

(2011) 02 DEL CK 0457

In the Delhi High Court

Case No : Regular First Appeal No. 109 of 2001

Shr. N.L. Goyal

APPELLANT

Vs

MKR Frozen Food Exports (p) Ltd.

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2011) 02 DEL CK 0457

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This case is on the Regular Board of this Court since 3.1.2011 and today is effective item No. 6 on the Regular Board. It is 3:15 pm. No one appears for the parties. I have therefore gone through the record and am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 1.11.2000 whereby the suit for recovery of the Appellant/plaintiff was dismissed. The suit was for recovery of Rs. 1,07,200/- for professional charges rendered by the Appellant to the Respondent with respect to the job of designing, structural design supervision and assessing the quality of work of construction of the factory of the Respondent. It was claimed that professional charges of Rs. 50,000/- were paid leaving a balance of Rs. 32,000/- and for the out of pocket expenses of Rs. 45,000/- payable, only a sum of Rs. 10,000/- was paid thus leaving a balance of Rs. 35,000/-. The Appellant/plaintiff claims that he had rendered all required services and since the Respondent/Defendant failed to pay the balance amount due hence the suit for recovery was filed. The Respondent appeared and contested the case. The case of the Respondent was that there was no amount payable to the Appellant and the figures of Rs. 82,000/- and Rs.

45,000/- towards professional fee and out of pocket expenses were self-generated figures which were not agreed to by the Respondent/Defendant. It was the further stand of the Respondent/Defendant that the services of the Appellant were terminated on 12.6.91 because the Appellant was guilty of negligence in performing his professional duties whereby it was found that there were cracks in the roof of the building and that payments were recommended to the contractor without checking the quality, specifications and drawings. It was argued that nothing was due to the Appellant who had been paid the complete dues.

3. The Trial has referred to the fact that there is no written contract showing the agreement to pay Rs. 82,000/- and Rs. 45,000/- respectively towards professional fee and out of pocket expenses as claimed by the Appellant. The Trial Court has also noted that although the Appellant/plaintiff claimed the contract to be in writing, the said contract was not filed and proved on record. The Trial Court has also referred to the delay of the Appellant in getting released the sanctioned plan. The relevant paragraphs 18 to 21 of the impugned judgment and decree read as under:

Ex.PW1/1 to 3 are the building plans. These bear the date of sanction as 18.8.90. Ex.PW1/4 is the fee receipt for the building plans. Amazingly, it is dated 23.1.91. Ex.PW1/5 is the letter of sanction plan. It is dated 22.8.90.

19. From the contents of Ex.PW1/6 to 8 dated 2.7.9, 12.6.91 and 13.6.91 respectively; it is found that the plaintiff admitted that the work was almost complete/abandoned and for the remaining work Rs. 7,000/- be retained and Rs. 60,000/- be cleared to him, i.e. Rs. 25,000/- of professional charges and Rs. 20,000/- out of pocket expenses and over head expenses. It seemed to be backlash of letter dated 11.6.91 Ex.PW1/D24 written by the Defendant wherein negligence was imparted upon the Architect in not performing its professional duties in due diligence and further recommending payments to the contractor (H.S. Punnu PW2), without checking the quality, specification and drawings. To the legal notice Ex.PW1/11 it was specifically denied that any amount was due and payable and it was replied that as per letter dated 11.6.91(Ex.PW1/D23), the services of the Architect were terminated; that only 70% work was completed but that too had caused damages/cracks to the Defendant construction.

20. Evidently, the plaintiff did not carry any work after 1.2.91. In its own letter dated 1.2.91, the plaintiff has mentioned "That the work of your factory is in completion stage and we have provided you all the necessary drawings and assistance in supervision also. We have so far received an amount of Rs. 50,000/- against our total professional fee of Rs. 82,000/- calculated on the basis of covered area. May we request you to kindly send us a further payment of Rs. 20,000/- as our running professional fee. An early action in this matter will be highly appreciated." The contents of above letter can be taken as proved for the reason that the same has been filed by the plaintiff itself and finds mention

in para 13 of the plaint. As its contents show it did not mention at all about dues to be paid by the Defendant as out of pocket expenses and over head expenses. It simply specifies and confined the case of the plaintiff to the professional fee. Thus, it won't be safe to infer that any out of pocket expenses and over head expenses were payable as on 1.2.91 to the plaintiff by the Defendant, regarding sanctioning of and providing of building. Plan/drawings etc. As recorded above, the building work started sometimes on 26.3.90(Ex.PW1/D4), whereas the building plan Ex.PW1/1 to 3 was sanctioned by the concerned authorities on 18.8.90 and sanctioning letter on 22.8.90. The fee in this respect was paid on 23.1.91(ex.PW1/4). How come that the plaintiff was still retaining the possession of these documents and also claimed charges for the same? It remains a mystery., whereas the Defendant vide Ex.PW1/D24 imparted the gross negligence on the part of the plaintiff in performing its professional duties and further recommending improper payment to the contractor(PW2). Taking into account the contents of Ex.PW1/6; it is obvious that the plaintiff had abandoned the work even before the receipt of Ex.PW1/D24 letter dated 11.6.91.

21. In the light of the above, I am of the opinion that for paucity of evidence, the plaintiff had failed to establish that the Defendant was liable to pay any out of pocket expenses or over head expenses to the plaintiff and secondly that the Defendant was liable to pay either Rs. 32,000/- or Rs. 25,000/-, the professional charges/fee. Even otherwise, for the abandoned work, the plaintiff at the most could claim proportionate damages. Neither, this is the case of the plaintiff nor the damages are quantifiable.

(Emphasis added)

4. I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this Court. This Court is entitled to interfere with the impugned judgment and decree only if the view taken by the Trial Court is completely perverse or causes grave injustice. Neither is there any illegality nor any perversity found in the impugned judgment and decree and nor has any injustice, much less grave injustice been caused to the Appellant. Appeal being devoid of merits, is therefore dismissed, leaving the parties to bear their own costs. The Trial Court Record be sent back.