the purchase order and the terms of purchase. Therefore, this Court has no hesitation to hold that the defendant has not fulfilled its obligation under the contract and that they purposely delayed installation to the satisfaction of the plaintiff, as undertaken by them during middle of the installation. Though the defendant made an attempt to convince the plaintiff to improve the performance as per specifications, they did not accomplish and hence this Court is unable to accept the case of defendant.



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35. In the written statement, the defendant claimed to have come with the solution to increase the lifting capacity of equipment by reducing the weight of gripper from 60 kg to 30 kg by replacing the Iron gripper with an aluminium gripper. This exposes the false case of defendant in their communication on 07.04.2008 that the defendant have enhanced the performance of one equipment to lift 130 kg at a cost of Rs.85,000/-. It is the report of P.W.2 that the average weight of gripper is only 31.5 kg and not 60 kg. Out of 7 equipments, the lifting capacity of 6 equipments is only 60 kg. Assuming that the lifting capacity may be affected due to non-use for a long time, the evidence of P.W.2 regarding the actual weight of gripper as 31.5 kg has not been questioned by specific suggestion. This Court has no reason to disbelieve the evidence of P.W.2 as regards the actual weight of gripper especially when the plaintiff's application for appointment of Advocate Commissioner was dismissed on the objection of defendant and the evidence of P.W.2 was not controverted. This Court finds no truth in the case of defendant.

36. From the sequence of events and evidence as discussed above,



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Issue Nos.(i) and (ii) are answered in favour of the plaintiff and against the defendant. This Court holds that the defendant failed to supply equipments to the plaintiff, satisfying the specifications mentioned in the purchase order. This Court also holds that the understanding of the plaintiff and defendant at the time of placing purchase order is that the weight carrying capacity of the equipment at all angles should be upto 160 kg and the actual weight of gripper has no relevance while denoting the equipment as FH 160. In other words, the Number 160 found in the basic equipment Fine Lift FH 160 would only refer to job lifting capacity of the equipment, irrespective of the weight of the gripper.

Issue Nos.(iii) to (v) :

37.Both learned counsel appearing for the appellant as well the learned counsel appearing for the respondent relied upon a few provisions, particularly Sections 16, 17, 41 and 42 of Sale of Goods Act, 1930. In the present case, the plaintiff placed orders with specific description of the equipment. The equipments are to be installed at the plaintiff's premises. It is also agreed by defendant to install. The goods were rejected by plaintiff



after finding that the goods were not working as per specifications. The plaintiff has filed the suit for recovery of money paid towards purchase. The facts admitted and issues decided earlier have to be kept in mind.

38.Learned counsel appearing for the appellant submitted that the plaintiff has failed to visit the defendant's factory, despite several requests by defendant to check the actual performance of the equipments to be supplied to the plaintiff as per the contract. When the defendant specifically invited the plaintiff to verify the actual performance, it is too late for the plaintiff to raise an issue regarding the condition of the equipments supplied or its efficiency. When the plaintiff was in a position to assess the actual capacity of the machinery even before delivery and installation, they cannot complain about the quality of equipments supplied. Learned counsel for the appellant then submitted that, when the plaintiff had every opportunity to examine the performance of the goods before delivery and installation, there is a presumption that the plaintiff has accepted the goods with whatever defects. The learned counsel then went further by submitting that the equipments were actually put to use by plaintiff and that therefore, the plaintiff, as a



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buyer of goods from the defendant as seller, is deemed to have accepted the goods and that therefore, the rejection of goods for the purpose of suit cannot be accepted and the plaintiff is not entitled to get back the amount which was paid as value for the goods supplied to the plaintiff. In support of his contention, learned counsel for the appellant relied upon the judgment of the High Court of Gujarat in the case of ***Shah Mohanlal Manilal v. Firm running in the name and style of Dhirubhai Bavajibhai*** reported in ***AIR 1962 Guj 56***, wherein, it has been held as follows :

