

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

+ **RFA Nos.1007/2017 & 1014/2017**

% **Reserved on: 1st December, 2017**
Pronounced on: 6th December, 2017

1. **RFA No.1007/2017**

M/S. KCL LTD. Appellant
Through: Mr. Arjun Garg, Advocate with
Mr. Munish Yadav, Advocate
and Mr. Mohit Chandra,
Advocate.

Versus

THOMSON PRESS INDIA LTD. Respondent

2. **RFA No.1014/2017**

M/S. KCL LTD. Appellant
Through: Mr. Arjun Garg, Advocate with
Mr. Munish Yadav, Advocate
and Mr. Mohit Chandra,
Advocate.

Versus

THOMSON PRESS INDIA LTD. Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No.1007/2017 and C.M.Nos.43567/2017 & 43568/2017
(exemption)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit

impugning the judgment of the Trial Court dated 31.7.2017; by which the trial court has decreed the suit for recovery filed by the respondent/plaintiff for an amount of Rs.19,81,927/- along with interest at 12% per annum simple. The counter-claim filed by the appellant/defendant was dismissed and which is the subject matter of challenge in the connected appeal being RFA No.1014/2017.

2. Respondent/plaintiff filed the subject suit seeking recovery of Rs.19,81,927/- being the amount of balance due for printing work which was done by the respondent/plaintiff for the appellant/defendant. Total amount value of the invoices raised was Rs.57,34,605/-. An amount of Rs.39,48,233/- was paid and therefore the principal balance amount remaining due came to Rs.17,85,842/-.

3. The appellant/defendant contested the suit and pleaded that the respondent/plaintiff was guilty of defective work and therefore the respondent/plaintiff was not entitled to the suit amount. It was pleaded by the appellant/defendant that on account of the defective printing the appellant/defendant suffered huge loss and therefore the appellant/defendant was entitled to a sum of Rs.18,14,677/- and for which amount a counter-claim was filed against the

respondent/plaintiff by the appellant/defendant, and against dismissal of which the connected RFA No. 1014/2017 is filed.

4. After pleadings were complete, the trial court framed the following issues:-

ISSUES:

1. Whether the plaint has been signed, verified and instituted by duly authorized and competent person? OPP
2. Whether the terms and conditions in letter dated 31.01.01 form part of the agreement or not? OPD
3. Whether preparation of the ready positives was part of the contract between the plaintiff and the defendant? onus on the parties
4. Whether the plaintiff is entitled to a decree for a sum of Rs.19,81,927/- against the defendant? OPP
5. Whether the plaintiff is entitled to any interest, if yes, at what rate and for which period? OPP
6. Whether the defendant is entitled to its counterclaim against the plaintiff as prayed for? OPD
7. Relief

ISSUE NO. 8.

Whether the material supplied by the defendant had not been rejected for bad quality by their client M/s. Moser Baer India Ltd. But on account of change and design of inlay cards and folders and defendant was compensated for the same? OPP”

5. The main issues to be decided and which were argued before this Court were issue nos.4 and 8. These issues pertain to the entitlement of the respondent/plaintiff to the suit amount or as to whether the respondent/plaintiff is not entitled to the suit amount but the respondent/plaintiff was guilty of defective work and also that on

account of defective work the printed material was rejected by the client of the appellant/defendant, namely M/s Moser Baer India Ltd.

