M/S GKB Optolab Pvt. Ltd Vs M/S Creons Advertising Pvt. Ltd

Court: Delhi High Court

Date of Decision: May 19, 2022

Acts Referred: Indian Contract Act, 1872 â€" Section 70

Hon'ble Judges: V. Kameswar Rao, J

Bench: Single Bench

Advocate: S.S. Malhotra, Naresh K. Daksh

Final Decision: Allowed

Judgement

V. Kameswar Rao, J

CM APPL. 19898/2022 in RFA 33/2022

CM APPL. 18802/2022 in RFA 147/2022

1. These applications have been filed by the applicants / appellants seeking condonation of delay in filing the appeals.

2. For the reasons stated in the applications delay in filing the appeals is condoned.

3. Applications stand disposed of.

RFA 33/2022

RFA 147/2022

4. By this common order I shall decide two Regular First Appeals being RFA 33/2022 titled as M/S GKB OPTOLAB PVT. LTD. v. M/S CREONS

ADVERTISING PVT. LTD. and RFA 147/2022 titled as M/S CREONS INFRASTRUCTURE PVT. LTD. (PREVIOUSLY M/S CREONS

ADVERTISING PVT. LTD.) v. M/S GKB OPTOLAB PVT. LTD. both arising from the same impugned judgment and decree dated February 18,

2021 deciding Civil Suit No. 11287/16 filed by M/S CREONS ADVERTISING PVT. LTD. against M/S GKB OPTOLAB PVT. LTD. Henceforth,

the parties shall be referred to as CREONS and GKB respectively.

5. The suit was filed by CREONS for recovery of an amount of Rs. 30,11,359/- along with pendent-lite and future interest @ 18% per annum against

GKB.

6. Suffice to state the Suit of CREONS was decreed for an amount of Rs. 9,00,477/- with pendent-lite and future interest @ 9% from the date of

institution till realisation. It was the case of CREONS that it is engaged in the business of advertising designing, architecture and interior decoration

etc. and is developing / fabricating the projects, showrooms, outlets, Exhibition events etc. and is also providing the related services to its various

customers including various multinational companies and corporate House and has established its goodwill and reputation for its expertise services.

GKB is engaged in the business of manufacturing and marketing of lenses and eye care product etc. It is further submitted that in due course of its

business GKB intending to hire services of CREONS for designing, fabrication and providing fittings and fixtures in various outlets / showrooms in

different parts of India, had approached CREONS after negotiations and having agreed the rates, terms and conditions, the GKB agreed to give the

said works to CREONS through its officials, notified its sites as well as sites of its franchisee / dealers for carrying the work of designing and

fabrication of stores and placed various work orders on CREONS.

7. It was the case of CREONS that it provided the ordered services and also provide the fitting, fixtures etc. as per the specifications. As per the

terms of work order, the GKB was also under an obligation to make advance payment in respect of the work order as per the schedule agreed on

completion of work. It is the case of CREONS that GKB did not make the payment of the amount as agreed and paid lesser amount and thus

committed breach of contract and such breach of contract and defaults on the part of GKB had resulted in delay in completion of some of the

projects. On completion of the projects CREONS submitted the bills / invoices for such services rendered, which GKB had duly received but failed to

make the payment within the stipulated time.

8. It was the case of CREONS that GKB duly admitted its liabilities outstanding as on April 28, 2008 amounting to Rs. 29,84,477/- while

acknowledging the same on May 31, 2008. Despite that it had only made part payment of Rs. 20,84,000/-, but failed to make balance amount of Rs.

9,00,477/-.

9. CREONS sent a legal notice dated April 20, 2009 to GKB but in spite of receipt of notice GKB did not make any payment towards the outstanding

amount which resulted in the filing of the suit by CREONS. The case of GKB in the written statement was that the suit is not maintainable. No

amount is due and payable by GKB to CREONS as CREONS had duly and finally settled the issue in terms of letter dated May 30, 2008.

10. Insofar as the amount of Rs. 9,00,477/- deducted from the principal amount was on account of the delayed work done by CREONS which was in

terms of the agreement between the parties enshrined under the work orders issued by GKB to CREONS which provided the last date for completion

of work and handing over the site to GKB and if the work is not completed on the provided date and not handed back to GKB, a penalty of Rs.