“6. ... One of the acts upon the doing of which the buyer is deemed to have accepted the goods is that he intimates to the seller that he has accepted them. It is clear that such an intimation may be made by the buyer before he has had a reasonable Opportunity of examination and if such an intimation is made, it is obvious the without more Section 42 would operate, and the buyer would be deemed to have accepted the goods. In the same way when the buyer does an act in relation to the goods which is inconsistent with the ownership of the seller, Section 42 must be treated as coming into operation notwithstanding that the reasonable opportunity of examining the goods has not expired. Suppose the buyer after taking delivery of the goods and before he has



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had a reasonable Opportunity of examining them consumes them or "turns them or part of them at once into his mill and uses them in the manufacture", can it be said in such a case that the buyer is not deemed to have accepted the goods because he used or consumed them before he had a reasonable opportunity of examining them for the purposes of ascertaining whether they were in conformity with the contract? The act of the buyer in using or consuming the goods would certainly be deemed to constitute acceptance of the goods by the buyer. Section 42 is, in my opinion, independent of Section 41 and must be given effect to whenever any one of the acts specified in that Section is done by the buyer irrespective of the question whether such act is done during the currency or after the expiration of the reasonable time for examination of the goods. Even if during the currency of the reasonable time within which the examination of the goods is to be made the buyer does any one of the acts specified in Section 42, he must be deemed to have accepted the goods. The language of Section 42 is plain and simple. There is no ellipsis and no redundancy nor is there anything vague or ambiguous about the language. That being so, I must read Section 42 in its natural and ordinary sense. Section 42 expresses a meaning which is single and



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sensible and I see no reason why the precise words used by the law-maker in that Section should not be given their full meaning and effect. Section 42 declares in clear and unambiguous language that when any one of the acts specified therein is done by the buyer, the buyer shall be deemed to have accepted the goods and does not introduce or admit any qualification or exception. Under these circumstances I do not see why the plain meaning and effect of Section 42 should be cut down by introducing a qualification by reference to Section 41. Section 41 confers on the buyer a right of examination of the goods for the purpose of ascertaining whether they are in conformity with the contract. On principle this right is conferred on the buyer for

"no acceptance can properly be said to take place before the purchaser has had an opportunity of rejection" and "a right of inspection to ascertain whether such condition has been complied with is in the contemplation of both parties to such a contract; and no complete and final acceptance so as irrevocably to vest the property in the buyer can take place before he has exercised or waived that right."

7. Now the last words of the preceding sentence provide the answer to the apparent conflict between Sections 41 and 42. The right of examination of the goods for the purpose of



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ascertaining whether they are in conformity with the contract is a right which is conferred on the buyer for the purpose of enabling him to decide whether to accept the goods or to reject them. But it is open to him to waive that right and he may choose to accept the goods without exercising that right. It will thus be seen that no conflict is created between Sections 41 and 42 by reading Section 42 as independent of Section 41 and not limiting the Provisions of Section 42 by Section 41. Where the buyer does any of the acts specified in Section 42 before the reasonable opportunity of examining the goods has expired the buyer waives the right of examination of the goods conferred by Section 41 and is deemed to have accepted the goods. This is in my opinion the only construction which can be placed on Sections 41 and 42. I am fortified in this opinion by a decision of the Court of Appeal in England in Hardy and Co. v. Hillerns and Fowler (1923) 2 KB 490, where the Court of Appeal has taken the same view regarding the construction of Sections 34 and 35 of the English Sale of Goods Act which are in the same termed as Sections 41 and 42 of the Indian Sale of Goods Act with which I am concerned in the present case. In this view of the matter it is clear that the defendant must fail. The act of the defendant in selling and delivering a part of the goods to



