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

% *Date of Decision: 13.05.2025*

+ **RFA(COMM) 133/2024 and CM Nos.21773/2024 & 21775/2024**

UMC DESIGN STUDIOAppellant
Through: Mr Pradeep and Mr Manas
Mohapatra, Advocates.
versus
AABIR SAIKIARespondent
Through: Mr Nishant Das, Ms Aatrayi Das and
Ms Jyoti Jha, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (Oral)

1. The appellant [**defendant**] has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 [**CPC**], impugning the judgment and order dated 03.05.2023 [**impugned judgment**], whereby the suit [CS(COMM) 426/2021 captioned *Aabir Saikia v. UMC Design Studio*] filed by the respondent [**plaintiff**], was partially decreed.

2. The plaintiff had filed the abovementioned suit seeking recovery of an sum of ₹6,60,000/- [Rupees Six lacs sixty thousand] including (i) refund of ₹1,60,000/-, which the plaintiff alleged was the excess amount paid to the defendant; (ii) ₹2,00,000/- (Rupees two lacs) as damages for “*incorrect and*



incomplete fixtures initiated by the defendant”; (iii) ₹2,00,000/- (Rupees two lacs) towards mental harassment and torture; and (iv) ₹1,00,000/- (Rupees one lac) towards costs.

3. The defendant – a sole proprietorship concern – did not file any written statement and was proceeded *ex parte*. The learned Commercial Court accepted the plaintiff’s claim that the defendant was liable to refund a sum of ₹1,60,000/-, being the amount paid in excess of the quantum of work done. The learned Commercial Court also accepted that the plaintiff was entitled to damages quantified at ₹2,00,000/- on account of incorrect and incomplete fixtures, and further a sum of ₹11,000/- as costs. The learned Commercial Court decreed the suit accordingly.

PLAINTIFF’S CASE

4. The plaintiff and the defendant entered into an Agreement dated 10.10.2020 [**Agreement**] for design and execution of works at the plaintiff’s residential flat (being Flat No.1605, Tower No.18, Sky Garden, Greater Noida West) [**subject flat**]. In terms of the Agreement, the scope of work to be performed by the defendant included design and execution of the interior works at the subject flat. The tabular statement setting out the item of works as included within the scope of work, as set out in the Agreement [**Ex.PW1/1**], is reproduced below:

Estimate					
S.No.	Cost Head	Unit	Qty.	Rate	Amount
1	False ceiling-Living room with lighting	Sq.ft.	300	140	42000
2	Mandir Unit	Nos	1	15000	15000



3	Modular kitchen	Nos	1	125000	125000
4	Balcony design	Nos	1	15000	15000
5	Wardrobe	Sq ft	80	1050	84000
6	Paint	Sq ft	2500	25	62500
7	tv unit	Nos	1	25000	25000
8	hanging light	Sq ft	1	10000	10000
Total					378500
Note:				net	330000

5. In terms of Clause 2 of the Agreement, the defendant had agreed to complete the works within a period of thirty days from the date of handing over the site. The plaintiff stated that he had handed over the site to the defendant on 10.10.2020, and therefore, the defendant was required to complete the work by 10.11.2020. However, the defendant completed barely 25% of the work within the stipulated period.

6. In terms of the Agreement, the plaintiff was required to make the payment in the following tranches:

Percentage	Amount (in Rs.)	Timeline
30%	99,000	Advance
30%	99,000	On false ceiling and wood work structure
20%	66,000	On Finishing work
10%	33,000	On completion
Total	3,30,000/-	

7. The plaintiff claimed that he was compelled to pay a sum of ₹2,60,000/- in advance. The said payments were made in good faith and on the assurance that the defendant would complete the work within the stipulated period of thirty days. The plaintiff alleged that the defendant had



failed and neglected to complete the works within the stipulated period. The plaintiff claimed that he had followed up with the defendant rigorously by making repeated calls and sending WhatsApp messages, but the defendant continued to give false assurances regarding the completion of the works.

8. The plaintiff claimed that he could not shift into his own residential flat and had to continue to stay at a rented premises. The petitioner claimed that he was residing in a flat leased by his company. The plaintiff was asked to withdraw “*the company lease on 30.11.2020*” and thereafter, he was obliged to personally pay the lease rental of ₹23,000/- per month. The plaintiff claimed that he was burdened with the said financial cost on account of failure of the defendant to perform his obligations under the Agreement (Ex.PW1/1).

