$~8

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

\+ RFA 563/2019 and CM APPL.54728/2023

SURYA PRATAP SINGH MEMORIAL & ANR ..... Appellants
Through: Mr. Dhruv Mohan and Ms. Madhu Vishnoi, Advs.

versus

N K JAIN ..... Respondent
Through: Mr. Rajat Aneja and Mr. Rishabh Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

<u>O R D E R</u>

% **22.02.2024**

<u>RFA 563/2019 & CM APPL.54728/2023 *(application for release of Bank Guarantee)*</u>

1. The present appeal has been filed by the appellants/defendants under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') assailing the judgment and consequential decree (hereinafter referred to as 'the impugned judgment') passed by the learned Trial Court on 23.09.2019 in C.S. No. 497/2016 against the appellants. The trial court had decreed the suit for recovery of Rs.3,85,936/- in favour of the respondent/plaintiff directing the appellants to pay a sum of Rs.2,88,012/- alongwith interest @ 9% p.a. from 03.03.2012, alongwith costs.

<u>Factual Background</u>

2. The respondent instituted a suit for recovery of Rs.3,85,936/- against the appellants, the cause of action being the non-payment of part amount due in lieu of equipments/goods supplied by the respondent to the appellants in

response to purchase made by the latter. Briefly stated, the respondent is engaged in a business of supply of Scientific Instruments, Chemicals, Glasswares, Engineering, Medical equipments and other laboratory materials. The appellants in lieu of their requirements made a purchase order of engineering and workshop equipments and later, also for installation of LPG Gas Pipeline and Lab Water Taps. Accordingly, the respondent supplied the purchased equipments/goods and raised invoices for a total amount of Rs.11,88,012/-. Out of this, an amount of Rs.9,00,000/- was paid by the appellants in two instalments (Rs.7,00,000/- and then, Rs.2,00,000/-) and upon the appellants' refusal to make the remaining payment, a recovery suit was initiated by the respondent against them.

3. It is the case of the appellants that pursuant to the orders placed by them, the respondent did not supply the said equipments/goods at the agreed site, except the LPG Gas Pipelines and water taps for chemistry labs. The appellants made a payment of Rs.9,00,000/- to the respondent, however, the respondent had only supplied material/goods worth Rs.71,655/-. Thus, the appellants set up a case before the Trial Court that an amount of Rs.8,28,345/- remains as balance to be paid by the respondent to the appellants.

4. Based on these averments, the Trial Court proceeded with trial and framed the following points for adjudication:

i. Whether the suit is not maintainable?

ii. Whether the suit is without any cause of action?

iii. Whether the plaintiff did not supply material despite giving an advance amount, and whether the plaintiff is entitled to a decree in the sum of Rs. 3,85,936/- as prayed for?

iv. Whether the plaintiff is entitled to the interest, as prayed for?

Findings of the Trial court

5. Subsequently, both the parties led their evidence and advanced arguments in the matter. Upon appreciation of the same, the trial court concluded that the respondent has successfully discharged the burden of proof to establish its case, and decreed the suit in favour of the respondent directing the appellants to pay a sum of Rs.2,88,012/- alongwith interest @ 9% p.a. from 03.03.2012 alongwith costs.

Grounds of Appeal

6. This impugned judgment has been challenged by the appellants in the present appeal, *inter-alia*, on the ground that (i) the trial court has erred in considering the fact that the appellants had specifically denied any delivery of equipments being made by the respondent ; (ii) the trial court has erred in rendering a finding that the onus of proof of procuring the equipments from another supplier was on the appellants and they have not been able to discharge the same; (iii) the trial court has overlooked the requirement of Section 101 of The Indian Evidence Act, 1882 (hereinafter referred to as 'IEA') that the burden to prove the case rested upon the respondent. Instead, the trial court assumed the case of the respondent to be true, and appreciated the evidence with the perspective that the said burden was upon the appellants; (iv) the trial court has erred in not considering/taking note of filing of forged delivery challans & invoices by the respondent; failure of the appellants to bring on record Form 32, delivery reports, transport bills, invoices of vehicles used for transportation; (v) the trial court has erred in overlooking the fact that the evidence adduced by the respondent i.e. invoices and delivery challans do not bear the

signature/receiving/confirmation of the appellants/authorized representative of the appellants and that the entire documentary evidence is forged.

