

(2024) 12 GUJ CK 0036

Gujarat High Court

Case No: First Appeal No. 4869 of 2010

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APPELLANT

Vs

Vs Bharat Sanchar Nigam
Limited

RESPONDENT

Date of Decision: Dec. 16, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Section 80

Hon'ble Judges: Sangeeta K. Vishen, J; Sanjeev J.Thaker, J

Bench: Division Bench

Advocate: Yuvraj G Thakore, Manish J Patel

Final Decision: Allowed

Judgement

'''

Sanjeev J.Thaker, J",,,

1.1 By way of the captioned Appeal the appellant herein â€" who is the original plaintiff before the trial Court, has assailed the judgment and decree",,,

dated 27.09.2010 of the learned Auxiliary Chamber Judge, Court No.9, City Civil Court, Ahmedabad passed in Civil Suit No.2339 of 2007 whereby the",,,

trial Court has dismissed the suit filed by the plaintiff for recovery of Rs.28,64,110/- with interest @ 12% p.a. from the date of the suit till realization",,,

from the defendant â€" respondent herein.,,,

1.2 For the sake of convenience, the parties are hereby referred to as per their original status in the suit filed before the trial Court.",,,

2. The brief facts, in nutshell, are as under:",,,

2.1 The plaintiff had filed Civil Suit No.2339 of 2007 before the City Civil Court at Ahmedabad against the defendant and by judgment and decree,,,

dated 27.09.2010, learned Auxiliary Chamber Judge, Court No.9 had dismissed the suit.",,,

2.2 The issue involved in the suit was that the plaintiff filed suit for recovery of Rs.28,64,110/- with interest @ 12% p.a. from the date of the suit till",,,

realization from the defendant and it was the case of the plaintiff that pursuant to the Public Advertisement of the defendant in daily news-paper i.e.,,,

â€˜Divya Bhaskarâ€™ dated 15.02.2006 and after due procedure the plaintiff was invited and thereafter discussion and negotiation took place and,,,

accordingly meeting was held on 05.05.2006. Before the issuance of Purchase Order, advance Purchase Order was issued dated 23.06.2006. The unit",,,

price of the items was agreed to be Rs.1,46,72,500/- and it was specifically mentioned that total composite price are inclusive of all levies and taxes.",,,

After the Advance Purchase Order, the Final Purchase Order was sent by the defendant on 31.07.2006 wherein it has been specifically stated",,,

regarding the price and payment. The said final Purchase Order has been produced vide Exh.31 before the trial Court.,,,

2.3 The defendant has filed written statement at Exh.25 contending that no notice under Section 80 of the Code of Civil Procedure, 1908 (herein after",,,

referred to as â€˜the Code, 1908â€™) has been served on the defendant and, therefore, the suit is not maintainable. In the written statement, the",,,

defendant has also taken a contention that bid and the tender document contain terms and conditions and after the plaintiff was called for negotiation,",,,

the plaintiff was found to be eligible as per financial bid annexed to the tender document. It is the case of the defendant in the written statement that,,,

plaintiff had to abide by the tender and Bid document and neither of the same provides that Octroi and VAT were to be paid by the defendant.,,,

2.4 It is the case of the defendant that though they received communication on 05.05.2006, the said letter can never be considered to be a concluded",,,

document as both the parties had not put up signatures to the said communication. In the written statement, defendant vide Exh.25 had taken the",,,

contention that the plaintiff has raised false bills contrary to the agreed terms and conditions and hence defendant is not liable to make any excess,,,

payment to the plaintiff.,,,

2.5 The issues are framed by the trial Court vide Exh.26, which read as under:" ,,,

1. Whether the plaintiff proves that they are entitled to the amount as prayed for?,,,

2. Whether the plaintiff is entitled to recover the amount which is paid towards the Octroi and VAT ?,,,

3. Whether the plaintiff is entitled to claim interest at the rate of 12% on the suit amount from the defendant ?,,,

4. Whether the defendants prove that VAT and Octroi are to be paid by the plaintiff ?,,,

5. Whether the plaintiff is entitled to the reliefs as sought for ?,,,

6. What order and decree?,,,

3. The plaintiff had examined one Kiritbhai Faldubhai at Exh.41, who is the Managing Director of plaintiff company. The defendant had examined" ,,,

