

**The Executive Engineer and ors. Vs. Machinery Parts Corporation**

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**SooperKanoon Citation :** [sooperkanoon.com/714498](http://sooperkanoon.com/714498)

**Court :** Delhi

**Decided On :** Apr-27-2006

**Reported in :** 129(2006)DLT629; 2006(90)DRJ379

**Judge :** Swatanter Kumar and; S.L. Bhayana, JJ.

**Acts :** Code of Civil Procedure (CPC) - Sections 151 - Order 17, Rules 1, 2 and 3 - Order 18, Rule 2

**Appeal No. :** RFA No. 632/2000

**Appellant :** The Executive Engineer and ors.

**Respondent :** Machinery Parts Corporation

**Advocate for Def. :** Anil Mittal, Adv.

**Advocate for Pet/Ap. :** B.S. Mor, Adv

**Disposition :** Appeal dismissed

**Judgement :**

**Swatanter Kumar, J.**

1. This Regular First Appeal is directed against the judgment and decree dated 8.2.2001 passed by the learned Trial Court vide which the suit of the plaintiff was decreed for a sum of Rs. 1,49,805/- with proportionate costs against the

defendants. The plaintiff, Sh. Mridul Khemka, Proprietor of M/s. Machinery Parts Corporation filed the suit on the basis that they were dealing with earth moving machinery, diesel engines, diesel generators and also took repairing and reconditioning of the said equipments, the Executive Engineer of HUDA, Division-III, Faridabad (defendant No. 1) under the administrative control of defendant No. 2 keeps various such equipments under their control and responsibility, and that the defendant No. 1, for repairing of the bulldozer make DEMIL model No. D-50-A 15 which was defective, sought the assistance of the plaintiff which included putting up of parts as may be necessary to make the said bulldozer work-worthy. The estimate was submitted vide letter dated 6.2.1993 which was approved for work order vide reference No. 2503 dated 25.2.1993 for a total sum of Rs. 85,982/-. In terms of the pay order the extra payment for extra parts consumed during repairs, which were to cover the offer made by the plaintiff on 20.10.1993 for an additional assembly, were to be paid. In terms of the said order the plaintiff supplied the goods and a bill dated 5.3.1993 amounting to Rs. 1,25,787/- was submitted to the defendants who made an adhoc payment of Rs. 40,000/- and agreed to pay the balance amount shortly. The defendants instead of releasing the balance payment raised objections and demanded return of worn out parts, which were returned and the plaintiff then made a request to the defendants to release the balance money. Having failed to recover the said amount despite their letter dated 27.2.1997, the plaintiff filed the present suit for recovery of the said amount with interest @ 24% per annum.

2. This suit was contested by the defendants on various grounds contending inter alias that the Court had no territorial jurisdiction to entertain and decide the present suit. It was stated that the plaintiff was guilty of carelessness and negligence in performing of its duties. Bulldozer had not been repaired properly and vide intimation dated 15.4.1993 the defendants intimated the plaintiff to correct the defects but no steps were taken by the plaintiff to correct the same. Relying upon Clause 7, it was stated that the plaintiff was not entitled to replace the additional parts and in fact, the plaintiff supplied old parts to the defendants after a lapse of two years. According to the defendants, the total cost of the repair done was only Rs. 39,366/-, and an advance payment of Rs. 40,000/- was already made by the defendants to the plaintiff at Faridabad. Thus, nothing was due by the

defendants to the plaintiff.

3. On the pleadings of the parties, the Trial Court vide its order dated 6.8.1998 framed the following issues:

1. Whether this Court has got no territorial jurisdiction to try and entertain the present suit? OPD

2. Whether this suit is signed, verified and filed by a duly authorised person? OPP

3. Whether the suit is barred by time?

4. Whether the plaintiff is entitled to relief of recovery of the suit amount?

5. Whether the plaintiff is entitled to recover the interest, if so, at what rate, for what period and to what amount?

6. Relief.

4. These material issues were answered in favor of the plaintiff and against the defendants and a decree was passed by the learned Trial Court. The main issue was issue No. 4, stating whether the plaintiff was entitled to recover the amounts. Issue No. 4 being the material issue was answered by the Trial Court as follows:

In his cross examination PW1, has deposed that he had completed the work within 10/15 days as per the contract. He also admitted that he had undertaken that repaired parts will be again repaired within 500 hours of guarantee period, if it fails, free of cost. He deposed that in the present case, sanction was not required from the higher authorities for additional use of spare parts. He denied the suggestion that required parts were not consumed in repairs of the bull-dozer. He also denied the suggestion that repair was not done properly. He admitted that Ex.P1/D1 to Ex.P1/D6 were written by the plaintiff. He also admitted having received letter Ex.P1/D7 to Ex.P1/D11 from the defendants. He denied the suggestion that old worn out parts were not returned to the defendant. He deposed that the old parts were returned to the defendant within 2 years. He denied the suggestion that he did not care to remove the defects. Rather he has deposed that he has seen the bull-dozer in working condition.

There is no evidence on behalf of the defendant to rebut or demolish the case of the plaintiff. It was for the defendant to prove that the work order was placed with the plaintiff; that the bull dozer did not work for 500 hours or that the repairs was not proper or that the spare parts were never replaced in the bull-dozer. It was again for the defendant to satisfy the court that the additional sanction could be made only by the competent authority.

Under the facts and circumstances of the case and in view of the admissions of the defendants on the record and the admitted documents as discussed above, I am of the view that plaintiff has been able to satisfy the court that it is entitled to a sum of Rs. 85,788/- being the balance amount against three bills dated 5.3.1993 for a total sum of Rs. 1,25,787.70, after adjusting a sum of Rs. 40,000/- already paid to the plaintiff ... (illegible), which was raised against the plaintiff by the defendants. This issue is accordingly decided in favor of the plaintiff and against the defendants.

5. The correctness of the above findings of the Court are questioned by the Appellants in the present appeal on the ground that the Court has ignored the objection of the appellant in regard to territorial jurisdiction of the Court as the office of the defendant was situated at Faridabad and Panchkula in the State of Haryana and cause of action had arisen at Faridabad and as such the Courts at Delhi had no territorial jurisdiction. It is also the contention of the appellants that the bulldozer did not work for 500 hours after repair and as such the presumption was that the said bulldozer was not repaired in accordance with the terms of the order. Lastly, the contention is that the court despite the order passed under Order 17 Rule 3 of the Code of Civil Procedure should have permitted the evidence to be led by the appellants. All these contentions are without merit.

6. Vide order dated 8.2.2001, the court had passed an order under Order 17 Rule 3 of the Code of Civil Procedure and closed the evidence. It may be noticed that on that date the counsel appearing for the defendants had stated that not only that no evidence was present, but also the counsel had stated that despite intimation to the defendants, he had no instructions. This order was preceded by the order of the Trial Court dated 19.12.2000 which reads as under:

19.12.2000

Pr. Sh. A.L. Dua Adv. for the plaintiff.

Sh. V.V. Singham, Adv., for defendant. No D.W. is present nor summoned. Ld. Counsel for defendant states that the witness was to come from Faridabad, he could not assign any specific reason for the absence of the witness. However in the interest of justice, defendants are given last and final opportunity to produce their evidence on 8.2.2001 failing which their evidence shall stand closed under all circumstances.

7. The above order of the Court clearly shows that the court had granted more than fair opportunity to the defendants to lead evidence. The conduct of the defendants before the Court was of such a nature that the order passed by the learned Trial Court would not call for any interference. Furthermore, the court cannot keep on adjourning the case for evidence of the parties indefinitely and grant adjournments at the mere asking of the parties, without any plausible cause or reason. Reference in this regard can be made to the judgments in the cases of Chander Singh v. Chottulal and Sarjeet Kaur v. Gurmail Singh and Anr. 1999 (3) PLR 402. In the case of Sarjeet Kaur (supra), the Court held as under:

Language of the impugned order clearly shows that the plaintiff had exhausted all limits for seeking adjournment on every score, whatsoever. The very purpose of granting last opportunity stood frustrated by grant of six subsequent adjournments, but even then the plaintiff neither summoned witnesses nor examined any. Wonder there was any other choice left before the learned trial court but to pass the impugned order. This court had the occasion to discuss the scope of such power of the court and consequence of persistent default on the part of the party in the trial Court, in the case of Joginder Singh and Ors. v. Smt. Manjit Kaur Civil Revision No. 5885 of 1998, decided on 14.1.1999, held as under:

The cumulative effect of the provisions of Order 18 Rule 2 read with Rules 1 and 2 of Order 17 of Code of Civil Procedure and inherent powers of the Civil Court vested in it under Section 151 of the Code, placed an implied obligation on the Court not to adjourn the case unless sufficient cause was shown. The cause by

itself cannot always be treated as a ground for repeated adjournments. Unnecessary and avoidable adjournments must be denied by the Courts. On the one hand, trial Courts are expected to dispose of suits and other proceedings expeditiously, and on the other, if parties to a lis are permitted to get the suits adjourned on the mere asking and that too for the indefinite times, it would frustrate the very spirit behind the provisions of the Code of Civil Procedure.

Obligation on a Court cannot be read as construed in isolation. It must find its reasoning from the basic concept of genuine attitude of the litigant. A litigant must help the Court by effective participation for expeditious disposal of the suit. Having taken more than six opportunities after the last opportunity was granted by the Court, the plaintiff can hardly challenge the correctness of the impugned order and more particularly on the ground that the learned trial Court has failed to exercise jurisdiction vested in it or the trial court has wrongly exercised jurisdiction.

The Rajasthan High Court in the case of Chander Singh v. Chottulal , while commenting upon the afore-said provisions of the Code, held as under:

It is clear from the order-sheet of the case that the learned trial Court repeatedly adjourned the case in utter disregard of the provisions of Order 17, Rule 1, C.P.C. Its provisos (b) and (c) run as under:

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) the fact that the pleader of a party is engaged in another Court shall not be a ground for adjournment.

Such liberal attitude of the trial Courts is mainly responsible for the huge arrears of cases and inordinate delay in their disposal. The learned trial Court should have closed the defendant's evidence much earlier. It had acted illegally in granting said adjournments to the defendant. It has not acted illegally or with material irregularity in the exercise of its jurisdiction in any manner in passing the impugned order.

The conduct of the plaintiff-petitioner no way demands exercise of judicial discretion in the Court in his favor on the grounds of equity or legal maxims.

Prudent reasoning leads one to no other conclusion but to one that the learned trial Court was fully justified and in fact was left with no alternative other than closing the evidence of the petitioner.

8. In view of the above principle and keeping in view the facts and circumstances of the case, we see no reason to interfere with the order of the Court, particularly when the order was not even questioned by a Revision or any other appropriate proceedings, when the decree was passed in February 2001.

9. The plaintiff proved his case by leading oral and documentary evidence. The plaintiff discharged the primary onus by examining PW1 who supported the case of the plaintiff. Ex.P3 is the document which bears the signature of the defendant's representative and where it has been recorded that the machine has been tested and is running to the entire satisfaction of the said officer. In face of this document, the onus that the machinery had not been repaired to the satisfaction of the defendants was upon the defendants. But the defendants led no evidence. Vide letter dated 6.2.1993, under Clause '7' the plaintiff had clearly stated that if any other parts need repair or replacement after dismantling the same will be charged extra. This term was accepted by the defendants without any variations. This is so clear vide office order dated 25.2.1993. This term, in any case, would be in consonance with the common practice of the trade as well as the fact that before opening the machine, it cannot be said how much and to what extent is the damage. The defendants cannot be permitted to take advantage of their own default and be heard to say that the findings recorded by the Trial Court, based upon the evidence produced, are factually incorrect or are erroneous in law.

10. For the reasons afore-stated, we see no legal or other infirmity in the judgment impugned in the present appeal. The appeal, thus, is dismissed while leaving the parties to bear their own costs.