7. The court has heard submissions of both sides & perused the Trial Court Record as well as the pleadings filed in the matter and has also considered the same.

Analysis

8. It is undisputed that the appellants had placed an order for the supply of engineering and workshop equipments/goods for their polytechnic college from the respondent and in lieu of the same, the appellants made a payment of Rs.9,00,000/ which was made in two instalments, i.e. first instalment being of Rs.7,00,000 made on 15.02.2012 and the second of Rs.2,00,000 made on 26.02.2012. It is apparent from the record that these two instalments were made within a short span of eleven days. As per the letter dated 16.02.2012 (Ex PW1/10) written by the appellants to the respondent, the balance payment had to be made after supplies, installation and commissioning of the purchased equipments. Relevant para of the said letter is reproduced below:

> *"With reference to your quotation reference no. PE/SCET/11-12 dated 21.01.2012 for Electronic Lab, Mechanical lab,Basic Electrical Engg. Lab, Applied Physics Lab, Applied MechanicsLab, Graphic Lab & reference no. PE/SCET/11- 12 dated 08.02.2012 forchemistry lab etc. We are pleased to place the order for the same as aboveand photocopies of the same duly signed and stamped is enclosed asorder.*
>
> *Please note that the supply should be F.O.R. of college siteinclusive of all charges and taxes. You will also give 5% discount on thequoted prices. The prices inclusive of installation and commissioning ofequipments.*
>
> *We are giving Rs. 7 lacs as advance against the order andbalance will be given against supplies and installation andcommissioning.*
> *Please make delivery of equipment at the earliest withinseven days."*

9. In order to prove supply and delivery of purchased equipments/goods, the respondent placed on record quotations; orders placed by the appellants; bill invoices; and delivery challans. The concerned bill invoices reflect that the entire purchase was to the tune of Rs.11,88,012/- of which Rs.9,00,000/- were paid and an amount of Rs.2,88,012/- remained due. On the other hand, it was contended on behalf of the appellants that even though the respondent was paid a sum of Rs.9,00,000/- but the respondent only supplied equipments/goods worth Rs.71,655/- vide two invoices dated 19.02.2012 and 20.02.2012. The appellants asserted an amount of Rs.8,28,345/- is still outstanding with the respondent.

10. It is pertinent to note that the appellants had initially made an instalment of Rs.7,00,000/- and again made a payment of Rs.2,00,000/-. It is inexplicable as to why a second instalment of Rs.2,00,000/- was paid despite the fact that the goods supplied were only worth Rs.71,655/-. It is also pertinent to mention here that out of the two bill invoices admitted by the appellants, one invoice bears the signature of a receiver named Diwakar while the other invoice bears no receiving, yet is admitted to be received by the appellants.

11. In the original suit the respondent has placed on record demand letters dated 13.06.2012 (Ex PW1/25), 14.12.2012 (Ex PW1/28) and 21.01.2013 (Ex PW 1/30) addressed to the appellants for recovery of the balance outstanding amount as per the bill invoices raised by respondent, alongwith the postal and courier receipts. However, it is the contention of the appellants that the same were never served upon the appellants.

12. It is pertinent to note here that the appellants vide their letter dated 05.11.2012 (Ex PW1/35) pointed out defects in goods supplied, mentioned

as under:

> *"Delivery challan not chargeable*
> *10 nos.(ten) drawing boards changed*
> *and the defected pieces returned to the*
> *party M/s Paras Engineers.*
> *25 pieces boiler tubes (Ist) rept.*
>
> *K.P. Singh*
> *Chairman"*

13. The said letter negates the appellants' version regarding non-supply of goods. The respondent has further fortified his case by placing on record a letter dated 14.12.2012 (Ex PW1/28) served upon the appellants, stating that all the defects as pointed out by the appellants in the equipment/goods were cured/replaced by the respondent and a request for payment of outstanding dues was made again. The said letter reads as under:

> *"While thanking you for the courtesy extended to our Mr. N.K.Jain and Jaitly during their meetingin the month of October 2012 with your goodself at your Lovely College. We have to bring it to your kind notice that all the defective Drawing Boards as pointed out had been replaced to your satisfaction with New Drawing Boards as promised in the meeting.*
> *As regards to our oldoutstanding payment, under some your personal reasons our payment could not be made immediately on our meeting but we were assured by your goodself that the payment will be made possibly by November end or otherwise positively by early December 2012.*
> *Since it now middle of the December, we would request you to please look into the matter and inform us the date as to when we may come to collect payment.*
> *In thisconnection, if it is convenient you can transfer the amount in our accountof PARAS ENGINEERS A/C NO. 003705002049 RTGS Code: ICIC0000037 with ICICI Bank, Preet Vihar Branch, Delhi 110092. Yourearly response in this matter will be highly appreciated and looking forward to your early reply.*
> *Thanking you once again and assuring our best be Services & Cooperation at all times to come."*

14. In these circumstances, the trial court rightly concluded that the respondent has successfully established his case. During the entire trial

process, the appellants were given a fair opportunity to controvert the case of the respondent by proving their contention that they never received goods from the respondent and/or that they purchased the said goods from a different supplier/third party vendor. However, nothing was brought in evidence to prove non-delivery of goods as well as purchase of same from another supplier. In this regard, the trial court observed as under:

> *"9.4…Obviously the fact of the matter remains that such goods were required for the purpose of running a polytechnic. If the defendants had not taken the goods from the plaintiff or the goods were not supplied by the plaintiff as contended by them then in that scenario such value of goods/such goods would have been logically purchased from some other vendor or third party vendor. The need to pay advance of a huge sum of money as well as putting a very small time line for delivery as well as the purchase orders and quotations being very exhaustive probabalizes the fact that the goods were urgently required for the purposes of running the polytechnic. At the cost of repetition I reiterate that the burden of proving that such goods were not supplied by the plaintiff and later on it had to be purchased by the defendants from third party was upon the defendants. On the said aspect not even a single document has been placed on record whereby the purchases of such huge amount of goods for various labs which were required for functioning of this institute were made."*

15. From the above order of the trial court, it is evident that it has weighed the cases of both the parties; the appellants despite being afforded ample opportunity failed to credibly refute the case of the respondent. The urgency of the appellants to purchase the equipments/goods was correctly noticed by the trial court in the light of advance payment, coupled with a prescribed period of 7 days for supply of the same. Moreover, as noticed above, the conduct of the appellants in remaining silent despite significant alleged overpayment, and the other attendant circumstances, completely validates the inferences/conclusions arrived at by the trial court. There is no warrant to arrive at a different conclusion in these proceedings.

16. The contention of the appellants that the respondent failed to produce Form 32 (road permit) to prove the actual delivery of the goods is also devoid of any merit. The respondent has stated that the delivery of goods was made through their personal vehicle and therefore, any Form 32 was not required. Moreover, the supply of goods is established through attendant circumstances as noticed by the trial court. Ample evidence has been placed on record by the respondent in the form of purchase order, bills/invoices raised, delivery challans and demand notices/letters.

17. In view of the above, this court finds no irregularity/illegality in the order of the trial court. The trial court has rightly decreed the suit in favour of the respondent for the balance amount as per the bill invoices i.e. Rs.2,88,012/- alongwith interest @ 9% p.a. with costs.

18. In the circumstances, the present appeal is dismissed; however, with no orders as to costs.

19. All pending applications also stand disposed of.

20. As per the directions in the order dated 06.03.2020, the respondent furnished a Bank Guarantee for withdrawal of the decretal amount. Let the said Bank Guarantee No. 201083IBGF00009 be released in favour of the respondent.

SACHIN DATTA, J

FEBRUARY 22, 2024
SS,ST