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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA(COMM) 310/2024**

M/S NEEL METAL PRODUCTS LTD
(FORMELY NEEL AUTO)

.....APPELLANT

Through: Mr Puneet Singh Bindra with Ms Yeeshu
Jain, Ms Jyoti Tyagi and Ms Charu Modi,
Advs.

versus

M/S THOMAS AND CO. PVT. LTD.

.....RESPONDENT

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

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05.08.2024

[Physical Hearing/Hybrid Hearing (as per request)]

CM Appl.44251/2024

1. Allowed, subject to the appellant filing legible copies of the annexures, at least three (3) days before the next date of hearing.

CM Appl.44254/2024

2. This application is disposed of with a direction to the appellant to move an application for obtaining the decree sheet at the earliest and place it before the Court as and when it is received.

RFA(COMM) 310/2024

1/3



RFA(COMM) 310/2024 & CM Appl.44250, 44252-53/2024

3. This appeal is directed against the judgment and decree dated 09.12.2023 passed by Ms Neelam Singh, learned District Judge (Commercial Court-02), South-East District, Saket Court, New Delhi.

4. The moot issue that arises for consideration is: whether the appellant/defendant could retain the balance retention amount i.e., Rs.7,49,511/-?

5. To be noted, the respondent/plaintiff had filed a suit for recovery of Rs.8,16,966/- along with *pendente lite* and future interest at the rate of 9% per annum. The amount claimed, i.e., Rs.8,16,966/- included interest at the rate of 9% per annum from 21.06.2017, the date on which retention money became due and payable, up until 21.06.2018.

6. The trial court has decreed the suit for Rs.8,16,966/-, along with accrued interest, at the rate of 6% per annum from the date of institution of the suit till the date of actual realization.

7. Counsel for the appellant/defendant says that because there was a defect in the quality of civil work carried out by the respondent/plaintiff, additional expenses were incurred, and therefore, monies were retained.

7.1 It is, however, conceded that no set-off or counterclaim was lodged by the appellant/defendant.

8. The matter requires examination.

9. Issue notice to the respondent/plaintiff via all permissible modes including email.

RFA(COMM) 310/2024

2/3



10. List the matter on 04.12.2024.
11. Upon the appellant/defendant depositing the entire decretal amount, within four (4) weeks, with the Registry of this Court, there shall be, for the moment, a stay on the operation of the impugned judgment and decree.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 5, 2024/pmc

[Click here to check corrigendum, if any](#)

RFA(COMM) 310/2024

3/3