the sub-purchasers was an act in relation to the goods which was inconsistent with the ownership of the plaintiffs and the defendant was, therefore, deemed to have accepted the goods by selling and delivering a part of the goods to the sub-purchasers. It was immaterial whether the act of selling and delivering a part of the goods to the sub-purchasers was done by the defendant before the reasonable opportunity of examining the goods had expired or was done by the defendant after the expiration of the reasonable time for examination of the goods. Even if the reasonably opportunity of examining the goods did not expire until 7th May 1953, when the defendant purported to reject the goods, the act of the defendant in selling and delivering a part of the goods to the sub-purchasers on 6th May 1952 resulted in the acceptance of the goods by the defendant and the defendant was, thereafter, not entitled to reject the goods. The rejection of the goods by the defendant on 7th May 1952 was, therefore, invalid and not binding on the plaintiffs and the goods being deemed to have been accepted by the defendant, the plaintiffs were entitled to claim the balance of the price from the defendant. No doubt the description of the goods was a condition of the contract and since the plaintiffs committed a breach of the condition by delivering goods



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which were not of the contract description, the defendant was entitled to treat the breach of the condition as a breach of warranty on the part of the plaintiffs and to claim damages from the plaintiffs for the loss suffered by the defendant as a result of the breach committed by the plaintiffs. These damages, I find, have been awarded to the defendant by the learned District Judge and the decree passed in favour of the plaintiffs is for the balance of the price of the goods after deducting therefrom the amount of damages awarded to the defendant. I must, therefore, negative the contentions urged on behalf of the defendant and refuse to interfere with the decree passed by the learned District Judge.”

39.Learned counsel appearing for the appellant relied upon a judgment of this Court in the case of **Sorabji Hormusha Joshi and Co. v. V.M.Ismail and another** reported in **AIR 1960 Mad 520**. The relevant portions of the judgment relied upon by the learned counsel are extracted below :

“13. ... The buyer by description had the opportunity to inspect goods and reject them and did not avail himself of the



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opportunity and reject them within reasonable time and therefore the seller was absolved from responsibility in regard to defects which such examination might have revealed with the result that this claim for damages will not lie.

...

25. ... Goods are of merchantable quality if they are of such a quality and in such condition that a reasonable man, acting reasonably, would, after a full examination, accept them under the circumstances of the case in performance of the offer to buy them, whether he buys for his own use or to sell again: Per Farwell, L. J., in Bristol Tramway Co. v. Fiat Motors Ltd., (1910) 2 KB 831 at p. 841.

...

28. ... The proviso to S. 16 of the Act, however, divides all such defects into two kinds, often called patent and latent defects. Patent defects are those which can be found on examination by a person of ordinary prudence with the exercise of due care and attention. Latent defects are those which cannot be discovered on such examination. There is an implied condition on the seller's part that the goods are free from latent defects: Mc. Kenzie and Co. (1919) Ltd. v. Nagendranath, ILR (1946) 1 Cal 225: 50 Cal WN 213. This condition exists in regard to patent defects as well, if there



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has been no examination of the goods by the buyer.

*30. At common law an opportunity to the buyer to inspect goods, whether availed of or not, was sufficient to absolve the seller from responsibility in regard to defects which such examination might have revealed. Under the Act an actual examination is necessary. (S. 41). But if the buyer's examination of the goods is superficial, the implied condition as regards defects which such examination, if more careful and thorough, would have revealed, is destroyed: *Thornett and Fehr. v. Beers and Sons*, (1919) 1 KB 486.*

31. There the defendants, who were desirous of purchasing a quality of vegetable ghee from plaintiffs who dealt in that commodity, went, by arrangement with plaintiffs, to the warehouse where the ghee, which was in barrels, was stored, for the purpose of inspecting it. Every facility was offered to defendants for inspection; but, being pressed for time, they did not have any of the barrels opened, and merely looked at the outside of the barrels. Defendants purchased the ghee, and after it was delivered they alleged that it was not of merchantable quality. It was held that the defendants had examined the goods and consequently there was no



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implied condition that the ghee was to be of merchantable quality.

...

