

(2012) 03 DEL CK 0466

Delhi High Court

Case No: CS (OS) 1315 of 2009

C.B. Richards Ellis South Asia
Private Ltd.

APPELLANT

Vs

Realtech Projects Private Ltd.

RESPONDENT

Date of Decision: March 13, 2012**Acts Referred:**

- Evidence Act, 1872 - Section 65B

Hon'ble Judges: G.S. Sistani, J**Bench:** Single Bench**Advocate:** Pratik Malik and Mr. Abhinav Tandon, for the Appellant;

Judgement

G.S. Sistani, J.

Plaintiff has filed the present suit for recovery of Rs. 29,18,666/- against the defendant. Despite service, defendant did not file their written statement and vide order dated 22.01.2010 defendant was proceeded ex parte. Plaintiff has filed the affidavit by way of evidence of Mr. Rajat Gupta, Executive Director of the plaintiff company, which is exhibited as Ex.PW-1. PW-1 has deposed that he is authorized by Board resolution, dated 30.06.2009 to sign, verify, and file the present suit on behalf of the Plaintiff Company, certified true copy of the Board resolution dated 30.06.2009 is on record and same is exhibited as Ex-PW-1/1.

2. PW-1 has deposed that the plaintiff is a company duly incorporated and registered under the Companies Act, 1956, and inter-alia involved in the business related to real estate; and plaintiff company enjoys impeccable and enviable reputation and good will in its field. Certified copy of the Certificate of Incorporation of the plaintiff company is exhibited as Ex.PW-1/2. It has also been deposed that the defendant company is in the same business and runs its business from the address mentioned in the plaint.

3. Mr. Rajat Gupta has deposed that in the year 2006, the defendant company was looking for a prospective lessee for its under construction property namely "Copia Corporate Suites" commercial space No 201 to 207, entire 2nd Floor, situated at Plot No. 09, Non-Hierarchical Commercial Centre, Mathura Road, Jasola", and thus the plaintiff introduced a company namely "Target Corporation" as prospective lessee for the aforesaid property. The defendant acknowledging and appreciating the aforesaid services provided by the plaintiff agreed and promised to pay the plaintiff a sum equivalent to 2 months monthly lease rental excluding the service tax and other tax as applicable, as service fee/commission. It is also deposed that the defendant company in this respect also wrote to the plaintiff a letter dated 23rd November, 2006; and thereafter plaintiff entered into an agreement to lease in respect of the said premises with said company namely "Target Corporation", which agreement to lease culminated into a lease deed later on. The letter dated 23rd November, 2006 is on record and the same is exhibited as Ex.PW-1/3. The same has been signed by Sh. Vikram Kohli, on behalf of the Plaintiff, and accepted by Sh. Pankaj Dayal, Director of the defendant.

4. PW-1 has also deposed that the plaintiff company thereafter claimed service fee equivalent to 2 month's monthly lease rental as agreed to be paid by the defendant, however to the anguish of the plaintiff payment of the aforesaid fees was avoided by the defendant on one pretext or other. Plaintiff Company to its best effort persuaded the defendant for the payment of the outstanding dues however each and every attempt of the plaintiff went in vain; and after constant persuasion, the defendant in the month of September, 2008 conveyed to the plaintiff that it had sold the said property to one Mr. Vijay Kumar Mishra & Ors at 2, B.H.S, Allahapur, Allahabad, India and the plaintiff company was told to raise an invoice in their name towards part of the outstanding dues. Plaintiff was further informed that the defendant would endeavor to pay the outstanding after the invoice was raised upon said Mr. Vijay Kumar Mishra. On the aforesaid request of the defendant, the Plaintiff raised an invoice dated 22nd September, 2008 in the name of said Mr. Vijay Kumar Mishra and Others of Rs. 71,73,871/- (Rupees seventy one lacs seventy three thousand eight hundred seventy one only) towards part of the total outstanding service fee including the application taxes and handed over the said invoice to the defendant as requested by it. Office copy of the said invoice is on record and is exhibited as Ex.PW-1/4.

5. As per this witness, even after the aforesaid exercise, the payment was not made and the plaintiff became anxious and thus it constantly persuaded the defendant for the payment of the said dues. This witness has also deposed that the constant persuasion of the plaintiff bore result and a meeting was held on 12th November, 2008 between the parties. The aforesaid meeting was attended by him on behalf of the plaintiff, Mr. Rajeev Behl and Mr. Yogesh Gupta on behalf of the defendant company. In the aforesaid meeting it was agreed that the plaintiff shall only claim a sum equivalent to one month's lease rental which is Rs. 47,90,828/- (Rupees forty

seven lacs ninety thousand eight hundred twenty eight only) towards the said service fee. It is deposed that the defendant confirmed in the presence of this witness that a sum of Rs. 4,96,040/- (Rupees four lacs ninety six thousand forty only) out of the amount Rs. 20,00,000/- paid earlier by the defendant was paid towards the aforesaid service fee.

