



NEUTRAL CITATION NO: 2022/DHC/003610

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Reserve: 26th July, 2022
Date of Decision: 13th September, 2022

+ CS(COMM) 555/2021**A2 Interiors Products Pvt. Ltd.**

Through its Authorized Representative

Mr. Jatin Pasricha

A-1121-22, Birla Farm,

Chattarpur Extension,

Delhi-110074

..... Plaintiff

Through: Mr. Mohit Chaudhary & Mr. Kunal
Sachdeva, Advocates.

versus

1. **Rahul Bhandari**
S/o Mr. M.C. Bhandari
R/o 1-2 Maharani Bagh,
New Delhi- 110065
2. **Namita Bhandari**
W/o Mr. Rahul Bhandari
R/o 1-2, Maharani Bagh,
New Delhi- 110065.
3. **Mr. M.C. Bhandari**
R/o C-109, South Ex, Part 2
New Delhi
4. **Mrs. Manali Singhal**
D/o Mr. M.C. Bhandari
R/o C-109, South Ex, Part 2
New Delhi.

.....Defendants

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Through: Mr. Prosenjeet Banerjee, Ms. Shreya Singhal, Ms. Aanchal Kapoor & Mr. Deepak Singh Rawat, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

I.A. 2147/2022 (For Summary Judgment) & I.A. 11640/2022 (For Rejection of Complaint)

1. An application I.A. 2147/2022 has been filed on behalf of the plaintiff under Order XIII A of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) for Summary Judgment for directing the defendant to pay ₹5,97,09,531/- along with *pendente lite* and future interest @ 24% per annum. On the other hand, application under Order 13(A) read with Order XII Rule 6 and Section 151 of CPC has been filed on behalf of the defendant for dismissal of the entire claim.
2. The **plaintiff in its application under Order XIII (A) CPC** has asserted that there are no disputes about the admitted facts and the liability of the defendant to pay ₹5,97,09,531/- with interest as proved and established from the various Invoices and documents relied upon by the plaintiff. Thus, the plaintiff is entitled to a decree in the sum of ₹5,97,09,531/- along with *pendente lite* and future interest @ 24% per annum.
3. The defendants have controverted the assertions made in the application and asserted that the claim of the plaintiff to be not maintainable. Similar are the contentions made in the application I.A. 11640/2022 seeking rejection of the complaint.



4. Briefly stated, plaintiff in its Suit has claimed that it is a Company engaged in various activities along with interior designing. It was engaged by the defendants sometime in February, 2016 for the work of interior designing and construction (inclusive of alteration, modification, repair and rectification) at the premises bearing No. C-109, South Extension, Part-II. Along with the above arrangement, the defendants also placed an order for supply of Burma Teak Wood and other goods. As per the arrangement, the plaintiff was entitled to keep 21% over the bills of input as its profit. In addition, an amount fixed for services i.e., labour payment was to be made by the defendants. The plaintiff in a timely manner executed the work and delivered Burma Teak Wood and other material at the respective addresses of the defendants and also performed necessary tasks. The plaintiff carried out the works as under:

Particulars of the Work Carried out	Amount	Total
Total Value of the Interior Work done at House no. C-109, South Extension Part - 2, New Delhi	₹2,67,69,994/-	
Total Value of the Hardware utilized at the C-109, South Extension Part-2, New Delhi	₹26,27,892 /-	
		₹2,93,97,886/-
Total cost of Burma Teak	₹2,46,06,762/-	



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wood after deduction of VAT + 21% contractors profit	₹51,67,420/-	
		₹2,97,74,182/-
Value of the second bill raised for the work done at the residence of the Defendants		₹9,71,530/-
Value of rework i.e. changes, additions, alterations, modifications, repairs and rectifications etc.		₹91,10,825/-
Value of work carried out at the residence of the Defendant No. 1		₹10,35,423/-
Addition of safety and security expenses lying on sites		₹10,50,900/-
Labor/ Installation Charges		₹1,35,82,774/-
Amount of Taxes		₹35,90,1411-
GST @ 18%		₹1,16,95,870/-
Total Amount		₹10,02,09,531/-
Amount received (details given in Para 8 below)		₹4,05,00,000/-
Amount Pending		₹5,97,09,531/-