33.The seller's duty is to afford the buyer a reasonable opportunity; it is up to the buyer to avail of that opportunity. and if he fails to avail of it or if he avails of it in an incomplete or perfunctory manner the seller cannot be held liable: (1919) 1 KB 486; Bragg v. Villa Nova, (1923) 40 TLR 154. Peer Mohammad Rowther v. Dalooram Jayanarayan, AIR 1919 Mad 728; Muthukrishna Reddiar and Sons v. Madhavji Devichand and Co. Ltd., . The opportunity is to be afforded only on request from the buyer. Where no such request is made it may be presumed that the buyer has dispensed with this requirement, i. e, has chosen to waive. Waiver may be implied from other acts or conduct of the buyer as well; National Traders v. Hindustan Soap Works, AIR 1959 Mad 112 : 71 Mad LW 757.

34.The inspection and rejection must be without practicable delay. The trial Court has rightly relied on Mithan Lal v. Suraj Parshad, AIR 1932 Lah 52 and Province of Madras v. Galia Kotwalla and Co., Ltd., 1945-2 Mad LJ 418: (AIR 1946 Mad 69, for the proposition that avoidable



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and inordinate delay would disentitle the plaintiffs from maintaining any action for damages.

...

35. ... The buyer is bound to make payment against the tender of goods; his right of examining the goods and to reject them if they are not in conformity with the contract, however, remains even after payment and is exercised on actual delivery of goods: Polenghi Bros. v. Dried Milk Co., (1905) 92 LT 64; Ram Dayal Ram Narain v. Bhairo Bux, AIR 1924 Pat 240; Mahadev Ganga Prasad v. Gourishankar, AIR 950 Orissa 42 : ILR (1949) 1 Cut 453.

...

45. The buyer is entitled examine the goods to decide whether he will become owner, and until the examination is completed or waived he is under no obligation to accept the goods: 3 Williston on Sales, S. 472. The examination is waived, however, in so far as it is a condition precedent to the transfer of the property, when there is an assent to delivery without reservation or condition accompanying the receipt and qualifying or postponing or neutralizing its effect: Henry Glass and Co. v. Misroch, New York Court of Appeals, (1925) 239 N. Y. Rep 475.



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46.Bearing these principles in mind, if we examine the facts of this case, we find that the plaintiffs have not shown that the goods supplied to them by the defendants were not of merchantable quality as described in the sold-notes. (His Lordship reviewed the evidence and proceeded):

...

48.Turning to inspection, the relevant dates have been given above and the evidence clearly makes out that notwithstanding the opportunity which the first plaintiff had to inspect or examine the goods before taking delivery, he did not do so and the circumstances of the case show that the plaintiffs accepted the goods and have started making these objections only when the prices had started to fall and wanted to go back on their contract. (His Lordship went through the evidence, and proceeded):

49.On this evidence it is quite clear that the first plaintiff who had an opportunity to inspect the goods did not avail himself of the same and was content to take delivery and having done so it does not lie in his mouth now to say that unmerchantable goods were fraudulently palmed off on him. On the other hand, the evidence, in this case clearly shows that probably the condition in which the surveyor noted the



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skins in the three bales was due to the bales not being opened and the damp not being removed by shade drying and the goods not being properly stored. Therefore, we are not in a position to say that even in the case of these bales when deterioration had set in.

50. Therefore, looked at from any point of view, the plaintiffs have failed under both the heads and their suit was rightly dismissed by the learned trial Judge. We set aside the decree and judgment of Basheer Ahmad Sayeed, J., and restore the decree and judgment of the trial Judge. This Letters Patent Appeal is allowed with costs.

...

51. Now, what are the consequences of such a sale of specific goods by description, in the sense of rights accruing therefrom to the buyer of the goods? As the learned Judge (Basheer Ahmed Sayeed, J.) stated there is certainly a presumption or implied condition under S. 15 of the Sale of Goods Act, that the goods should correspond with the description. Again, under S. 16(2) of the Sale of Goods Act:

"Where the goods are bought by description from a seller who deals in goods of that description..... there is an implied condition that the goods shall be of merchantable quality,"



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52. But there is a proviso to the section that:

"if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed."