10,000/- per day is liable to be deducted from the balance amount payable to CREONS.

11. It was further stated that the additional work at Varanasi, Lucknow and Gurgoan has been remunerated in the full and final settlement bill dated

May 30, 2008. GKB denied that it has admitted its liability of Rs. 29,84,477/- and part payment was made on May 31, 2008. According to GKB,

CREONS is trying to mislead this court by making incorrect statements as the aforesaid payment was made under the full and final settlement of the

dues towards CREONS and the said settlement was acknowledged and accepted by GKB.

12. A replication was filed by CREONS reiterating the facts as stated in the plaint. On the basis of the pleadings, the following three issues were

framed:

Ã¢â‚¬Å“1. Whether the plaintiff is entitled to decree for Rs.30,11,359/- with interest? If so at what rate? OPP

2. Whether the subject matter of this suit stand settled in full and final vide settlement of 30th May 2008? OPD

3. Relief.Ã¢â‚¬â€‹

13. CREONS had produced one witness through Devender Kansal, PW-1 and also relied upon the documents Ex.PW-1/1 to Ex.PW-1/47. Similarly,

the defendant examined Ram Chandra Thakur as DW-1, and has relied upon documents Ex.DW-1/1. On the basis of the evidence adduced, the Trial

Court with regard to the issue Nos.1 and 2, held that CREONS is entitled to an amount of Rs. 9,00,477/- from GKB. Insofar as the claim for balance

amount of Rs. 11,53,090/- it was held that as no work order has been placed on record by CREONS, it is not entitled to the said amount. Accordingly,

the Trial Court granted an amount of Rs. 9,00,477/- in favour of CREONS and against GKB with pendente-lite and future interest @ 9% per annum

from the date of institution of the suit till actual realisation.

14. It is the submission of Mr. S.S. Malhotra, learned counsel appearing for GKB in the appeals that the Trial Court has failed to appreciate that GKB

had already settled all the accounts with CREONS vide settlement deed dated May 30, 2008 Ex.DW-1 and pursuant to the execution of the said

settlement, GKB is not entitled to pay balance amount to CREONS. He stated that after the full and final settlement of the outstanding amount dated

May 30, 2008, CREONS had not made any communication with GKB till April 20, 2009 which ex-facie prove that CREONS settled all its account,

and is not liable to claim any amount from GKB.

15. According to him, Trial Court has failed to appreciate that CREONS has forged settlement dated May 30, 2008, i.e., CREONS had disowned

upper part of hand written portion and filed the suit with the sole intention to cause wrongful gain to itself. Rather, they had admitted the lower portion

of the hand written endorsement on the document of full and final settlement dated May 30, 2008, Ex.D-1. Moreover, no reasoning was given by

CREONS as to why it has filed the full and final settlement without any endorsement. He also stated that Devender Kansal had accepted the cheque

for an amount of Rs. 20,84,000/- in his own hand writing as full and final settlement of the outstanding bills as on April 28, 2008. In this regard, Mr.

Malhotra has drawn my attention to page 155 of the appeal paper book in RFA 33/2022.

16. He states that the confusion is sought to be created by the counsel for CREONS because of the presence of the date Ã¢â‚¬Å“May 31, 2008Ã¢â‚¬ at P-11

(Exb. P-12 in RFA 147/2022). In other words, the plea of Mr. Naresh K. Daksh that even after accepting the amount on May 30, 2008 an

acknowledgment of pending dues as on April 28, 2008 amounting to Rs. 29,84,477/- is totally a misconceived argument and only as an afterthought

having realized that it had acknowledged the settlement at Rs. 20,84,000/-. He states that once a settlement has been entered and the amount is

accepted, there is no dispute which exists for CREONS to file a suit for adjudication. In this regard, he has relied upon the judgment of the Supreme

Court in M/s P.K. Ramaiah and Company v. Chairman & Managing Director, National Thermal Power Corpn., 1994 Supp (3) SCC 126.

17. According to Mr. Malhotra, the claim is nothing but a mala fide attempt on the part of CREONS to enrich itself and such an attempt must not be

allowed by this Court. He has also, for a similar proposition relied on the judgment in the case of Nathani Steels Ltd. v. Associated Constructions,

1995 Supp (3) SCC 324. Similarly, he has relied upon the judgment in the case of Kelkar and Kelkar v. Indian Airlines & Anr., 2003 SCC OnLine

Bom 1090.

