

IN THE COURT OF THE ADDITIONAL MUNSIF, CHERTHALA

Present: Smt. Akshaya.P.R., Additional Munsiff

Wednesday, the 13th day of October, 2021/21st Aswina,1943

O.S.No. 132/2016

Filed on 02.03.2016

Plaintiff: Nikesh, Proprietor,
M/s Nila Trading International
15/30/B Arya, Near N.H.Bypass,
Cherthala.

By Adv.Mathew Alexander

Defendant:- College of Engineering,
Pallippuram P.O,
Cherthala, Kerala,
represented by its Principal.

Exparte

This suit having been finally heard on 01.10.2021 and the court on 13.10.2021 delivered the following:-

J U D G M E N T

Suit is one for realisation of money.

2. Plaintiff averments in brief are as follows:- The plaintiff is the proprietor of M/s Nila Trading International 15/30/B Arya, Near NH Bypass, Cherthala and the defendant is the College of Engineering, Pallippuram P.O, Cherthala represented by its Principal. On 11.5.2015 the defendant herein made an invitation for quotation for the installation of water purifier system . On the basis of the said invitation the plaintiff had placed the quotation before the defendant. Thereafter on 17.06.2015, the defendant had issued a purchase order to the plaintiff annexed the specification of the said water purifier system. After that, on 10.7.2015 the plaintiff had delivered and installed the said water purifier system in the said college. Initially the plaintiff company installed kent model water purifier

system. But on inspection defendant's office had suggested for original RO water purifier. It is to be noted that there was no such specification in the purchase order issued by the defendant. Even then the Plaintiff has replaced the earlier installed item and installed the said original kent RO water purifier in the defendant institution on 17.8.2015. An amount of Rs 1,96,940/- is due to the plaintiff by the defendant as the net cost of the said item and a bill for the same is also issued to the defendant. But even after repeated demands the defendant did not pay the bill amount to the plaintiff and on the other hand the defendant issued a lawyer notice alleging that the plaintiff has not supplied the said water purifier to the defendant. Therefore, the plaintiff is entitled to get an amount of Rs. 1,96,940/- with 18 % of interest till realisation from the defendant and its assets. Hence, the suit.

3. Defendant appeared and filed written statement. The defendant admitted that it has issued a purchase order to the plaintiffs since he submitted the lowest rate of quotation to supply water purifier system. Then the defendant denies the allegation in plaint as to installation of purifier in the college on 10.7.2015. Further defendant added that since the plaintiff has not effected the supply within the specified period, they contacted the plaintiff through phone many times. Later a letter was sent on 10.8.2015. Thereupon the plaintiff brought certain items which were not specified in the purchase order and submitted a bill dated 17.08.2015. Subsequently, the plaintiff executed an agreement dated 26.10.2015 agreeing to comply with the terms and conditions in the quotation and the purchase order and also deposited the security amount. On receiving the agreement and the security deposit the procurent committee engaged a mechanical Engineer to examine and evaluate the supplied items with respect to the quotation. The report of the

engineer revealed that the item supplied by the plaintiff are entirely different from the specification in the quotation. Hence, the defendant requested the plaintiff several times but they did not reply. Thereafter, the Board of Governors decided to cancel the supply order and the same was communicated to the plaintiff through registered post. It was returned unclaimed. Since the plaintiff had supplied entirely different item from the specification in the quotation the defendant is not liable to pay the amount noted in the bill ie, Rs.1,96,940/-. That bill is also not in tune with the cost of the item. In the notice issued to the plaintiff by the defendant it is clearly stated why the amount was not disbursed. The purchase activities of the defendant is governed by the store purchase rules. The defendant is not in a position to accept any supply of items if it is not confirms to all the conditions specified in the quotation invitation/purchase order. The college does not have any responsibility of any item which are not accepted by the college. Since the plaintiff has not acted in accordance with the quotation, no amount need be given by the defendant therefore, the suit is only liable to be dismissed with costs.

4. Following issues were arise for consideration;

1. Is the suit maintainable?
2. Is the suit is bad for non joinder of necessary parties?
3. Is the Plaintiff entitled to realize money with interest from the defendant and his assets as prayed for?
4. Reliefs and costs?

5. The case was included in the special list for trial of September,2021. Even on repeated opportunities the defendant had not appeared before the Court. Further, no instruction was submitted by the

learned counsel for the defendant. Therefore, notice was sent to the defendant and the same was served. Even on receiving the notice the defendant had not appeared, therefore, the case against the defendant was proceeded *ex parte*.