6. Trial court in the impugned judgment has noted that the contract between the parties stood concluded in terms of the communication dated 31.1.2001/Ex.PW1/4 sent by the respondent/plaintiff to the appellant/defendant and terms of which letter were accepted by the appellant/defendant in terms of its response dated 2.2.2001/Ex.PW1/5. In the present case really the onus of proof was upon the appellant/defendant as to whether the suit was to be dismissed on account of defective printing work being done by the respondent/plaintiff and some of the defective printing work being that which was allegedly rejected by M/s Moser Baer India Ltd. On this main issue as to whether the work done was defective, the trial court has held that the appellant/defendant failed to prove that the work was defective. For reaching this conclusion trial court notes that till the respondent/plaintiff wrote its letter dated 29.1.2002/Ex.PW1/8 no complaints were ever made by the appellant/defendant with respect to any defective work. No such letter or communication was placed on record and proved by the appellant/defendant written before 29.1.2002

with respect to the defective printing work against the contract and which printing work commenced in February, 2001 i.e for around 11 months there was never ever a complaint in writing by the appellant/defendant to the respondent/plaintiff of any defective work. It was for the first time only on 29.1.2002, that the appellant/defendant claimed that there were defects in the printing work. Respondent/plaintiff immediately in response wrote its letter dated 30.1.2002/Ex.PW1/10 that there was no defective work. I may note that the respondent/plaintiff has proved the different invoices which were collectively exhibited as Ex.PW1/16 and Ex.PW1/17 and the delivery challans as Ex.PW1/18 and Ex.PW1/19. Even in the communication dated 29.1.2002/Ex.PW1/8 the appellant/defendant only generally and vaguely stated that there is a quality issue on 30 lacs inlay sets and reconciliation of paper and that because of this reason payment was stopped to the respondent/plaintiff. This letter however did not specify as to what was the quality issue/defect in the printing. Trial court has noted that as per the agreed terms contained in the letters Ex.PW1/4 and Ex.PW1/5 of the parties, the appellant/defendant was duty bound within four days with the receipt

of the material to point out defects and where after no subsequent complaint would be considered. This term was on the overleaf of the letter Ex.PW1/4 dated 31.1.2001.

7. Though learned counsel for the appellant/defendant contended that the term on the over leaf of Ex.PW1/4 cannot be looked into because there was no such term, however before this Court for some unexplained reason the appellant/defendant has only filed a typed copy of front portion of Ex.PW1/4 dated 31.1.2001. Appellant/defendant has failed to file the front and back portion of Ex.PW1/4 and therefore there is no reason for this Court to disbelieve the findings of the trial court that on the overleaf of Ex.PW1/4 it is clearly specified that there was a period of four days within which the appellant/defendant was entitled to raise in the complaint for any alleged defective work. This finding of the trial court of four days term existing in Ex.PW1/4 is referred to in para 40 of the impugned judgment at internal page 29 of the judgment.

8. In my opinion even if this clause of four days for raising a grievance was not there, yet, the appellant/defendant was bound by virtue of Section 42 of the Sales of Goods Act, 1930. As per this

provision once no objection is raised within a reasonable period of time with respect to alleged defects in the goods, then, the buyer cannot thereafter object to any defect in the goods. Trial court has in this regard referred to this provision of the Sales of Goods Act in para 55 of the impugned judgment and this para 55 reads as under:-

“55. In case of sales of goods, as per provisions of Sales of Goods Act 1930, under the provisions of section 41 and 42, it is the responsibility of buyer to examine the goods before accepting the delivery. Section 41 clearly mandates that where goods have been delivered to buyer which have not been previously examined, buyer will not deem to have accepted the same unless he has reasonable opportunity of examining the goods to ascertain whether goods are in conformity with contract. However, Section 42 mandates that buyer will deem to have accepted the goods when he either actually intimates to the seller regarding acceptance of goods or where he does any act in relation to those goods which is in consistent to the ownership of seller or when after lapse of a reasonable time buyers retains the goods without intimation of rejection of the same. In the present case also, when there were already expressed conditions of sale for inspection of the goods, still there being no communication from defendant for period of about two months since the lastly accepting of goods of printed inlay cards and folders to the effect that there is any defect in the printing work, in view of the conditions of sale and the provisions of section 42 as discussed above, defendant company will deem to have accepted the material without there being any defects.”

