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

+ **RFA(COMM) 86/2022 & CM APPLs. 47779/2022, 47780/2022 & 47781/2022**

**M/S TIRUPATI CABLE INDUSTRIES THROUGH ITS
PROPRIETOR SH.ROHTASH SHARMA APPELLANT**

Through: Mr. M.R. Chanchal, Advocate.
versus

**NAGMA ENTERPRISES THROUGH ITS PROPRIETOR
MR.MOHD.SHADAB RESPONDENT**

Through: None.

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Date of Decision: 02nd August, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal challenges judgment and decree dated 11th July, 2022 passed by District Judge (Commercial Courts), North-East District, Karkardooma Courts, Delhi in *CS (COMM) No. 52/2021*, titled as “Nagma Enterprises Vs. M/s Tirupati Cable Industries”. By way of the impugned judgment and decree, the suit for recovery filed on behalf of respondent herein was decreed.

2. Facts that emerge from the documents on record are that appellant purchased PVC compound from respondent herein against various invoices. However, appellant did not pay the full amount pertaining to the said invoices. Since appellant did not make payment towards the goods supplied



to it despite various reminders and demand, respondent filed a suit for recovery praying for decree in sum of ₹ 6,61,104/- along with interest. By the impugned judgment and decree, suit for recovery filed on behalf of respondent was allowed. Against the said judgment and decree dated 11th July, 2022, the present appeal has been filed.

3. On behalf of appellant, it is contended that the PVC compound delivered by respondent on 11th September, 2019 and 15th September, 2019 pertaining to invoice nos. 023 and 024, were of low/poor quality. Thus, the said goods were returned by appellant to an employee of respondent who took back the entire PVC compound delivered by respondent pertaining to invoice nos. 023 and 024. It is further the case on behalf of appellant that he was liable to pay only a sum of ₹ 2,11,182/- to respondent herein.

4. It is further contended that the learned Trial Court has not considered and appreciated the averments of appellant as stated in his written statement while deciding the suit of respondent. Conclusive proof of truth can be derived, if this Court peruses the documents as well as evidences adduced on behalf of appellant.

5. Having heard learned counsel for appellant and having perused the record, this Court is of the opinion that the impugned judgment and decree passed by learned Trial Court is correct and justified. The only defence as raised on behalf of appellant before the Trial Court was that the goods supplied by respondent were of inferior quality, which were returned to Mr. Javed, the driver of respondent herein. It was not the case on behalf of appellant that he had already paid for the goods, for which suit had been filed by respondent. However, appellant utterly failed to establish the plea raised by him that goods supplied by respondent pertaining to invoice nos.



023 and 024 were either of inferior quality or that the said goods were returned back by appellant to respondent.

6. Appellant had examined himself as DW-1 before the Trial Court. In his evidence as DW-1, appellant had testified that the goods/PVC compound were supplied by respondent to appellant on 11th September, 2019 and 15th September, 2019. The said goods were stated to be of low/poor quality. He further testified that Sh. Javed, driver of respondent took back the entire lot of PVC compound which had been delivered by respondent on 11th September, 2019 and 15th September, 2019 in the presence of his labour from the factory of the respondent. However, during cross-examination, appellant categorically admitted that he never issued either any debit note or e-way bill or any related documents regarding returning of the said goods/PVC compound to appellant.

7. Appellant also produced his quality checker/machine operator, namely, Sh. Gaurav as DW-2, who testified that he checked the quality of the PVC compound which were delivered by respondent vide invoice nos. 023 and 024 on 11th September, 2019 and 15th September, 2019 respectively and that they were found to be of low/inferior quality. Hence, the same could not be used for making the electricity cables/wires. He also deposed that Sh. Javed, driver of respondent came and took back the said PVC compound in his presence. During cross-examination, DW-2 also admitted that he did not issue any debit note or e-way bill or any related document regarding returning of the material to respondent herein.

8. On similar lines was the testimony of DW-3, who is the brother of DW-2. He also admitted during his cross-examination that he did not issue any debit note or e-way bill or any other related document against returning



of the material/PVC compound to respondent.