5. It is asserted that from time to time i.e., from 24.02.2016 to 01.02.2018 invoices were raised on the defendants for the work done and the goods delivered against which a sum of ₹4,05,00,000/- has been paid by the defendants, but there is an outstanding amount of ₹5,97,09,531/- which the defendants are jointly and severally liable to pay. The plaintiff has claimed that on several occasions via e-mails, telephonic conversations, personal visits and meetings, plaintiff requested the defendants to clear the outstanding amount and to make further payments to its various suppliers of goods and services but all requests went in vain. Certain works, which were beyond the scope of the work, were also carried out by the defendants using third-party contractors.

6. It is claimed that the defendants acknowledged the payments to the extent of ₹5.97 cores as due and payable to the plaintiff and proposed to make payment in two tranches i.e., first tranche of ₹1,35,50,887/- towards labour, installation charges, and the second tranche of ₹4.61 cores which was due and payable according to the admitted invoices between the parties. Since the defendants failed to make the payments, Legal Notice dated 19th March, 2019 was issued calling upon the defendants to pay the first tranche in the sum of ₹1,35,50,887/- which was wrongly withheld. However, the defendants failed to make any payment or give a reply to the Legal Notice of the plaintiff.

7. It is submitted that the plaintiff aggrieved by the loss suffered and the attitude of the defendants, instituted a Criminal Complaint No. 4216/2019 under Section 420 of the Indian Penal Code, 1860. The defendants were summoned for trial and bailable warrants were issued but could not be executed due to non-availability of the defendants on the given address. On



19th July, 2019 warrants of arrest have also been issued against defendant Nos.1 and 2.

8. The defendants filed an application under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) seeking stay of Complaint Case. *Vide* Order dated 25th July, 2019 the proceedings of the complaint case were stayed and the parties were referred to Mediation Centre. However, no settlement could be arrived at in the Mediation Centre due to non-cooperative attitude of the defendants. The Suit for recovery of ₹5,97,09,531/- along with 24% *pendente lite* and future interest was filed by the plaintiff.

9. The **defendants in their Written Statement** have admitted that sometime in 2016, plaintiff was engaged to do the wood work (purchase of Burma Teak Wood Crafting of Doors, Windows, Window and Door Frames, Cupboards) during the renovation of C-109, South Extension Part-II, New Delhi. The work done by the plaintiff was claimed to be sub-par and there were material delays in the execution of the work was alleged. The defendants paid ₹4,05,00,000 towards full and final settlement of the entire work done by the plaintiff by June, 2018. On 11th June, 2018, the plaintiff's Accounts Manager wrote an e-mail stating that "*various invoices as per cheques received by us, kindly enter them into your books of accounts and equalize them.*" Only 17 invoices were annexed along with the said e-mail. The Legal Notice was sent by the plaintiff to Defendant Nos.1 and 2 which pertained to one fabricated invoice in the sum of ₹1,35,50,887/- dated 30th March, 2019 i.e., 11 days after the Legal Notice was issued.

10. Admittedly, a Criminal Complaint was filed by the plaintiff in the Court in Meerut in respect of purported non-payment of dues to the tune of



₹1,35,50,887/-, but the proceedings in the Criminal Complaint had been stayed by the High Court of Judicature at Allahabad in the petition under Section 482 of Cr.P.C. bearing No. 27388 of 2019 titled "*Rahul Bhandare @ Rahul Bhandari & Anr. vs State of UP*". It is claimed that there is no change in circumstances since the filing of Criminal Complaint before the Court of Magistrate in Meerut in 2019. Moreover, the plaintiff has failed to disclose the e-mail dated 11th June, 2018 written by it to defendant No. 1's office acknowledging the payments made by the defendants.