...

57. The same aspect of law was again discussed in (1958) Mad WN 631 : (AIR 1959 Mad 112) by the learned Chief Justice and Ramachandra Iyer, J. The learned Judges refer to Sections 15 and 16(2), and observe that the effect of the two conditions is to give a right or an occasion to the buyer to reject the goods, in case what was tendered did not answer the description, or was not of a merchantable quality. But where the goods were accepted, the buyer would be precluded from rejecting the goods, and would only be entitled to a remedy by way of damages. But the passing of property in the goods is not the test of applicability.

...

65. But where the goods were not thoroughly inspected at the time of sale, the proviso does not apply, and the purchaser would be entitled to the benefits of the warranty. The difficulty here is not in applying the law. The difficulty, if we may so tersely express it, is in ascertaining the facts. It is here that a decision such as Empire Engineering Co.,



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Cawnpore v. Municipal Board, Bareilly, AIR 1929 All 801, is of value and interest. A buyer need not examine the goods when he buys them. But if he wants to inspect them, he must do so within a reasonable time.

66.If he does not do so, he loses his right of rejection.. though he could sue upon the breach of warranty. But the difficulty here would be, as in the present case, that if the inspection were made months later, and revealed certain defects, it may be totally impossible to determine whether those defects existed at the time when the goods were taken over, or had subsequently developed owing to imperfect storage and allied causes. Reference might also be made to 1945-2 Mad LJ 418: (AIR 1946 Mad 69), for the broad proposition that goods must not be rejected if opportunities for inspection within a reasonable period had not been availed of.

40.Learned counsel appearing for the appellant also relied upon a judgment of a Division Bench of this Court in the case of ***A.R.Muthukrishna Reddiar & Sons v. Messrs. Madhavji Devichand & Co. Ltd.*** reported in ***1965 LW Pg.854*** [O.S.A.No.16 of 1949 dated



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30.11.1951]. As a matter of fact, the judgment of the Division Bench appears to be against the case of the appellant before this Court. The Division Bench of this Court, in the said judgment, has only accepted the right of purchaser to reject the goods on the ground that the goods are not in accordance with the terms of the contract, if the purchaser had no opportunity to inspect the goods before. It was further observed by the Division Bench that Section 16(2) of Sale of Goods Act specifically has to be understood that there is an implied condition that goods bought by description shall be of merchantable quality. In the present case, the contract was to supply equipments of a specified description. The equipments were manufactured at the factory premises of the defendant at Pune. Though the defendant invited the plaintiff on the first occasion, the plaintiff required demonstration at the plaintiff's site as per the terms of contract and this Court cannot reject the claim of the plaintiff merely because an opportunity was there for the plaintiff to inspect the goods at the factory premises of defendant. The judgments relied upon by appellant's counsel will have no relevance to the present case where the defendant failed to supply the equipments as per specifications and the defendant has agreed



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to install the equipments at the place of plaintiff and this never happened.

41.Learned counsel appearing for the appellant also relied upon a judgment of Lahore High Court in the case of ***Mithan Lal-Inder Nanin v. Suraj Parshad-Madan Gopal*** reported in ***AIR 1932 Lah 52***, wherein, it is held as follows :

“4.So far as damages are concerned, the learned District Judge held that the plaintiffs could not claim more than Rs. 100 which was all that they prayed for in the suit, and that, by reason of the last paragraph of Section 118 of the Contract Act, the plaintiffs, if they intended to claim compensation, should have given notice of their intention to do so within a reasonable time after discovering the breach of warranty, whereas in fact they waited for 24 days.