9. A reading of the aforesaid discussion as also the relevant paras of the impugned judgment of the trial court show that the trial court was justified in arriving at a finding that no objection was raised with respect to invoices upto 31.10.2001. Once never any objection was raised with respect to defective work thus this lack of challenge to

defective work became final as against the appellant/defendant by virtue of Section 42 of the Sales of Goods Act.

10.(i) Learned counsel for the appellant/defendant argued that respondent/plaintiff by virtue of letter Ex.PW1/11 dated 16.4.2002 accepted that there was defective work of invoice nos.8477 and 8478, both dated 31.10.2001 for Rs.2.49 lacs and Rs.2.53 lacs respectively, and hence it is argued that respondent/plaintiff was liable with respect to the defective work in the invoices dated 31.10.2001.

(ii) In my opinion this argument urged on behalf of the appellant/defendant by placing reliance upon letter dated 16.4.2002 of the respondent/plaintiff *qua* two invoices dated 31.10.2001 is a misconceived argument. In this regard the trial court has arrived at a finding of fact that these invoices pertain to printing work done by the respondent/plaintiff for the appellant/defendant and that the appellant/defendant itself had taken this printing work for being done from M/s Moser Baer India Ltd. After the suit was originally filed and the appellant/defendant took up a stand in the written statement that the work which was defective under the invoices dated 31.10.2001 pertain to its client M/s Moser Baer India Ltd the respondent/plaintiff

communicated with M/s Moser Baer India Ltd and this company confirmed that it had not rejected the printed material received from the respondent/plaintiff through the appellant/defendant but M/s Moser Baer India Ltd itself had asked during the printing process for changing of its design and had consequently compensated the appellant/defendant in this regard. The letter given by M/s Moser Baer India Ltd dated 19.8.2006 was proved by the respondent/plaintiff as Ex.PW1/20. On account of this response of M/s Moser Baer India Ltd, the respondent/plaintiff amended its plaint and added paras 17A and 17B and which aspects were proved by the respondent/plaintiff during the course of its evidence and such aspects are discussed in detail by the trial court in para 63 of its impugned judgment and which para 63 reads as under:-

“63. This brings us to consider the issue no. 8. I have already discussed the evidence of PW 1 and PW 2. It is already noted above that defendant company has failed to lead any evidence to substantiate that material supplied by the defendant to its clients M/s Moser Baer India Ltd. was rejected by its clients on account of any defects in the printing of Inlay Cards and folders. Plaintiff, however, by way of amendment in the plaint brought out certain facts as mentioned in para no. 17 A and 17 B of the plaint. PW 1 has also testified in his additional affidavit of examination in chief (para no. 3 & 4) in this regard, that plaintiff company has informed to M/s Moser Baer India Ltd. about the outstanding amount Rs.17,85,842/- payable by defendant company as well as filing of the suit for recovery. PW 1 says that M/s Moser Baer India Ltd. in response to clarification sought by the plaintiff has stated that no material supplied against purchase orders had been rejected by it due to bad quality or otherwise. Such letter of M/s Moser Baer India Ltd.

Dated 19.08.2006 is Ex.PW1/20. Nothing came in the cross-examination of PW1 to disbelieve his evidence or to negate the fact regarding sending of letter dated 19.08.2006 Ex.PW1/20 by M/s Moser Baer India Ltd. PW 1 was simply suggested that he was not present when such letter Ex.PW1/20 was signed. Thus, reading the evidence of PW 1 alongwith this document Ex.PW1/20, it is established that the client of defendant company itself made it clear that printed material of plaintiff was never rejected by M/s Moser Baer India Ltd. on account of defects in the printing. Nothing has come even in the evidence of DW 1 in this regard, thus, for the reason stated above I find that plaintiff company has been able to establish both these issue no. 4 & 8, by preponderance of probabilities. Issues no. 4 & 8 are accordingly decided in favour of the plaintiff and against the defendant.”
(underlining added)

(iii) It is therefore clear that there was no defective work which was done by the respondent/plaintiff even with respect to two invoices dated 31.10.2001 bearing nos.8477 and 8478.

