

**HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE**

(SINGLE BENCH : HON. JUSTICE S.K.SETH)

First Appeal No. 253 Of 1999

M/s. Sanghi Brothers

...Appellant

Vs.

Methodex System Ltd.

... Respondent

x-x-x-x-x-x-x-x-x-x-x-x-x-x-x

J U D G M E N T

(Delivered on 30th April 2012)

This appeal arises out of the judgment and decree passed by the XIIIth Additional District Judge to the Court of District Judge Indore in Civil Suit No. 118-B/93 decreeing the suit of the respondent/plaintiff for recovery of Rs. 79,750/- together with interest @ 18% p.a.

2. About the following facts there is no dispute. Appellant is a registered company so also the respondent. Respondent Company deals with the manufacturing and sales of office equipments and computers. Respondent company offered to supply computer peripherals. Said offer was accepted by the appellant and a purchase order was placed on 8.6.1989 for supply of following:

Sl.No.	Particulars	Qty.	Price/	Total
1.	Terminals(Graphics)	4	12,500/-	50,000/-
2.	Cartridge Tape Drive(Internal Xenix Driver)(40MB)	1	18,000/-	18,000/-
3.	Dot Materix Printers			

(a)MSP-45,132 Col.240 CPS	2	18,000/-	36.000/-
(b)MSP-55,312 Col.300 CPS	1	20,500/-	20,500/-
4. Unix & Unify(with 'C' dev. System) Installation Charges.			5,000/-
		Total:	1,29,500/-

Out of this, Rs. 32,250/- was paid in advance. Out of 4 Terminals, one was found damaged. No other fact is admitted.

3. It was stated that the supply shall be made within two weeks and the vendor will install Unix and Unify with "C" Dev in the existing machine [386 Computer] and provide training on the **O/S** [i.e. the Operating System]. A sum of Rs. 32,250/- was paid in advance. According to respondent/plaintiff, peripherals were installed except the Unix OS because of the incompatibility of the machine. They therefore, made two suggestions to get back the terminal and also to reduce the installation charges of Rs. 5000/- for Unix and Unify system from the Bill or use the Terminals by upgrading the existing system with nominal costs with HCL Magnum Mini Computer and demanded payment of balance amount. When it was not forthcoming, the suit was instituted out of which this appeal arises.

4. Appellant, except the admitted facts, denied the entire claim of the respondent/plaintiff. It was stated that peripherals were not supplied as per order. It was alleged before making the offer, vendor's engineers had inspected the existing Machine(386 Computer) and assured that the

Unix Unify OS would be installed in the Machine for the proper use and function of peripherals at different locations but the vendor could not install the Unix Unify OS consequently other peripherals were of no use for the appellant. Even otherwise, also 3 Terminals (one was already damaged/defective) were junk without parallel (Printer) Port; as against the requirement of Cartridge Tape Drive of 40 MB, the CTD supplied 60MB drive with Rs. 2,000/- extra charges. It was pointed out that so called issue of incompatibility of hardware was never raised, otherwise appellant would not have placed the order for supply and installation of peripherals. Old and used Dot Matrix printers were supplied instead of new ones. Thus appellant denied that respondent/plaintiff was entitled to any sum; on the contrary he was liable to pay damages to the appellant to the tune of Rs.5,17,886/ as per demand notice and prayed for dismissal of the suit with special costs.

5. At this stage it is pertinent to point out that appellant had also filed a separate suit for damages as aforesaid. It was registered as C.S.No. 3-B/94. Learned Court below as per order-sheet dated 14.9.1994 clubbed together both suits for consolidated hearing and after recording evidence by common judgment, dismissed the suit of the appellant where as suit of the respondent/plaintiff was allowed as mentioned above. No separate appeal was preferred by the appellant against dismissal of suit; hence decree of the trial

Court to that extent has become final and need not detain us any longer.

6. Now coming to the case in hand, respondent, Plaintiff examined only Ravindra Kumar Manan(P1) General Administration whereas appellant examined Jai Kumar, Director in support of their cases and proved certain documentary evidence.

7. Both witnesses were not parties to negotiation before or after and had no personal knowledge of the matter. Both were technically not qualified nor had any knowledge of computer or its working. Trial Court rightly held that their oral testimony was not much of help in deciding the controversial issues. In assessing the value to be attached to the documentary evidence, as a Judge of fact, it is open for this Court to test the evidence on the basis of probabilities and come to own conclusions.

8. Over-all picture emerging from material on record clearly shows that appellant already had a 386 Computer System and the Annual Maintenance Contract (AMC) was with Methodex Systems, Branch Indore. That time Sanjay Das was the Branch Manager of Metthodex Systems and staff was under him. They were aware of requirement of installment of those 4 Terminals with Serial Parallel Ports at 4 different locations viz. Sales, Stores, Workshop and Accounts department with proper cable networking. As stated, out of 4 terminals, one terminal was already damaged and remaining

three had no proper interface printer ports; without which they could not be hooked to the main Computer System in absence of proper installation and operation of Unix Unify with "C" Development and training to staff. Respondent could not install and made the Unix Unify "C" Dev operational was admitted by PW1 in the following term "You would appreciate the fact that my engineers spent 7/10 days trying to rectify trying the above design fault but finally had to give up." (See E.D.2). In view of this categorical admission, we do not think any other evidence was required to prove the so called supply was not as per order. There is yet another reason for the dismissal of the suit. Based upon pleadings, trial Court had framed Issue No. 2

“क्या वादी मेथोडेक्स द्वारा प्रतिवादी सांघी ब्रदर्स को उक्त आपूर्ति आदेश हिनांक 8.6.89 के पालन मे बेचा गया सामान प्रतिवादी के रखे 386 कम्प्यूटर सिस्टम्स पर इंस्टाल करके कार्यशील करना संविदा के अंतर्गत शामिल था।”

9. Parties did not object to said issue and went to trial with open eyes and led evidence. No effort was made by the respondent/plaintiff to controvert the 'curt' contents of Ex. Ex.P.-4 sent by the appellant in response to ex.D-3. In our considered opinion, Ex.P.-3 was rightly termed as sales gimmicks after hooking the appellant with assurances and promises to install Unix and Unify with 'C' dev for utilization of peripherals purchased from the respondent/plaintiff. It was like dangling carrot on a stick. In this state of affair, it could not be said that the sale of goods was complete after delivery of peripherals. It is like offering a car for sale without a steering

wheel and transmission machine or breaks. Absence of any, would render the merchandise only a museum item or junk. Same would be the position when the Unix Unify with "C" dev OS was not installed, the other peripherals were either museum piece or junk item. As long as they were dysfunctional they were useless goods worth nothing to the appellant. Now a day it is a matter of common knowledge that to boot a system, besides power, one requires an Operating System to run the hard disk or external devices like CTD Printer Scanner etc. These peripherals work in unison and not alone mode. Thus we have no hesitation to hold that in the present case supply of these peripherals on alone mode were not good enough to lay the claim for recovery and as such, law does not compel the appellant to pay money for any item of peripherals, charges, interest) and without proof of actual payment of sales tax as directed by the Court below. Appeal allowed the suit filed by the respondent/plaintiff is dismissed with costs throughout. Counsel's fee Rs. 5,000/- if certified.

(S.K.SETH, J.)

Alok/-