Mr.C.A.Patel, Assistant General Manager (Marketing) in defendant company at Exh.53 and one Navinchandra Hiralal Bhavsar at Exh.56 and it is the" ,,,

case of the defendant that the plaintiff is not entitled for any amount much less the amount claimed in the plaint.,,,

4. The learned trial Court, after hearing both the parties and perusing the documentary evidence on record, vide judgment and decree dated" ,,,

27.09.2010, dismissed the suit. Hence, the plaintiff filed the captioned appeal." ,,,

5. Heard Mr.Yuvraj Thakore learned advocate, for the plaintiff and Mr.Manish Patel learned advocate, for the respondent herein " original" ,,,

defendant.,,,

5.1 Mr.Thakore, learned advocate for the plaintiff submitted that the trial Court has erred in dismissing the suit. The Purchase Order is a contract and" ,,,

it has been specifically mentioned in the Purchase Order produced vide Exh.31 that the amount decided is inclusive of all except VAT and Octroi.,,,

Besides, there was specific condition that the amount of VAT and Octroi will be paid extra as per actual on production of documentary evidence." ,,,

When the tender was issued VAT was not in force. Therefore, it is the case of the plaintiff that the said amount of VAT and Octroi will have to be" ,,,

paid by the defendant.,,,

5.2 Learned advocate for the plaintiff has drawn our attention to the documentary evidence produced vide Exhs.60, 61 and 62, which are the invoices",,,
that have been sent by the plaintiff to the defendant which also includes the VAT charges @ 12.5% and Octroi expenses. Therefore, the plaintiff has",,,
generated the invoices with respect to VAT charges and Octroi expenses that have been incurred by the plaintiff vide Exhs.46, 47 and 48 which are",,,
the receipts of the payment, which have been paid by the plaintiff to the concerned department for the payment of VAT and Octroi. There is no",,,
dispute that the said amount has not been paid by the plaintiff and the only dispute that the defendant has taken is that the same is not part of tender,,,
document.,,,

5.3 Learned advocate for the plaintiff has submitted that having accepted the Purchase Order and it having been issued by the defendant, all the terms",,,
of the Purchase Order specifically mention that the amount of VAT will be paid by the defendant extra on production of documents and the plaintiff,,,
having paid the said amount, the defendant can not deny the said fact and back out from the said understanding.",,,

5.4 Learned advocate for the plaintiff has relied on the following judgments:-,,,

(i) Bharat Sanchar Nigam Limited vs. Telephone Cables Limited reported in (2010) 5 SCC 213 and,,,

(ii) a decision of the Division Bench in the case of IMC Limited vs. Board of Trustees of Deendayal Port Trust rendered in Letters Patent Appeal,,,

No. 1059 of 2018.,,,

Exhs.,Invoice No.,Date,Amount in Rs.

60,12134,14.10.2006,"38,67,765/

61,13362,11.11.2006,"34,87,103/-

62,15102,11.12.2006,"74,90,344/-

„Total,"1,48,45,212/-

Price & Payment,"The payment shall be at the approved rate of Rs.1240/- single side & for

Double side Rs.1360/- per Double side inclusive of all except vat &

octroi. Cost of Single Side Board Rs.49,60,000/- (Rupees Forty nine lac

sixty thousand only) & Double side Board Rs.81,60,000/- (Rupees Eighty one lac sixty thousand only)",,,

â€œ12. â€¡. â€¡ Bid documents did not constitute a contract, or an agreement or an agreement to enter into a contract. It was merely an",,,

invitation to make an offer. It informed the prospective bidders, how they should make their bids; how the bids would be processed by",,,

BSNL; how contracts would be entered by placing purchase orders; and what terms would govern the contracts, if purchase orders were",,,

placed. Some sections of the bid documents governed the tender process which preceded the placing of purchase orders. Some sections",,,

contained the forms in which the bid should be made by the bidder. Other sections of bid documents contained provisions which would",,,

govern the contracts, when purchase orders were placed by BSNL by accepting the bid. For example, Section I (Notice Inviting Tenders)",,,

and Section II (Instructions to bidders) had nothing to do with the performance of the contract. They relate to the pre-contract process of",,,

bidding, that is who would be eligible to make bids and how the bids should be made. On the other hand, Section III had nothing to do with",,,

the bidding process or selection of suppliers, but contained provisions which would govern the performance that is the terms and conditions",,,

of the contract â€" if and when contracts were entered by placing purchase orders. The arbitration Clause (Clause 20) is a part of Section",,,