18. Even in the appeal of CREONS against the impugned judgment / decree for denial of claim of Rs. 11,53,090/-, it is his submission that the Trial

Court has rightly held in the absence of any work order, CREONS is not entitled to the said amount. He seeks that the appeal being RFA 33/2022 be

allowed and the connected appeal filed by CREONS be dismissed.

19. On the other hand, Mr. Naresh K. Daksh, learned counsel appearing for CREONS would submit that the document at 155 relied upon by Mr.

Malhotra is totally misplaced. According to him, if the parties have settled their inter se dispute at Rs. 20,84,000/- there was no occasion for the

representative of GKB to acknowledge the outstanding dues as Rs. 29,84,477/- on April 28, 2008 and that too on May 31, 2008. In other words, GKB

has acknowledged the complete outstanding dues as Rs. 29,84,477/-, and hence, the payment of Rs. 20,84,000/- was only a part payment by GKB and

they have to make a further payment of Rs. 9,00,477/-.

20. That apart, he has relied upon the document on page 79 of the appeal paper book to contend that the same is quite clear on what has been paid is

only a part payment and writing on the document by CREONS cannot be construed as an acceptance of settlement for the amount of Rs. 20,84,000/-

as full and final settlement. He states that the Trial Court has clearly erred in not granting the interest for the pre suit period @ 24% per annum till

May 30, 2008 and also interest @ 18% per annum on Rs. 9,00,477/- since July 01, 2008 till October 06, 2009, i.e., date of filing of the suit.

21. Insofar as the claim for Rs. 11,53,090/- which has been denied by the Trial Court is concerned, Mr. Naresh K. Daksh has drawn my attention to

the invoices raised by CREONS to contend that the said bills have been raised for designing of showrooms and in fact a copy of the design was also

sent / mailed to GKB but despite that the work of designing the showroom has not been compensated to the extent of Rs. 11,53,090/- commensurating

the invoices.

22. Mr. Malhotra contest the submissions made by Mr. Naresh K. Daksh on interest as well as on the payment for Rs. 11,53,090/- on the ground that

the Trial Court has rightly rejected the interest as demanded by CREONS for the pre suit period as; (i) it is the discretion of the Court and; (ii) it was

the case of GKB that the parties have settled their inter se dispute by entering into a full and final settlement on May 30, 2008 which encompasses the

component of interest, if any that was payable under the invoices. Even, insofar as the claim of Rs. 11,53,090/- is concerned, the Trial Court has

rightly rejected the claim on the ground that no work orders were raised by GKB, as was done earlier. Merely by sending a design through email

would not ipso facto mean that such an order was placed by GKB to CREONS. He seeks the dismissal of the appeal filed by CREONS.

23. In support of his submission, Mr. Naresh K. Daksh has relied upon the following judgments:

(i) Bharat Cooking Coal Ltd. v. M/s Annapurna Construction, 2003 (8) SCC 154,

(ii) M/s S. N. Nandy & Co. v. M/s Nicco Corporation Ltd., 2011 (4) R.A.J. 592 (Delhi),

(iii) Anita Rani v. Ashok Kumar & Ors., 2021 (15) SCALE 448,

(iv) Tower Vision India Pvt. Ltd. v. Procall Pvt. Ltd., Com. Pet. No. 458/2010, decided on August 24, 2012; and

(v) State Bank of Travancore v. Kingston Computers (I) Pvt. Ltd., 2011 (11) SCC 524.

24. Having heard the learned counsel for the parties at the outset, it may be stated here that CREONS had filed a suit for an amount of Rs.

30,11,359/- against GKB. The break-up of the same being Rs. 9,00,477/- (the balance of Rs. 29,84,477/-); Rs. 11,53,090/- (against the bills submitted

on May 30, 2008) and Rs. 4,89,579.59/- (accrued interest due to delayed payment of the bills for different projects).

25. The Trial Court has granted an amount of Rs. 9,00,477/- with interest @ 9% from the date of institution of the suit till actual realization.