11. Learned counsel for the appellant/defendant argued that there is a difference between proving of a letter and proving of contents of the letter and it was argued that merely by the respondent/plaintiff proving as Ex.PW1/20 the letter of M/s Moser Baer India Ltd dated 19.8.2006 would not mean that this Court or the trial court should have accepted the contents of Ex.PW1/20. This argument of the counsel for the appellant/defendant is completely misconceived because the issue with respect to M/s Moser Baer India Ltd not rejecting printing material as defective was proved by the

respondent/plaintiff during the course of its evidence and if the appellant/defendant doubted that M/s Moser Baer India Ltd had not written the letter Ex.PW1/20 then there was no reason why the appellant/defendant would not have summoned a witness from M/s Moser Baer India Ltd to prove that the letter Ex.PW1/20 was not written by M/s Moser Baer India Ltd to the respondent/plaintiff. Obviously the appellant/defendant did not summon during the course of its evidence any witness from M/s Moser Baer India Ltd because there was no doubt as to the authenticity and the contents of Ex.PW1/20. Accordingly, I reject the argument urged on behalf of the appellant/defendant that the contents of Ex.PW1/20 are not proved.

12. It is therefore seen that the alleged defects stated by the appellant/defendant for dismissing of the suit of the respondent/plaintiff and for allowing of the counter-claim of the appellant/defendant was in two parts. One part was with respect to the goods supplied under invoices prior to 31.10.2001 and with respect to which no complaint ever was raised by the appellant/defendant at any point of time in writing that printing was defective and therefore the trial court was justified in holding that the appellant/defendant had

failed to discharge its onus that the printing work was defective. So far as the second part of the allegations of the printing work being defective under two invoices dated 31.10.2001 is concerned, this was proved to be completely baseless in view of the letter dated 19.8.2006 Ex.PW1/20 proved on behalf of the respondent/plaintiff and which showed that M/s Moser Baer India Ltd never rejected the printing material on the ground that it was defective and on the contrary M/s Moser Baer India Ltd stated that it had itself asked for change of printing and for such change of printing in fact the appellant/defendant was suitably compensated. Clearly therefore the case of the appellant/defendant of defective printing was false and was rightly disbelieved by the trial court.

13. Some of the relevant observations of the trial court judgment which refer to the reasoning, discussion and conclusion on the relevant issues are paras 38 to 40, 52, 54, 56 and 57 and these paras read as under:-

“38. As per plaintiff's case defendants company through its Director Sh. Sanjeev Khemka, had approached plaintiff company in Jan. 2001 for printing and processing of Inlay Cards and Folders. It is also stated in the plaint that Director of Defendant company met with principal officers of plaintiff company to discuss terms and conditions for such job of plaintiff. After such meetings plaintiff company sent communication dt 31.01.2001, signed by its regional sales

manager wherein specifications were given as well as other terms as agreed between the parties in the meeting held in Jan 2001 were also printed over leaf of that letter / quotation which is proved in the evidence of PW-1 as Ex.PW1/4. Defendant company in pleadings has denied agreeing for any such terms and conditions, more specifically the terms as enumerated in para 5 of the plaint and discussed above. As such the onus of proving the issue under consideration was on defendant.

39. Let us now consider the evidence on issue under consideration. As stated above, PW-1 Rajan Khurana in para 6 of his affidavit has testified that plaintiff company sent a communication dt 31.01.2001 Ex.PW1/4, mentioning therein different specifications for job of printing Inlay Cards as well as the terms and conditions of such job, which were printed on the overleaf of such letter Ex.PW1/4. PW-1 has also testified that defendant vide its response dt 02.02.2001, accepted the terms mentioned in the letter Ex.PW1/4, by making two modifications regarding payment and delivery schedule. PW-1 proves the letter of defendant company dt 02.02.01 as Ex.PW1/5. PW1 has also testified that defendant conveyed its acceptance at plaintiff's Delhi Office. PW-1 then went on to testify the pursuant to acceptance of aforesaid quotations with terms and conditions of sale, defendant company placed its orders from time to time for processing, printing and supply of inlay cards and folders.