6. PW-1 has also deposed that in his presence the defendant in the aforesaid meeting further confirmed that as on that date a sum of Rs. 42,63,820/- (Rupees forty two lacs sixty three thousand eight hundred twenty only) was the remaining outstanding amount to be payable by the defendant to the plaintiff, which amount was agreed to be paid by defendant as per the following payment schedule:

Amount	Time of Payment
Rs. 15,00,000/-	December, 2008
Rs. 15,00,000/-	January, 2009
Rs. 12, 63,820/-	February, 2009
Total : Rs. 42,63,820/-	

7. PW-1 has also deposed that after the said meeting he sent to the defendant a confirmation mail dated November, 18, 2008; and further he on 20th November, 2008 wrote a mail to the defendant whereby it was conveyed to the defendant that the plaintiff is going to raise an invoice for the outstanding amount as agreed to be paid. It is pertinent to mention here that in response to the aforesaid mail the plaintiff received a mail on the even date from the defendant confirming the fee. The said e-mails dated th 20November, 2008 duly certified u/s 65 B of the Indian Evidence Act are exhibited as Ex.PW-1/5 and Ex.PW-1/6 respectively. It th is also deposed that the plaintiff thereafter raised an invoice dated 28November, 2008, upon defendant of the amount of Rs. 47,90,828/- (Rupees forty seven lacs ninety thousand eight hundred twenty eight only). Office copy of the aforesaid invoice has been placed on record and the same is exhibited as Ex.PW-1/7.

8. Mr.Rajat Gupta has deposed that in the month of December, 2008, the th plaintiff received a cheque dated 27December, 2008, for an amount of Rs. 11,00,000/- (Rupees eleven lacs only) towards the part payment of the said agreed service fee, however as the said amount was less than the amount which was agreed to be paid in the month of December, as per schedule-I, on behalf of the plaintiff, wrote an email dated 22December, 2008, to the defendant whereby the receipt of the said cheque was acknowledged and further the plaintiff agitated non-release of the balance sum of Rs. 4,00,000/- of the first installment. True print out of the e-mail nd dated 22December, 2008 duly certified u/s 65 B of the Indian Evidence Act and the same are exhibited as Ex.PW-1/8.

9. PW-1 has also deposed that despite persuasion from the plaintiff, the defendant did not make the payments as per the agreed schedule and it was only in the month of February, 2009, the defendant in further part th payment issued a cheque dated 13February, 2009 for an amount of 5,32,020/- (Rupees five lacs thirty two thousand twenty only). The th aforesaid amount was acknowledged by the plaintiff vide mail dated 12February, 2009. It is also deposed that vide the aforesaid mail PW-1, on behalf of the plaintiff, further requested the defendant to make the balance th payment. The true print out of the email dated 12February, 2009 duly certified u/s 65 B of the Indian Evidence Act is exhibited as Ex.PW-1/9.

10. Mr.Rajat Gupta has deposed that after the aforesaid part payment no further payment of the outstanding dues was made by the defendant and th thus he, on behalf of the plaintiff, was forced to write a mail dated 9March, 2009, whereby the defendant was called upon to expedite the payment of the balance sum of Rs. 26,31,800/- (Rupees twenty six lacs CS (OS) 1315/2009Page 5 of 9 thirty one thousand eight hundred only) prior to 31st May, 2009, which th being the closing day of accounts. The true print out of the email dated 9March, 2009 duly certified u/s 65 B of the Indian Evidence Act is exhibited as Ex.PW-1/10.

11. PW-1 has further deposed that he on behalf of the plaintiff, thereafter th th wrote repeated emails dated 19March 2009 and 24March 2009, to the defendant requesting the payment of the remaining outstanding sum; and th th he also wrote to the defendant a letter dated 19March 2009 and 24March 2009, whereby the defendant was called upon the clear the outstanding dues till 31st March, 2009. Vide the said letter it was also conveyed to the defendant that if the said amount is not paid as requested the plaintiff would be forced to initiate legal action. The true print out of th th the emails dated 19March, 2009 and 24March, 2009 duly certified u/s 65 B of the Indian Evidence Act are exhibited as Ex.PW th 1/11 and Ex.PW-1/12 respectively. The office copy of the letter dated 19 th March, 2009 and 24March 2009 written by PW-1 are exhibited as Ex.PW-1/13 and Ex.PW-1/14 respectively.