26. The issues raised in both the appeals fall in narrow compass, i.e., whether (i) an amount of Rs. 9,00,477/- with interest granted by the Trial Court

is erroneous and (ii) whether the CREONS is entitled to an amount of Rs. 11,53,090/- and pre-suit interest on Rs. 9,00,477/-.

27. In so far as the claim of Rs. 9,00,477/- granted by the Trial Court against GKB is concerned, the plea of Mr. Malhotra are the following:

i. GKB has already settled all the accounts with CREONS vide settlement dated May 30, 2008 (Ex.D-1)

ii. Pursuant to the settlement dated May 30, 2008, CREONS has not made any claim till the communication dated April 20, 2009, which ex-facie

proved that CREONS settled all its accounts.

iii. Mr. Devender Kansal accepted the cheque for an amount of Rs. 20,84,000/- in his own handwriting as full and final settlement of outstanding bills

as of April, 28, 2008.

iv. The reliance placed by Mr. Daksh on the endorsement Ex.P-12 dated May 30, 2008 is only an afterthought.

28. To decide the issue which falls for consideration it is necessary to consider the documents at pages 79 and 155 on which reliance has been placed

by the counsel for the parties.

29. The document at Ex.D-1 (page 155) is with the subject matter Ã¢â‚¬Å“final settlement of outstandingÃ¢â‚¬. The document also depicts the total

outstanding as Rs. 29,84,477/- . But it also says -

Ã¢â‚¬Å“less: Amount deducted towards delayed work

as per the attached details : Rs. 9,00,477.00

Settled for : Rs. 20,84,000.00Ã¢â‚¬â€‹

30. The above narration shows that the parties have settled the issue of outstanding bills for an amount of Rs. 20,84,000/-. Even if the upper part of

the acknowledgment made is denied by CREONS, the lower part (being admitted) does not dispute / contest the typed portion of the document

depicting that an amount of Rs. 9,00,477/- is being deducted for delayed payment and the dispute is being settled for an amount of Rs. 20,84,000/- as

full and final settlement.

31. I must also state that Mr. Daksh in support of his submission has relied upon Ex.P-11 (page 79) of the paper book of RFA 33/2022. The relevant

part I reproduce as under:

32. No doubt the document shows an endorsement was made on May 31, 2008 stating, balance as on April 28, 2008 is Rs. 29,84,477/-, but the

question is whether the acknowledgment of the document being of May 31, 2008, the document Ex.D-1 of May 30, 2008 must not be construed as full

and final settlement for an amount of Rs. 20,84,000/-. On this issue, the Trial Court has stated as under:

Ã¢â‚¬Å“xxxx xxxx xxxx

It is submitted that this claim of the plaintiff is contrary to the established business practices. I have gone through Ex.D-1 and Ex.P-12 and

admittedly both the documents are same as regards typing portion is concerned but on the document of the defendant the endorsement in

blue ink is there which is - Ã¢â‚¬Å“ Received from GKB Optolabs Pvt. Ltd. Above mentions cheques towards full and final settlement upto dateÃ¢â‚¬â€‹

and the date mentioned on this document is 30.05.2008. Plaintiff has denied this endorsement document Ex.D-1. As per this document, an

amount of Rs.9,00,477/- has been deducted by the defendant towards delayed work. Defendant has also placed on record the documents

for the work done by the plaintiff for an amount of Rs.29,84,477/-. No document has been placed on record by the defendant that he has

ever issued any notice for the delayed work to the plaintiff and any notice for the deduction of the amount for the delayed work. Admittedly

no counterclaim has been filed by the defendant.

On the basis of the above discussions and documents defendant has not proved the endorsement in the blue ink on Ex.D-1. The witness

examined by the defendant is even not aware about the fact that who has written this endorsement on the document. Accordingly, I am of

this considered opinion that plaintiff is entitled for an amount of Rs.9,00,477/- from the defendant in the absence of any cogent evidence

filed on behalf of defendant. One of the defence taken by the defendant is that he has mentioned the penalty clause in the work order but

the court is unable to appreciate the fact as to how the defendant has come to the conclusion of deducting the abovesaid amount in the

absence of any documentary evidence filed by the plaintiff. So the findings in issue no. 2 is against the defendant.

xxxx xxxx xxxx

Accordingly, issue no. 1 partly allowed in favour of plaintiff to the extent that he is entitled for an amount of Rs.9,00,477/- (as no evidence

has been led by the defendant about the deduction of this amount on the delayed ground)Ã¢â‚¬â€‹

33. From the above, it is noted, that the Trial Court has granted the amount of Rs. 9,00,477/- by stating that no document has been placed on record by

GKB to show that it had issued notice for the delayed work and further admittedly no counter-claim has been filed by GKB for adjustment of Rs.