40. Such evidence of PW-1, is not disputed, such documents Ex.PW1/4 and PW1/5 are also not disputed and being matter of record. Even in the cross examination of PW-1 nothing has come to suggest the witness that defendant had never accepted the specifications mentioned in quotation Ex.PW1/4 or the terms and conditions mentioned on the overleaf of that document. Rather, DW-1 B.L.Prajapati when appeared in the witness box has referred to these quotations and letter dt 02.02.2001 of defendant company in para 3 of his examination in chief. DW-1 in his cross examination has admitted that he has read the terms and conditions as stated in the quotation Ex.PW1/4. DW-1 further admits that upon accepting the quotation Ex.PW1/4, defendant company has placed purchase order with plaintiff company which is Ex.PW1/5. The specifications of job of processing and printing as mentioned on the document Ex.PW1/4 thus is not disputed. Although, there is a dispute with regard to whether positives were to be supplied by defendant or were part of contract, regarding which a separate issue (Issue no. 3) is framed and therefore that aspect will be separately considered. Beside that nothing has come in the evidence to dispute the other terms and conditions as well as specifications as are mentioned on the quotations Ex.PW1/4. Although, while responding to quotation Ex.PW1/4, certain modifications were made in communication dt 02.02.2001

Ex.PW1/5, Reading of PW-1 /4 and PW1/5 make it clear that defendant company accepted the terms and conditions as given in the quotations (Overleaf) by its response dt 02.02.2001 Ex.PW1/5. Accordingly, I find that plaintiff company has been able to establish the specifications as mentioned in Ex.PW1/4 along with conditions of sale and defendant company has failed to prove that such specifications and conditions of sale were not accepted by it. Issue accordingly decided against the defendant and in favour of plaintiff.

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52. PW-1 says that in respect of all the bills of total amount of Rs. 57,34,065/- , after taking the payment of Rs.39,48,233/- there was a balance of Rs.17,85,842/- towards defendant as per the statement of account Ex.PW1/7. PW-1 then went on to testify that a letter dt 29.01.2002 Ex.PW1/8, was written to Director of Defendant company. On the same day, communication was received from defendant company being Ex.PW1/9, whereby amount due though was acknowledged. However, a plea was taken by defendant for certain reconciliation of account. PW-1 then says that in response to letter of defendant company, plaintiff company wrote letter dt 30.01.2002 Ex.PW1/10, informing it that outstanding balance of Rs.19 lacs, without admitting the allegations of defects in the printing work. PW-1 also testifies that thereafter Director of Defendant Company and authorized Representatives were called upon to meet regarding payment of outstanding amount. PW-1 says that to the utter shock of the plaintiff company it received letter dt 10.04.2002 from defendant. Whereby it is stated that it is returning certain goods printed and delivered by plaintiff company.

54. Keeping such defence of defendant in mind, if we examine the evidence of PW1 and PW2. These witnesses have proved different invoices which are collectively exhibited as Ex.PW1/16 and Ex.PW1/17 as well as Delivery Challans which are Ex.PW1/18 & PW1/19. It would be evident from perusal of these invoices and delivery challans that goods of printed inlay cards and folders were supplied after carrying out the job of printing and processing the same lastly by 31.10.01. Thereafter, when plaintiff company e-mailed a letter dt 29.01.2002 Ex.PW1/8 demanding the outstanding amount, defendant company also e-mailed communication dt 29.01.2002 Ex.PW1/9. It is for the first time in this communication dt 29.01.2002 Ex.PW1/9, defendant simply stated that “there is a quality issue on 30 lacs inlay sets and reconciliation of paper, therefore, payment has been holded.” Even in this letter also it is not specified as to what was the quality issue / defect in the printing. Now, in this regard if I consider the evidence of PW-1, in cross examination nothing has come to specify about the defects in the printing work of 30 lacs inlay cards as alleged by the