9. Perusal of the aforesaid shows that appellant put forth a case before the learned Trial Court that the inferior goods of invoice nos. 023 and 024 were returned back to respondent through Sh. Javed, driver of respondent. However, Sh. Javed who was examined as PW-4 before the learned Trial Court categorically denied that the PVC compound/material delivered to appellant vide invoice nos. 023 and 024 were ever returned back to respondent or that he had taken back such goods. Further, no documents pertaining to return of the goods were produced on behalf of appellant. Therefore, appellant had miserably failed to establish before the learned Trial Court that PVC compound delivered by respondent vide invoice no. 023 and 024 were ever returned back to respondent.

10. Appellant also failed to establish that the goods supplied by respondent were of inferior/low quality. Though it is the case of appellant that the quality of PVC compound/material delivered by respondent on 11th September, 2019 and 15th September, 2019, were found to be of low quality, however, no evidence was produced in support of the said contention. Appellant had produced DW-2 as witness before the Trial Court, who is the quality checker of appellant. However, except oral testimony that the goods were of inferior quality, no documentary evidence was produced with regard to any tests being carried out or any procedure adopted by the said witness to check the quality of the goods. It was also not testified as to in what manner or nature were the goods that were supplied by respondent, of inferior quality. The oral testimony of the appellant as DW-1 or of the quality checker of appellant as DW-2, were not substantiated by any documentary evidence. Appellant failed to show as to how the quality of the



goods supplied by respondent was checked on his behalf. Thus, the contentions in this regard were merely bald assertions without any substantive documentary evidence to support the same.

11. On the other hand, respondent/plaintiff on the basis of the evidence on record was able to establish that goods were supplied by him to appellant, who failed to pay for the same. The testimony on behalf of respondent herein remained consistent. There is a clear finding by the learned Trial Court that respondent and witnesses examined by him have corroborated the versions of each other on the material aspects of the case.

12. On the basis of the evidence on record, learned Trial Court came to a clear finding that appellant herein had failed to show that the PVC compound/goods supplied to him by respondent were of low/poor quality or that the said goods were ever returned by him. Thus, respondent herein was held entitled to recover a sum of ₹ 6,61,104/- inclusive of interest of ₹1,52,562/- from appellant towards outstanding amount. Further, respondent was also held entitled to interest @ 6% per annum on the principal amount of ₹ 5,08,542/- from the date of filing of suit till realisation. Thus, learned Trial Court held as follows:

“41. In the considered opinion of the court, the plaintiff/PW1 and the witnesses examined by him have corroborated the versions of each other on the material aspects of the case and nothing is shown on record, if they have deposed falsely or that their versions suffer from any artificiality or exaggeration or that their versions suffer from any inherent infirmity which go to the root of the matter and shake their basic versions. On the other hand, defendant has miserably failed to show if he returned the material which was delivered to him vide invoice nos. 023 and 024. Further, nothing is shown on record by/on behalf of the defendant even remotely if he ever made any payment pertaining to invoice nos. 010, 012, 022 and 025.



42 (a). Accordingly, in the given facts and circumstances of the case, on the basis of material as placed and proved on record and in view of aforesaid discussion, in considered opinion of the court, the defendant has miserably failed to show on record even remotely that the PVC compound/goods supplied to him by the plaintiff vide invoice nos. 023 dated 11.09.2019 and 024 dated 15.09.2019 was of low/poor quality or the same was not of agreed quality. The defendant has also failed to show if he returned the said material back to the plaintiff ever in any manner. Further, the defendant also could not show if at all, he ever made the payments pertaining to invoice nos. 010, 012, 022 and 025 to the plaintiff with respect to the PVC compound/material delivered by the plaintiff to him vide said invoices.”

13. In view of the aforesaid detailed discussion, no merit is found in the present appeal. The same is accordingly dismissed along with pending applications.

MINI PUSHKARNA, J

MANMOHAN, J

AUGUST 2, 2023

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