9,00,477/-. According to this Court, this finding of the Trial Court is clearly erroneous inasmuch as such a finding is contrary to the contents of Ex.D-1

which clearly mentions Ã¢â‚¬Å“less; amount deducted towards the delayed work as per the attached billsÃ¢â‚¬ which fact / endorsement has not been denied

/ contested by CREONS even while writing / acknowledging the bills at point-A on the document Ex.D-1.

34. I must also state that the writing on Ex.D-1 by CREONS was also made on May 31, 2008, i.e., the same date when the acknowledgment was

made by GKB at Ex.P-11 (page 79) which show both the documents are contemporaneous inasmuch as the GKB acknowledged the balance as on

April 28, 2008 being Rs. 29,84,477/- on May 31, 2008 but, the parties have settled their dispute at Rs. 20,84,000/- (instead of Rs. 29,84,477/-) on May

31, 2008 itself. This is clear from the statement of Devendar Kansal who during his cross-examination he has stated as under:

Ã¢â‚¬Å“After the completion of the whole work under all the invoices the payment to be recovered from the defendant no. 2 was Rs.29 Lacs.

Ex.PW -1/45.

At this stage the witness is confronted with para 1 of Ex.PW -1/45 where the figure of Rs.31.5 Lacs is stated to be recoverable by the

plaintiff from the defendant.

The difference amount of Rs.2.5 Lacs is explained in the attachment to his exhibit. I have not filed the printout of this attachment.

At this stage the witness states that amount recoverable is mentioned on Ex.P-12 as Rs.29,84,477/-.

I had put my signatures on Ex.D-1 probably on 31.05.2008. It is correct that Ex.D-1 bears the date of 30.05.2008. It is correc that only

outstanding amount stood against the defendant namely, / difference of Rs.9,00,477/- after signing of Ex.D-1. I have sent a reminder for

this amount of Rs.9,00,477/- from 31.05.2008 to Ex.20.04.2009. It is Ex.PW-1/45. The amount mentioned in Ex.Pw-13 because of addition

architecture and design charges...Ã¢â‚¬â€‹

(emphasis supplied)

35. The impression that the amount of Rs. 20,84,000/- (and not Rs. 29,84,477/-) was paid on May 30, 2008 is belied by the statement of Devender

Kansal.

36. I agree with the submission of Mr. Malhotra that having accepted Rs. 20,84,000/- as full and final settlement, CREONS has not followed up with

GKB for the balance payment for more than ten months till April 20, 2009. Further, I have seen the legal notice dated April 20, 2009, wherein the

CREONS has not contested the contents of Ex.D-1 about the fact that the dispute has been settled for Rs. 20,84,000/-. So it follows, the Trial Court

has clearly erred in not considering the facts in the manner done by this Court above. The conclusion arrived at by the Trial Court is liable to be set

aside.

37. Insofar as the claim of Rs. 11,53,090/- of CREONS which has been rejected by the Trial Court is concerned, the Court while rejecting the claim

has stated as under:

Ã¢â‚¬Å“xxxx xxxxx xxxxx

As regards the payment of outstanding amount in respect of designing and architecture work for various sites as claimed by the plaintiff to

the tune of Rs. l 1,53,090/-, admittedly no work order has been placed on record by the plaintiff , plaintiff has not proved that this work was

done at the instance of the defendant so in the absence of any valid work order , plaintiff is not entitled for this amount .