11. The plaintiff had instituted a pre-institution mediation in February, 2020 before South-East District Legal Services Authority against defendant Nos.1 to 4, wherein the plaintiff admitted having received ₹4,05,00,000/- and claimed recovery of ₹1,35,50,887/-. However, the plaintiff has now changed its case completely in the present Suit and has made an inflated claim that ₹5,97,09,531/-. The plaintiff has relied upon 170 invoices but it is asserted that they are fabricated and were never raised upon the defendants. It is submitted that the claim of the plaintiff is false and is liable to be rejected.

12. It is further asserted that the plaintiff has failed to plead any material particulars in respect of the properties where the work was carried out. There were two properties involved, one at South Extension, Part-II where defendant Nos. 3 and 4 reside and the one at Maharani Bagh where defendant Nos.1 and 2 reside. However, plaintiff has never stated as to who owned those properties.

13. Similar averments have been made in the application under Order VII Rule 11 of CPC, wherein rejection of the suit has been sought by the defendants.



14. The defendants have thus, denied the entire claim of the plaintiff and have asserted that the number of purported invoices is in duplicate. Only 17 invoices had been raised against which the payments have already been made. There are inherent contradictions in the documents relied upon by the plaintiff and, therefore, the Suit is liable to be dismissed.

15. Submissions Heard.

16. In the Commercial Suit, while Order XII Rule 6 CPC has been made applicable, Order XIII A Rule 3 CPC titled '*Summary Judgments*' has been incorporated. The Legislative intent behind introducing summary judgment under Order XIII A of CPC is to provide a remedy independent, separate and distinct from judgment on admissions and summary judgment under Order XXXVII of CPC. It empowers the Court to give Summary Judgment against the plaintiff or the defendant on a claim it considers that the plaintiff has no real prospects of succeeding in the claim or the defendant has no real prospect of successfully defending the claim, as the case may be and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. Rule 4 prescribes the procedure for making Summary Judgments.

17. The relevant parts of Order XIII A Rule 3 CPC read as under:

“3. Grounds for summary judgment.- The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that –

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.”



18. In Swain vs. Hillman (2001) 1 AIR 91 Lord Woolf M.R. explained that the words "*no real prospect*" do not need any amplification as they speak for themselves. The Court needs to see whether there is a realistic as opposed to fanciful prospect of success. In Three Rivers District Council vs. Governor & Company of Bank of India (2003) 2 AC 1 the House of Lords while considering the word "*no real prospect*" held that Court should look what will happen at the trial and that if a case is so weak that it has no reasonable prospect of success, it should be stopped before great expenses are incurred.

19. These judgments were referred to by the Hon'ble Supreme Court in Sukam Power Systems Limited vs. Kunwer Sachdev & Anr. (2019) SCC OnLine, Delhi 10764 and it was observed that the Legislative intent behind introducing Summary Judgments under Order 13A of CPC is to provide a remedy independent, separate and distinct from the judgment on admission and summary judgment under Section 37 CPC.

20. The Apex Court endorsed the test of real prospect of succeeding or no real prospect of defending the claim for determination of an application for Summary Judgment, as propounded in the aforementioned judgement. It was observed as under:

"49. Consequently, this Court is of the view that when a summary judgment application allows the Court to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. It bears reiteration that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the Court the confidence that



it can find the necessary facts and apply the relevant legal principles so as to resolve the dispute as held in Robert Hryniak (supra).

....

51. This Court clarifies that in its earlier judgment in Venezia Mobili (India) Pvt. Ltd. v. Ramprastha Promoters & Developers Pvt. Ltd., 2019 SCC OnLine Del 7761 while deciding two applications, both filed by the plaintiff in the said case (one under Order XII Rule 6 and other under Order XIII A) it had applied the lowest common denominator test under both the provisions of the Code of Civil Procedure and held that the suit could be decreed by way of a summary judgment.

...

52. Consequently, this Court is of the opinion that there will be 'no real prospect of successfully defending the claim' when the Court is able to reach a fair and just determination on the merits of the application for summary judgment. This will be the case when the process allows the court to make the necessary finding of fact, apply the law to the facts, and the same is a proportionate, more expeditious and less expensive means to achieve a fair and just result."