defendants. In this regard, it is important to note that as per the conditions of sale, defendant company was given opportunity to inspect and make comparison between machine proof and completed job. It was also agreed under the conditions of sale that once delivery of printed material accepted, no subsequent complaint can be considered to be genuine / bonafide made beyond period of 4 days from the date of receipt of job / printed goods. In this case, printed material of inlay cards and folders was lastly delivered on 31.10.2001, but there is no evidence on the record to show that immediately thereafter defendant company raised the issue of defects in the inlay cards / folders or issue that its client M/s. Moser Baer did not accept the printed goods on the ground of quality of printing. Such issue as noted above for the first time was raised in the mail / communication Ex.PW1/9 on 29.01.2002. That too without any much details as to what are the defects in the printing. Merely alleging the printing is defective, was not sufficient for defendant to avoid the liability.

56. Raising an issue of defective printed goods, at later stage had no legal relevance more specifically when such issue has been raised without even any evidence on the record as to what was the defect in those goods / 30 lacs inlay cards as alleged by defendant. In this regard, if we consider the evidence of DW1 B.L.Prajapati he has simply testified in para 8 of his affidavit of examination in chief that out of total 1 crore inlay cards that were to be printed by plaintiff company for defendants client, M/s. Moser Bare, 30 lacs inlay cards were totally defected as composition did not lodged the approved design. DW-1 says that on 29.01.2002 defendant informed plaintiff about the defect in 30 lacs inlay cards and also about the loss incurred on account of paper wasted due to defective printing. DW-1 in his cross examination has admitted that plaintiff company delivered the consignment of printed inlay cards and folders from time to time by different challans. Although DW1 has testified that consignment was received by them subject to verification. However, witness has admitted that he has never given anything in writing regarding any defect in material prior to letter dt 29.01.2002 and 30.01.2002. When DW-1 was specifically asked as to whether he can show any complaint lodged by defendant company till 31.12.2001, regarding any defective material. Witness has simply replied that all the objections were verbally raised till 31.12.2001 and later by letters/ mail dt 29.01.2001 and 30.01.2001 were sent.

57. DW-1 has further admitted in his cross examination that he cannot specify the exact mode or manner by which defendant tried to return the 30 lacs sets of inlay cards if they were so defectively printed. DW-1 has specifically admitted in cross examination that defendant company had not tried on its own to send back the alleged defective material to plaintiff

prior to 29.01.2001. Such evidence of DW-1 coupled with nothing coming in cross examination of PW-1 & 2 to establish any defect in the printing of inlay cards sets. Moreover, no witness has been examined from M/s. Moser Baer to establish the fact as alleged by defendant in the WS that such 30 lacs inlay card sets were rejected by defendant's client Moser Baer. Thus, from the above discussion of law and the evidence I find that defendant company had failed to establish that the printed inlay cards and folders as sent by plaintiff company were defective in any manner.” (underlining added)

14. In view of the above discussion I do not find any merit in the appeal. This appeal is therefore dismissed, leaving the parties to bear their own costs.

RFA No.1014/2017 and C.M. Nos.43717/2017 (stay) & 43718/2017 (exemption)

15. In view of the discussion given while dismissing RFA No.1007/2017, and adopting the said discussion and reasoning, this appeal is also dismissed, and it is held that the trial court rightly dismissed the counter-claim filed by the appellant/defendant. This appeal is accordingly dismissed, leaving the parties to bear their own costs.

DECEMBER 06, 2017
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VALMIKI J. MEHTA, J