Accordingly , issue no. 1 partly allowed in favour of plaintiff to the extent that he is entitled for an amount of Rs. 9 ,00,477/- (as no

evidence has been led by the defendant about the deduction of this amount on the delayed ground).Ã¢â‚¬â€‹

38. The submission of Mr. Daksh in support of the claim was by relying on the invoices raised by the CREONS for designing the showrooms and the

fact that copy of design was also sent / e-mailed to GKB. In support of his submission, Mr. Daksh has relied upon Ex.PW1/28 to PW1/42. The

Ex.PW1/28 to Ex.PW1/34 are the e-mails written by CREONS to GKB to contend that the designs have been sent / emailed to GKB and approved

by it and the balance exhibits, Ex.PW1/35 to Ex.PW1/42, being the invoices.

39. The stand of Mr. Malhotra and of GKB was that there was no work order issued to the CREONS for designing the showrooms for which the

invoices were raised.

40. Suffice to state during hearing, Mr. Daksh could not contest the conclusion of the Trial Court that no order was placed by GKB for designing the

showrooms as was done for earlier work. Merely because CREONS has sent/emailed the design would not ipso facto mean that the order was placed

for designing the showrooms for which the GKB need to pay as per the invoices raised by CREONS.

41. I agree with the conclusion arrived at by the Trial Court that CREONS is not entitled to the amount of Rs. 11,53,090/-.

42. Coming to the Judgments relied upon by both the counsel for the parties, Mr. Malhotra has relied upon the Judgment in the cases of M/s. P.K.

Ramaiah and Company (supra); Nathani Steels Ltd. (supra) and Kelkar and Kelkar (supra). The said Judgments are in the context, when one party

has received in full and final settlement certain amount, even if under duress, such a dispute is not arbitrable.

43. Suffice to state in this case, the issue raised was whether the parties have actually entered into full and final settlement and the amount of Rs.

20,84,000/- was given in furtherance to that settlement. Though the Trial Court has answered the issue in the negative, this Court is of the view that

the parties have entered into a full and final settlement of the outstanding amount. The claim in that regard of CREONS was not tenable. To that

extent, the Judgments are clearly applicable.

44. I must state here that Mr. Daksh has relied upon the Judgment in the case of Bharat Coking Coal Ltd. (supra). In the said Judgment the Court

was concerned with an issue, whether, a party accepting the final bill can raise a claim? Negating the plea, it was held by the Supreme Court that

accepting the final bill would not mean that it is not entitled to raise any claim. The Supreme Court further held that it was not the case of the appellant

that while accepting the final bill, the respondent has unequivocally stated that he would not raise any further claim. The said Judgment has no

applicability in the facts of this case, inasmuch there was a full and final settlement between the parties on May 31, 2008 and CREONS had actually

received an amount of Rs. 20,84,000/- in the month of June, 2018 without demur. A claim thereof shall not be maintainable on the balance amount.

The same having been granted by the Trial Court, it is clearly erroneous.

45. In so far as the reliance placed by Mr Daksh on the Judgment in the case of Anita Rani (supra) in support of his submission by relying upon

Section 70 of the Indian Contract Act, the said Section provides that once a party has done some work or delivered anything to the other person, not

being done gratuitously, the other party is bound to make payment / compensation to the first party for such work. I am afraid, the said section has no

applicability in the facts of this case for the reason, (i) that it has not prepared the design on the asking of GKB, (ii) nor GKB has placed any order,

(iii) it is also not the case of CREONS that those designs have been used by GKB for their showrooms and as such GKB has to pay for those designs,

for which invoices have been raised.

46. For similar reasons, the Judgment in the case of V.R. Subramanvam vs B. Thayappa & Ors ., AIR 1966 SC 1034 has no applicability. Mr. Daksh

has relied upon the Judgment in the case of State Bank of Travancore (supra) to contend that the person who has filed the appeal had no proper

authority to verify and institute the appeal. Suffice to state, the appeal has been filed by Ram Chandra Thakur as is clear from the resolution dated

September 22, 2016, filed on record authorizing Ram Chandra Thakur to sign, verify, file and do all acts on behalf of GKB. Hence, this plea of Mr.

Daksh is liable to be rejected.

47. In view of my above discussion I allow the appeal being RFA 33/2022 and set aside the Judgment / Decree dated February 18, 2021 passed in Suit

being CS No.11287/2016 and further dismiss the appeal being RFA 147/2022. No costs. Decree sheet be drawn accordingly.

CM APPL. 5370/2022 in RFA 33/2022

As I have decided the appeals, this application has become infructuous, and is dismissed as such.