12. It has also been deposed by this witness that even thereafter as the aforesaid outstanding dues was not paid by the defendant, the plaintiff was constrained issue a legal notice dated 20.05.2009, whereby the defendant was called upon to pay to the plaintiff the remaining principle outstanding amount of Rs. 26,31,800/- (Rupees twenty six lacs thirty one thousand eight hundred only). Defendant was further called upon to pay interest @ 18 % per annum on the principle amount from the date of the compromise i.e. 12.11.2008 till the date of the issuance of the said notice which comes to a sum of Rs. 2,47,389/- (Rupees two lacs forty seven thousand three hundred eighty nine only) and further interest from the date of the said notice till the payment of the principle amount. It is also deposed that vide the said notice the defendant was called upon the pay the said amount within a period of 15 days from the receipt of the said notice; and despite receipt of the said notice the defendant has not come forward to pay the claimed amount neither said notice has been

replied by the defendant. The office copy of the legal notices are collectively exhibited as Ex.PW 1/15. The postal receipts and the duly received AD card are exhibited as Ex.PW-1/16 and Ex.PW-1/17.

13. Mr.Rajat Gupta has also deposed that the aforesaid balance principle sum of Rs. 26,31,800/- (Rupees twenty six lacs thirty one thousand eight hundred only) along with interest is a legally payable due to the plaintiff by the defendant, which obligation the defendant has miserably failed to discharge. The plaintiff in good faith agreed to receive service fee equivalent to one month lease rental instead of two month"s as initially agreed. The plaintiff further in good faith agreed to the aforesaid payment schedule; however the defendant in flagrant discharge to its contractual obligation have failed to pay the remaining balance outstanding amount, despite repeated request from the plaintiff.

14. PW-1 has also deposed that the correspondence in the form of emails, true print outs of which have been placed on record, have been taken from the email id belonging to the plaintiff, and the same are being used for correspondence with clients of the plaintiff company in the normal course of business. It is also deposed that a certificate/affidavit u/s 65 B of the Indian Evidence Act 1872 to this effect, has been sworn by him. The said affidavit is on record and the same is exhibited as Ex.PW-1/18.

15. PW-1 has also deposed that the conduct the defendant is not only unwarranted, but also unlawful, and illegal. It is also deposed that the defendant has developed malafide intentions, and in breach of its contractual duties avoiding payment of the aforesaid outstanding amount. The aforesaid conduct of the defendant has compelled the plaintiff to file the present suit.

16. I have heard counsel for the plaintiff and perused the plaint and the accompanying documents and the evidence led by the plaintiff. The evidence of the plaintiff remained unrebutted. After issuance of summons on 22.07.2009, the defendant entered appearance on 22.10.2009. Thereafter vide order dated 05.04.2010 the defendant was proceeded ex parte. The affidavit by way of evidence together with documents placed on record, including invoice raised by the plaintiff, dated 22.09.2008, establish that defendant had agreed to pay the plaintiff his fee equivalent to two months? monthly lease rental. The e-mail placed on record establishes that a meeting was held between the parties which was attended to by Mr.Rajat Gupta (PW-1), and Mr. Rajeev Behl and Mr.Yogesh Gupta on behalf of the defendant company. In this meeting it was agreed that the plaintiff would claim only one month"s lease rental towards the services rendered amounting to Rs. 47,90,828/- . PW-1 has also deposed that after the said meeting, he sent to the defendant a confirmation mail dated 18.11.2008 and 20.11.2008, copies of which have been exhibited as Ex.PW-1/5 and Ex.PW-1/6. Pursuant to this meeting, the plaintiff also raised a revise invoice, Ex.PW-1/7 and the defendants also released part payment to the plaintiff, in the sum of Rs. 11.0 lacs and Rs. 5,32,020/- . Copies of the

subsequent e-mail further establish that the defendants did not pay the balance amount to the plaintiff, despite the repeated requests. The plaintiff has also placed on record a copy of the legal notice and the postal receipts Ex.PW-1/16 and Ex.PW-1/17. Having regard to the evidence and the documents placed on record, I am satisfied that the plaintiff is entitled to a decree in the sum of Rs. 29,18,666/- towards the principle outstanding amount along with interest @ 8% from the date of compromise reached i.e. on 12.11.2008 till the date of realization. Decree-sheet be drawn up accordingly.