5.Now it is well settled that a reasonable time for examining goods is a question of fact depending on the circumstances of each case. In the case before us the goods reached the plaintiffs as I have said, on 21st October. Their buyer sent them intimation on 30th October, and even after that the plaintiff delayed for another fortnight. The plaintiffs



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were responsible for not discovering the alleged breach of warranty earlier and in view of their prolonged failure to give notice I would hold that their claim for damages must fall. The result is that their appeal is dismissed with costs.”

42. Similarly, learned counsel appearing for the appellant relied upon a judgment of a Division Bench of this Court in the case of ***The Province of Madras v. C.A. Galia Kotwala & Co. Ltd.*** reported in ***1958 LW Pg.588***, wherein, Section 42 of Sale of Goods Act was relied upon to hold that the plaintiff, who has accepted the goods without reservation, cannot reject the goods after sometime and the defendant is also entitled to a decree for the price of goods delivered to the plaintiff. However, the facts narrated by the Division Bench cannot be fitted to this case to deny the relief to the plaintiff who has never accepted the goods at any point of time.

43. The learned counsel then relied upon a judgment of King's Bench Division in the case of ***Thornett & Fehr v. Beers & Son [1918 T. 820]***, wherein, it is held as follows:



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“Mr. Halfhide stated in evidence, and the judge accepted this; that he did not have any of the barrels opened, and only looked at the outside, but he admitted that he and Mr. Beers had been offered every facility and had received Mr. Arnholt's message that he would return, but he said that they had no time to wait as they had another appointment. On the following day the defendants, in conversation with the plaintiffs' representative, said that they had inspected the parcel, and they offered 90l. a ton for it. That offer was not accepted, and eventually the defendants agreed to buy at 95l., and a sold note was made out on that basis.

The facts that both parties were to be present, that the foreman was told by the plaintiffs to offer the defendants every facility, and the defendants' letter of September 18 go to show this. I think I must take it that the defendants did not in fact have any barrels opened, but I think that the reason was that they had no time; they were satisfied with their inspection of the barrels, and they were willing to take the risk, the price being so low, and Mr. Halfhide himself, as I have found, told the plaintiffs at the beginning of the interview when the bargain was made that he had inspected the parcel. It may be a question whether, after this statement,



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the defendants could be heard to say that they had not examined the glue, but however that may be, I think they examined the goods within the meaning of the sub-section. There can be no doubt that such an examination if made in the ordinary way would have revealed the defects complained of. The defects complained of were apparent the moment the casks were opened. The examination agreed to on September 18, which they had full opportunity of making on September 19, would involve the opening of a sufficient number of casks to ascertain the condition of the glue. I hold that this case falls within the proviso and consequently there was no implied condition. Having found that it was not a sale by sample, and that there was no implied condition that the glue was merchantable, the defence fails, and the plaintiffs are entitled to judgment.

44.A Division Bench of Allahabad High Court, in the case of ***Empire Engineering Co., Branch of the British India Corporation Ltd., Cawnpore v. Municipal Board, Bareilly*** reported in ***AIR 1929 All 801***, held that, for the user of goods, it is his duty to have the goods thoroughly examined, if necessary, by an expert and that the plaintiff cannot keep the



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goods and then return the same after a long period. The above judgment has no application to the facts of this case, particularly having regard to the terms of purchase order. The purchaser is entitled to reject the goods if the goods are not in accordance with the terms of the contract. In *A.R.Muthukrishna Reddiar & Sons v. Messrs. Madhavji Devichand & Co. Ltd. (supra)*, this Court has held that under Section 16(2) of the Sale of Goods Act, there is an implied warranty that goods bought by description shall be of merchantable quality.

45.A few more judgments were also cited by the learned counsel appearing for the appellant. However, this Court finds that those judgments are out of context and cannot be considered in favour of the appellant to deny relief to the plaintiff who has proved his case. It is not the case of the defendant in the written statement that the equipments supplied by defendant were used by the plaintiff as owner of the goods and therefore, the defendant cannot rely upon Sections 14(2) and (6) of Sale of Goods Act. We are unable to accept the arguments of the learned counsel for the appellant relying upon several other judgments in view of our findings on facts to the



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effect that the goods were not supplied as per specifications.