9. The plaintiff claimed that the defendant stopped work with effect from 06.12.2020 and therefore, the plaintiff terminated the Agreement by issuing a notice dated 19.12.2020 (Ex.PW1/4). In terms of the said notice, the plaintiff had also called upon the defendant to deposit the lease charges of ₹23,000/- for the month of December; to further compensate the plaintiff to the extent of ₹2,00,000/- for all unfinished and wrong installations; and to pay an amount of ₹3,00,000/- as compensation for mental harassment and agony.

10. The plaintiff also referred to an email dated 13.12.2020 (Ex.PW1/3) in the plaint, whereby the defendant had agreed to bear the cost of one month’s rent of ₹23,000/-.



11. The plaintiff claimed that he had paid an aggregate sum of ₹2,60,000/- to the defendant. However, till the date of termination of the Agreement, the defendant had completed works of a value of ₹1,00,000/- and was, therefore, liable to refund the balance amount of ₹1,60,000/-.

12. The plaintiff also claimed damages of a sum of ₹2,00,000/- for incorrect and incomplete fixtures as well as a sum of ₹2,00,000/- towards mental harassment and torture.

13. The summons in the suit, filed by the plaintiff, were directed to be issued on 15.07.2022 and 22.09.2022. The defendant was duly served with the summons on 10.10.2022. However, the defendant failed to file a written statement within the time as provided and thereafter, by an order dated 06.01.2023, was proceeded *ex parte*.

14. The plaintiff filed his affidavit by way of evidence (Ex.PW1/A), essentially, affirming the contents of the plaint. The plaintiff proved the legal notice dated 10.12.2020 issued to the defendant; copy of email dated 13.12.2020 (Ex.PW1/3) received from the defendant; and the notice of termination dated 19.12.2020 (Ex.PW1/4). The plaintiff also proved WhatsApp messages and documents (Ex.PW1/5 colly.) to establish that he had made certain payments to third parties.

15. Since the defendant had not filed a written statement and the suit was proceeded *ex parte*, no issues were framed. The learned Commercial Court passed the impugned judgment after hearing learned counsel for the plaintiff.



REASONS AND CONCLUSION

16. The learned counsel appearing for the defendant earnestly contended that there was no material before the learned Commercial Court to establish that the plaintiff had suffered any damages. Although the plaintiff had produced certain material, such as screenshots of phones evidencing payments made through electronic modes and slips of paper, the same did not establish that the plaintiff had suffered any loss. He also contended that the learned Commercial Court had erroneously described the said documents as bills and invoices.

17. The learned counsel appearing for the plaintiff countered the aforesaid submissions and contended that there was sufficient material on record, which establish that the plaintiff had suffered losses.

18. We have heard the learned counsel for the parties.

19. At the outset, it is relevant to note that there is no dispute that the defendant had received amounts in excess of the work done. The learned counsel appearing for the defendant fairly accepted that the plaintiff's estimation that the work of a value of ₹1,00,000/- was done, was accurate. Thus, there is no dispute that the defendant would be liable to refund the amount of ₹1,60,000/-, being the amount received in excess of the value of the work done.

20. The controversy, essentially, relates to the award of damages amounting to ₹2,00,000/-. It is noted that the plaintiff had not made any averment in the plaint regarding the damages suffered by him on account of



unfinished and wrong installations, which the plaintiff claimed that he got executed/ rectified from a third party. The plaintiff had merely referred to the termination notice dated 19.12.2020 (Ex.PW1/4) and the amounts demanded in terms of the said notice. Paragraph 22 of the plaint – which is the only paragraph, other than the prayers, which allude to plaintiff's claim of damages – is set out below:

“22. That in the said Notice dated 19.12.2020, the Plaintiff had clearly communicated to the Defendant that the contract dated 10.10.2020 was put to termination with immediate effect and the Defendant was hence required to:-

- A. To refrain from entering or sending any labour in the Plaintiff's house.
- B. To remove all equipment, malba and any other material kept/stored inside the house for the purpose of installation or usage, by the end of the day (19.12.2020)
- C. To handover the vacant, physical and peaceful possession of the house to the Plaintiff and handover the keys by the end of the day (19.12.2020).
- D. To deposit the lease charges of Rs. 23,000/- for the month of December, that the Plaintiff had to pay due to the actions/ non-action and undue delay caused at the Defendant's end, to fulfil the contract.
- E. To compensate the Plaintiff for the tune of Rs.2,00,000/- (Rupees Two Lakhs only), for all the unfinished installations and wrong installations that the Plaintiff would have to get it done from a third-party, due to the Defendant's inactions.”

