

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

+ **Ex.No.146/2006**

% **Date of Decision:19.01.2009**

M/s.Ramnath International Construction (P) Ltd Decree Holder
Through: Mr. D.P.Sharma, Advocate.

Versus

UOI through Northern Railway, Headquarters Judgment Debtor
Office.
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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This is a petition by the Decree holder/petitioner seeking execution of award dated 16th April, 2001 passed under the Arbitration & Conciliation Act, 1996.

The Decree holder/petitioner seeks execution of the award pertaining to his claim No.2 under which the claim consisting of five broad parts, earthwork, pitching, breast wall, mass concrete and some steel was awarded to the petitioner. While awarding the claims it was also held that details due to variation in the ground levels furnished by the Railways at the time of tendering and as actually handed over and similarly other items are matters of detailed measurements which

should be jointly recorded and paid for if not paid by the Railways already.

The award regarding claim No.2 is as under:-

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|----|---|----------------|-------------------|
| 2. | Extra cost for temporary staging for supporting Centering of Cast-in-situ prestressed concrete girder | Rs.56,46,000/- | As detailed below |
|----|---|----------------|-------------------|

Reason:- From the details of claims filed by the firm, it is noted that the claim consists of five broad parts:- earthwork, breast wall, mass concrete and some steel. Details due to variation in the ground levels furnished by the Railways at the time of tendering and as actually handed over and similarly other items are matters of detailed measurements which should be jointly recorded and paid for, if not paid by the Railway already.

The learned counsel for the decree holder contends that though the measurement was carried out regarding earthwork and pitching, however, no measurements have been carried out in respect of breast wall, mass concrete and steel.

In the execution petition filed by the decree holder it has not been elaborated that the amounts have been paid in respect of the earthwork, pitching and the measurements have not been carried out for breast wall, mass concrete and some steel.

The petition is contested by the judgment Debtor contending inter-alia that in terms of the award dated 16th April, 2001 payment of Rs.27,93,255/- was made after deducting Rs.58,169/- as TDS on 16th August, 2001. It is also contended that the said amount of Rs.27,93,255/- was received by the decree holder towards full and final settlement of all its claims against the judgment debtor and

consequently the award dated 16th April, 2001 has been completely satisfied.

The judgment debtor has also pointed out that by a letter dated 5th July, 2001 the decree holder was requested to attend the office of Deputy Chief Engineer/Construction, Jammu Tawi at 9.00 hours on 9th July, 2001 for recording joint measurement. According to the judgment debtor the joint measurements for claim No.2 were taken on 9th July, 2001 in the presence of authorized representative of decree holder, Mr.Vishwajeet Sood. Mr.Vishwajeet Sood is stated to have left the office of the judgment debtor on that date and made a representation that he will come back again on the next day to sign the joint measurements. However, neither Mr. Vishwajeet Sood nor the decree holder nor anyone else on behalf of the decree holder turned up next day i.e 10th July, 2001 or thereafter to sign the joint measurements.

It is contended that on the basis of joint measurements taken on 9th July, 2001 by letter dated 3rd August, 2001 the total amount of Rs.28,57,424/- was paid. In the circumstances, the judgment debtor contends that no amount is due and the decree holder is not entitled for execution of any amount against the respondent. It is also contended that now after considerable period, it may not be possible to take the measurements.

From the perusal of the execution petition, reply and rejoinder it is apparent that it has not been denied that Mr.Vishwajeet Sood had attended the office on 9th July, 2001. This has also not been disputed

that the measurements were taken. What is disputed is that the measurements were taken only for 2 components and not five components which were awarded to the decree holder under the award.

The measurements were taken in the presence of the representative of the decree holder who however, did not sign the same and went back with the representation that he would come and sign the measurements next day. This is not denied that Shri Vishwajeet Sood was the representative of the decree holder. Nothing has been shown that the decree holder or the representative of the decree holder went back on the next date and signed the joint measurement or represented to the judgment debtor that the measurements had been taken for two components and not for all the five components which were awarded to the decree holder under the award. The amount which was sent by letter dated 3rd August, 2001 was accepted. The said amount was accepted by the decree holder in full and final settlement. Since TDS certificate on the amount which was given to the decree holder was not given, therefore a letter dated 12th September, 2002 was written only demanding the TDS certificate and acknowledging the amount already paid. The letter dated 12th September, 2002 is as under:-

No.RICL/JURL/F/02

12 September 2002

Deputy Chief Engineer (C)
Northern Railway
Jammu Tawi

Dear Sir,

Re:- Non-receipt of TDS certificate in Form No.16A

Ref:- Balance work of design and construction of
Viaduct in Zone E-11 on JURL

In satisfaction of the Award dated 16.4.2001 in the above matter cheque No.G-230704 dated 16.8.2001 for Rs.27,93,255/- was sent after deducting Income Tax plus 2% surcharge on Income tax vide your office letter No.6-A/cs/Dy.CE(C)/JAT/Arb dated 16.8.2001 copy enclosed for ready reference. However, TDS certificate in Form No.16A for Rs.58,169/- being the amount of tax deducted at source out of the awarded amount has not been sent along with the said cheque and is still awaited. As the accounts of the year 2001-2002 are under compilation, you are requested to send the TDS certificate for Rs.58,169/- without any further delay. The certificate is required to be submitted to the Income Tax office along with the Return of Income Tax. Needless to emphasize that it is the statutory obligation of the payer to deduct TDS and furnish the necessary TDS certificate in Form No.16A to the payee.

Kindly look into the matter and have the needful done at your earliest.

Thanking you,

Yours faithfully

For Ramnath International
Construction Pvt Ltd.

(R.D.Kapoor)
General Manager

From the letter dated 12th September, 2001 it is apparent that the decree holder did not accept the amount reserving his right to claim the amount for alleged three components nor it was represented to the judgment debtor that the amount has been paid only for two components out of five components of claim no.2. After 12th September, 2002 no communication seems to have been sent by the decree holder till 15th February, 2006 for almost four years claiming any amount towards the alleged balance three components of claim no.2. After

measurements were taken in the presence of the representative of the decree holder, it has not been represented by the decree holder that the measurements were in respect of two components and not for all the five components. No reason has been disclosed as to why the measurements shall be taken for only two components and not for all the five components of the same work.

The learned counsel for the decree holder has relied on the letter dated 23rd August, 2001 allegedly sent by fax. However, no report about the transmission of the said document has been produced. The receipt of said document is not admitted by the judgment debtor. In any case if the said letter was sent on 23rd August, 2001 after the receipt of letter dated 3rd August, 2001 sending an amount of Rs.28,46,5000 towards the claim no.1 & 3 and an amount of Rs.4924 towards the claim no.2, the decree holder should have protested and sought measurement of alleged three components. Nothing was done for almost four years.

In the circumstances, it is apparent that the claim now raised by the decree holder is an afterthought and the measurements were done by the respondents in the presence of the authorized representative of the decree holder and the payment was made to the decree holder which was accepted by the decree holder. The learned counsel for the judgment debtor also contends that after four years, the measurement as has been claimed by the decree holder cannot be carried out.

In the circumstances, the inevitable inference is that no amount is due from the judgment debtor to the decree holder and whatever

amount was due was paid in August, 2001. Therefore, it cannot be held that any amount is due to the decree holder from the judgment debtor. The execution petition filed by the decree holder is, therefore, without any merit and it is dismissed.

JANUARY 19, 2009
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ANIL KUMAR, J.