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46.Learned counsel appearing for the respondent/plaintiff, on the other hand, relied upon Sections 13, 15, 42, 53 and 59 of Sale of Goods Act and relied upon several precedents for the proposition that, when the goods are purchased by description, the condition implied as to the merchantable quality of the goods can be presumed and the seller is bound to supply goods in conformity to the contract and of merchantable quality. When there is a dispute between buyer and seller with respect to quality, it would be the duty of the seller to prove that the goods were of the same quality contracted for. Counsel for respondent/plaintiff further submitted that the buyer on rejection of goods not answering to the description is entitled to recover from the seller the money paid for the purchase of goods. He relied upon the judgment of this Court in the cases of *Re Beharilal Baldeoprasad Firm of Merchants by partner Tagoor Prasad and others* reported in **AIR 1955 Madras 271**, *Messrs. Sha Thilokchand Poosaji v. Crystal and Co.*, reported in **AIR 1955 Madras 481**, *National Traders v. Hindustan Soap Works* reported in **AIR 1959 Madras 112**, *Ranbirsingh Shankarsingh Thakur v.*



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Hindusthan General Electric Corporation Ltd. and another reported in **AIR 1971 Bombay 97** and *Eternit Everest Ltd., Coimbatore v. C.G.Abraham and another* reported in **AIR 2003 Kerala 273** and a few more judgments to support his arguments.

47.In the present case, though the defendant was bound to discharge the burden lies on them, they failed to produce even the Brochure to establish their story about the Number 160 found in the purchase order. This Court has already seen that the case of defendant is not consistent and the evidence of D.W.1 is liable to be rejected. Though the trial Court has not considered the report given by P.W.2 and the evidence of P.W.2, this Court has no reasons to disbelieve them atleast as to the actual weight of gripper, as the appellant/defendant has not cross-examined the witness on this aspect. Though this Court has repeatedly held in several cases that the purchaser is bound to pay the contract price when he accepts the goods, in the present case, the plaintiff is entitled to reject the goods when the goods did not satisfy the specifications as per the terms of contract. This Court carefully examined the applicability of the judgments relied upon by both



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sides and found that the plaintiff's right to get back the amount paid towards value of equipments supplied by the defendant, has to be upheld, in view of the findings on the first two issues by this Court. The plaintiff is not responsible for the goods lying idle. The goods are of no value for the plaintiff. The plaintiff has parted with substantial money to the defendant towards supply of equipments. When the plaintiff's right to reject the goods is upheld, the consequence that would follow is that the plaintiff is also entitled to interest. Since interest claimed is only 12% p.a., and the transaction being commercial, this Court is justified in granting 12% p.a. interest for the period from 02.10.2008 to 28.02.2010 and 6% p.a. thereafter till date of realisation. Accordingly, Issue Nos.(iii) to (v) are answered in favour of the respondent/plaintiff and against the appellant/defendant.

48.In fine, the judgment and decree of the trial Court is confirmed. In addition, there shall be a decree granting interest at the rate of 12% p.a. for the period from 02.10.2008 to 28.02.2010 and at the rate of 6% p.a. thereafter till the date of realisation. Upon making payment of the amount as per the decree, it is open to the defendant to take delivery of all the



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equipments supplied by them to plaintiff. The appeal in A.S.No.666 of 2016 is dismissed and the Cross-Objection in Cross.Obj.No.91 of 2022 is allowed by allowing interest as directed above. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (A.A.N., J.)
25.01.2023

mkn

Internet : Yes

Index : Yes / No

To

1.The Additional District Judge,
Fast Track Court No.III,
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Chennai.



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A.S.No.666 of 2016 &
Cross Objection No.91 of 2022

S.S. SUNDAR, J.
and
A.A.NAKKIRAN, J.

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Judgment in
A.S.No.666 of 2016 &
Cross Objection No.91 of 2022



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25.01.2023