III of the Bid documents.â€",,,

8.11 It is well settled that the bid documents do not constitute a contract or an agreement or an agreement to enter into a contract. It is merely the",,,

invitation to make an offer. Contracts are entered into by placing purchase order governing the terms of the contract. Therefore, the purchase order is",,,

a contract between the parties and binding.,,,

8.12 The trial Court has only taken into consideration the bid document produced at Exh.49 which does not mention about payment of VAT and Octroi",,,

and therefore arrived at a finding that the defendant is not liable to pay the said amount. However the trial Court failed to consider the Purchase Order",,,

produced vide Exh.31 which clearly state that the amount of Octroi / VAT will be paid extra and that is excluded from the amount that has to be paid.,,,

The trial Court has erroneously held that there is no document produced on evidence to show that the plaintiff has paid the VAT charges but as,,,

against that Exhs.46, 47 and 48 are the receipts which are on record before the trial Court wherein it has been specifically stated that the amount of",,,

VAT has been paid by the plaintiff. Moreover, the defendant has also not denied the letter dated 08.02.2007 produced vide Exh.33 whereby the",,,

defendant was requested by the plaintiff to pay the said amount of VAT and details of invoices and receipts were also mentioned in the said letter.,,,

The defendant has neither replied to the said letter nor there is any contention coming from the respondent that they have not received any such letter,,,

sent by the plaintiff more particularly produced vide Exh.33.,,,

8.13 The trial Court relied upon the evidence of witness Mr.Navinchandra Hiralal Bhavsar, who has been examined vide Exh.56 who has",,,

categorically stated and admitted that the plaintiff has sent the bill during the period of October to December, 2006 and, therefore, the question that",,,

defendant was not aware of the payment having been made by the plaintiff to the concerned department for VAT does not arise. The trial Court has,,,

dismissed the suit on the ground that the plaintiff has failed to prove that he has produced the receipts regarding VAT paid by him to the defendant,,,

authority wherein the trial Court, in judgment itself, has stated that witness Navinchandra Hiralal Bhavsar, in his evidence at Exh.56, has admitted",,,

before the trial Court that the plaintiff has sent the bill during period of October-December, 2006. Therefore, the question of plaintiff having failed to",,,

prove the receipts regarding VAT paid by him to the authority does not arise. Moreover, the trial Court has come to erroneous conclusion that the",,,

defendant has succeeded to prove that the VAT and Octroi are to be paid by the appellant-plaintiff. If that was the view taken by the trial Court then,,,

there was no question of coming to the conclusion that the plaintiff-appellant herein has failed to prove that he has produced receipts regarding VAT,,,

paid by him to the defendant authority.,,,

8.14 Therefore, it is clearly established that the plaintiff has paid an amount of Rs.28,64,110/- towards VAT and therefore, is entitled to the said",,,

amount from the defendants as per the purchase order. Looking to the totality of the facts, oral evidence and documents produced on record, more",,,

particularly the Purchase Order at Exh.31, the receipts produced at Exhs.46 to 48 and the letter dated 08.02.2007 at Exh.33 written by the plaintiff, it",,,

clearly appears that the trial Court has erroneously decided all the issues against the plaintiff.,,,

9. For the discussion and reasons recorded above, the present appeal succeeds and is accordingly allowed. The judgment and decree dated 27.09.2010",,,

of the learned Auxiliary Chamber Judge, Court No.9, City Civil Court, Ahmedabad passed in Civil Suit No.2339 of 2007 is hereby quashed and set",,,

aside. The defendantâ€" respondent is hereby directed to pay an amount of Rs.28,64,110/-to the plaintiffâ€"appellant herein with interest @ 6% p.a.",,,

from the date of filing of the present appeal till its realisation. Record and Proceedings be sent back to the concerned trial Court. No order as to costs.,,,

Decree be drawn accordingly.,,,