21. The twin test therefore, provided for a Summary Judgment is:



*“(i) that there is no real prospect of succeeding or of defending the claim, or
(ii) there are no other compelling reasons as to why the claim should not be disposed of before recording of oral evidence.”*

22. In the light of this twin test prescribed under Order XIII A Rule 3 CPC, the facts of the present case need to be considered.

23. It is an admitted case of the parties that the plaintiff-Company was engaged for the work of interior designing by the defendants. The plaintiff had asserted that he had raised invoices for the work done and out of the total amount of ₹10,02,09,531/-, the defendants has made payment of ₹4,05,00,000/- leaving a balance of ₹5,97,09,531/-. The plaintiff has relied on 117 Invoices.

24. The defendants on the other hand has claimed in their Written Statement that there were 17 invoices raised by the plaintiff, the last being in 2017 which added up to ₹4,05,00,000/- and the said amount stands paid to the plaintiff. This is evident from his own ledger account on which reliance has been placed.

25. The plaintiff thereafter has referred to an Invoice dated 30th March, 2019 in the sum of ₹1,35,50,887/- towards labour/installation charges. The defendants have refuted this invoice and has claimed that all the accounts stood settled by 2018 and there is no basis for having raised this invoice in 2019. Furthermore, while the assertions have been made in the plaint in regard to recovery of ₹5,97,09,531/-, this is contradictory to his own statements made in various documents. The plaintiff had given a Legal Notice dated 19th March, 2019; had filed a Criminal Complaint dated 06th



April, 2019 before the Magisterial Court at Meerut, U.P and a pre-litigation Mediation Notice at DLSA, South-East, Saket Courts, dated 20th August, 2020. In all these documents, the plaintiff had claimed an outstanding amount of ₹1,35,50,887/-. However, in contradiction to his own documents, the plaintiff had raised a claim of ₹5,97,09,531/- in the present suit which is not supported by its own documents.

26. It is also claimed by the defendant that there are about 170 invoices which have now been placed on record, which were never delivered to the defendant and their authenticity and genuineness has been refuted by the defendant. According to the defendant only 17 invoices were raised amounting to ₹4,05,00,000/- against which all payments have been made, as is evident from the emails of the plaintiff itself. The plaintiff is thus required to prove its Invoices in support of its claim.

27. The plaintiff has also claimed a profit of 21% for which reliance has been placed an email dated 06th February, 2016. Furthermore, the plaintiff has relied on email dated 24th July, 2018, wherein he has raised a claim against Invoice for charging GST. The plaintiff has also relied on his e-mail dated 12th January, 2018 whereby the bills for the work done for the South Extension property and the Maharani Bagh along with submissions and hardware list, was submitted. The defendant had responded to the same vide email dated 31st January, 2018 and had sent correction in the bills to which an objection was taken by the plaintiff. There are disputed facts which need to be proved by way of evidence.

28. It is quite evident from the email that have been exchanged that the defendants have refuted the correctness of the bills that have been raised by the plaintiff, which needs a trial. The plaintiff has also claimed that the



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defendant had agreed to pay ₹5,97,09,531/- which also needs to be proved by adducing evidence, since it has been out rightly denied by the defendant.

29. There are neither any undisputed facts nor admitted documents from which it can be inferred that a summary judgment can be passed. A definite defence has been taken by the defendant denying the authenticity of the documents relied upon by the plaintiff and also highlighting the contradictions in the documents and the facts asserted in the plaint by the plaintiff. It is the plaintiff who is required to prove his case and also the documents relied upon by him and it cannot be held that the defendant has no prospect of succeeding in its defence.

30. Considering the disputed facts and also that the plaintiff is required to prove its documents and its case by evidence, it is held that the twin test for pronounce of summary judgement have not been satisfied and this is not a fit case for pronouncement of Summary Judgment under Order XIII A Rule 3 of CPC. The application is accordingly dismissed.

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31. List this matter before the learned Joint Registrar for admission/denial of documents and for completion of pleadings for 31st October, 2022.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 13, 2022
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