21. The termination notice (Ex.PW1/4) also does not contain any allegation regarding any “wrong installation”. It merely called upon the



defendant to compensate the plaintiff to the extent of ₹2,00,000/- “*for all the unfinished and wrong installations caused by the defendant*”, which the plaintiff had to get executed by third party contractor/interior designer.

22. There is no dispute that the work undertaken by the defendant remained incomplete, and it is, therefore, obvious that the plaintiff would have had to get the interior work executed from another agency. The material placed on record (Ex.PW1/5 colly.) also indicates minor payments made to workmen. Clearly, the defendant cannot be held liable to pay the amount for completion of the works in addition to refunding the part consideration received for the said purpose.

23. As noted above, the consideration for execution of the works was agreed to ₹3,30,000/-, out of which the defendant had executed works of a value of ₹1,00,000/-. Whilst the defendant is required to refund the sum of ₹1,60,000/- received in excess, it would not be liable to bear the cost of the balance works. At best, the plaintiff could have recovered any amount spent in excess of ₹2,30,000/- (₹3,30,000/- less ₹1,00,000/) for completing the balance works. However, there is neither any averment in the plaint nor any material on record to substantiate the claim of any damage on this count.

24. It is apparent from the plaint that the plaintiff’s claim appears to be one of damages suffered on “wrong installation”. However, there is no material on record to indicate the work that was incorrectly executed. The plaint also does not contain sufficient averments to establish the loss suffered. Absent any averment in the plaint and material establishing the



same, no claim for damages on account of wrong installation could have been awarded in favour of the plaintiff.

25. It is relevant to refer to the email dated 13.12.2020 (Ex.PW1/3) sent by the defendant. The said email indicates that the defendant had agreed to bear the cost of ₹23,000/-, which was allegedly suffered by the plaintiff on account of continued residence in rented accommodation. However, the said email also indicates that the defendant had claimed that the delay was on account of various factors including the delay on the part of the plaintiff in making payments and in finalising the material and design. The defendant had acknowledged that it had received a sum of ₹2,60,000/- and had also agreed to complete certain works, which were valued of ₹2,98,500/-. The defendant had computed that a total amount of ₹3,50,500/- would be payable for the entire work. Out of the aforesaid sum, the defendant acknowledged receipt of a sum of ₹2,60,000/- and had agreed to bear one month rent of ₹23,000/- thus, acknowledging a total receipt of ₹2,83,000/-. According to the defendant, the balance payment due from the plaintiff would be ₹67,500/-. It had, accordingly, called upon the plaintiff to pay an amount of ₹34,500/- immediately and the balance amount of ₹33,000/- on the handing over of the site. Concededly, the said proposal did not fructify.

26. Thus, we are unable to accept that the defendant would be liable to pay a rent of ₹23,000/- solely for the reason that it had agreed to pay the same in terms of the proposal forwarded by the email dated 13.12.2020.

27. There is also no material to indicate that the plaintiff had put the



defendant to notice that any delay in execution of the works would result in the plaintiff incurring additional cost of lease rentals.

28. In view of the above, we are unable to accept that the plaint contains sufficient pleadings to sustain the claim as awarded in favour of the plaintiff. The plaintiff has also failed to establish that he has suffered the damages as awarded by the learned Commercial Court.

29. In view of the above, the impugned judgment to the extent that it had decreed damages in the sum of ₹2,00,000/- in favour of the plaintiff and against the defendant, is set aside. The judgment stand modified to the aforesaid extent.

30. We are informed that the defendant has deposited a sum of ₹1,60,000/- with the Registry of this Court. We clarify that disbursal of the said amount shall abide by the directions issued by the court executing the impugned judgment as modified.

31. The appeal is disposed of in the aforesaid terms. The pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 13, 2025
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Click here to check corrigendum, if any