6. Plaintiff filed affidavit in lieu of examination in chief and 5 documents to prove his case. The documents are marked as Exts.A1 to A5. The commission report and plan are marked as Exts.C1,C1(a).

7. **Issue No.1:-** This is a suit filed by the Plaintiff for realising the money due to him from the defendant relating to the purchase of water purifier system by the Defendant on 10.7.2015. The suit was instituted in the year 2016. Therefore, it is within the period prescribed by the limitation Act. Further the amount due to the Plaintiff herein is a legally recoverable one out of the contract with the defendant institution.

S.9 of the Code of Civil Procedure,1908 provides as follows “ *The court shall(subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

Explanation 1 – A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies

1. Explanation II- For the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation 1 or whether or not such office is attached to a particular place.”

Here the subject matter of the suit is to realise the money due to the plaintiff by the defendant out of the purchase of Kent RO water purifier. Since the money due is out of a lawful transaction and the relief was sought

with the period of limitation, I believe that the suit is maintainable.

Point No.1 is so found

8. **Issue No.2:-** The 2nd contention raised by the defendant in their written statement is regarding the non joinder of necessary parties ie, IHRD stating that College of Engineering is a Government institution under the management and control of Institution of Human Resource Development ie, IHRD. But here on the perusal of records placed before me which is marked as Exts. A1 to A3 clearly shows that the order is for water purifier system and the purchaser is College of Engineering, Pallippuram and from the retail invoice which is marked as Ext. A3 it is lucid that the contract is between the Plaintiff herein and Engineering College, Pallippuram PO, Cherthala. None of these records gives me an implication as to the involvement of IHRD in this contract. This is purely an agreement entered into between the Plaintiff herein and the Defendant college for the purchase of Kent RO Water Purifier. Clause No. 16 of Ext A1 provides that *“sealed quotation to be submitted at the address mentioned below ie, College of Engineering, Ottappunna, Pallippuram PO, Cherthala”*. From these aspects I would like to hold that the claim of the defendant regarding non joinder of necessary party is not tenable.

Point No.2 is also found against the Defendant.

9. **Issue No.3-** The written statement filed by the Defendant admit the fact that defendant has issued purchase order to the Plaintiff, since he submitted the lowest rate in the quotation to supply the water purifier system but denies the fact as to installation of original Kent RO water purifier in the College campus. No documents were produced by the defendant that to prove their claim. On the other hand from the Commission Report which was prepared by giving notice to both sides clearly stated that “പ്രതി കോളേജിൽ നാലു

കെട്ടിടങ്ങളിലായി ഓരോ original Kent RO water purifier system സ്ഥാപിച്ചിട്ടുള്ളതായി സ്ഥലം സന്ദർശിച്ച സമയം ലക്ഷ്യങ്ങൾ കണ്ടു മനസ്സിലാക്കിയിട്ടുള്ളതാകുന്നു.”

10. Rough sketch also shows that four original Kent RO water purifier were installed their in the college. No objection was seen filed by the parties to the report. All these circumstances, that the plaintiff had installed original Kent RO water purifier in the college premises of the defendant as per the purchase order and is entitled to realise the amount as per the retail invoice ie, Ext. A3 from the defendant.

11. **Issue No.4** – In the light of my findings in issue No. 1 to 3, the Suit is liable to be decreed.

In the result, the Suit is decreed as follows:-

1. The plaintiff is allowed to realise a sum of Rs. 1,96,940/- (Rs.One lakh Ninty-six thousand Nine Hundred and Forty only) from the defendant and its assets with 18% interest from the date of the suit till the date of decree.
2. Thereafter from the date of decree till realisation the Plaintiff is entitled to realise the amount with interest at the rate of 6% per annum.
3. The defendant and its assets if any shall be liable to the decree debt.
4. The plaintiff is also allowed to realize the costs of the suit.

Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court this the 13th day of October,2021.

Sd/-

Akshaya.P.R.
Additional Munsiff

Appendix:Exhibits for Plaintiff

- A1 :- Copy of the invitation for the quotation dated 11.05.2015
- A2 :- Purchase order dated 17.06.2015
- A3 :- Computer print of retail invoice dated 17.08.2015
- A4 :- Lawyer's notice dated 27.01.2016
- A5 :- Acknowledgement card dated 28.01.2016

Exhibits for defendant:- NilCourt Exhibits

- C1 :- Commission Report filed by commissioner Adv.J.Sachith dated on 30.03.2016
- C1(a):- Rough plan filed by commissioner Adv.J.Sachith dated on 30.03.2016

Id/-
Additional Munsiff