

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

% Judgment Pronounced on: 25.01.2011

+ **CS(OS) No. 1503/2008**

**Sh. Dev Dutt Sharma**

**.....Plaintiff**

**- versus -**

**Municipal Corporation of Delhi & Others ....Defendants**

**Advocates who appeared in this case:**

For the Plaintiff: Mr. Sandeep Sharma

For the Defendant: Mr. Anshum Jain for Ms. Suparna  
Srivastava.

**CORAM:-**

**HON'BLE MR JUSTICE V.K. JAIN**

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|--------------------------------------------------------------------------|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not?                                | No. |
| 3. Whether the judgment should be reported in Digest?                    | No. |

**V.K. JAIN, J. (ORAL)**

1. This is a suit filed under Order XXXVII of the Code of Civil Procedure for recovery of Rs.20,29,752/-. The suit is based on the bills submitted by the plaintiff to the defendant in respect of the work executed by him for the defendant.

2. The plaintiff submitted a tender for providing RMC from Mithapur Chowk to Village Hari Nagar on main Jaitpur

Road, which was accepted by the defendant vide acceptance letter dated 31<sup>st</sup> March, 2005. The work order dated 18<sup>th</sup> August, 2005 was issued to the plaintiff after deposit of performance guarantee by the plaintiff. An agreement, thereafter, was executed between the parties on 30<sup>th</sup> August, 2005. On completing the execution of the work, the plaintiff submitted the first RA bill for Rs.11,53,978/-. A sum of Rs.1,38,840/- was deducted from that bill and the bill was passed for the balance amount of Rs.10,15,138/- on 22<sup>nd</sup> September, 2005. However, the defendant failed to make payment of the bill passed by it. Since the work was completed on 8<sup>th</sup> August, 2005 and the defect liability period was also expired on 7<sup>th</sup> August, 2006, the plaintiff also became entitled to refund of security deposit of Rs.94,456/- made by him with the defendant. The plaintiff has also claimed a sum of Rs.1982/-, which he claims to be payable in respect of second and final bill. He has also claimed Rs.16,930/-, which was recovered/deducted by the defendant from the second and final bill. The plaintiff has also claimed interest at the rate of 18% per annum on the principal amount claimed by him.

3. I.A. 1324/2009 has been filed by the defendant

seeking leave to contest. It has been admitted in the application that a sum of Rs.10,15,138/- was payable to the plaintiff towards the first running account (RA) bill. Regarding second RA bill, the defendant has admitted its liable to pay a sum of Rs.1982/- to the plaintiff. However, the defendant has justified the deduction of Rs.16,930/- from the second RA and final bill.

4. Admittedly, the amount of Rs.10,15,138/-, which was payable to the plaintiff against the first RA bill as also the amount of Rs.1982/-, which was payable to him against the second RA bill has been paid during the pendency of this suit. As regards the amount of Rs.16,930/-, which was deducted from the second RA bill, the learned counsel for plaintiff does not press for recovery of this amount. Thus, the claim of the plaintiff in respect of principal amount stands satisfied.

5. Coming to interest part, the only plea taken by the defendant is that in view of amendments made in Clauses 7, 9 and 9A of the General Conditions of Contract for Municipal Corporation of Delhi Works, vide circular dated 19<sup>th</sup> May, 2006, which provided that payment of bill would depend on availability of funds in particular head of account

from time to time in MCD and payment of bills shall be made strictly on Queue basis i.e. first the past liabilities will be cleared and release of payment for passed bills will be in order of the demand received at the head quarter under particular head of account, the amount payable to the plaintiff could not be released due to non-availability of funds from the Government of NCT of Delhi.

6. Admittedly, the tender of the plaintiff was accepted on 31<sup>st</sup> March, 2005 and the work order was issued to him on 18<sup>th</sup> August, 2005. Even the formal agreement between the parties is alleged to have been executed on 30<sup>th</sup> August, 2005. The agreement between the parties does not contain the terms of payment, which were stipulated vide circular issued by the MCD on 19<sup>th</sup> May, 2006 and this is not the case of the defendant that the plaintiff had at any point of time agreed to accept payment in terms of circular dated 19<sup>th</sup> May, 2006 issued by it. A unilateral amendment of the General Conditions of Contract by the defendant will not bind the plaintiff since it does not result into a concluded contract between the parties. The defendant was not entitled in law to amend the terms of payment, without the plaintiff agreeing to the amended terms. Consequently, the

defendant cannot claim any justification for withholding the payment, which was due to the plaintiff in respect of the work executed by him for the defendant.

7. It has been alleged in the plaint and has also been stated in the affidavit filed by the plaintiff for issue of summons for judgment that a notice was issued by the plaintiff to the defendant on 6<sup>th</sup> December, 2007, which was duly served on the defendant. The receipt of notice has not been disputed by the defendant in the application filed by it for leave to contest the suit. Though the date of service of the notice has not been given in the plaint, having been dispatched on 7<sup>th</sup> December, 2007, the notice would in the normal course have been served on the defendant by 9<sup>th</sup> December, 2007. A perusal of the notice dated 6<sup>th</sup> December, 2007 shows that the defendant was required to make payment within two months from the date of receipt of the notice along with interest at the rate of 18% per annum from due date till the date of payment.

8. Section 3 of the Interest Act, 1978, to the extent it is relevant, provides that in any proceedings for recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is

made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, if the proceedings do not relate to a debt payable by virtue of written instrument at a certain time, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

9. Since the notice dated 6<sup>th</sup> December, 2007 indicated that the defendant would be liable to pay interest from due date, the plaintiff, in view of the aforesaid provision contained in Section 3 of the Interest Act, 1978, is entitled to interest from the date the principal amount was payable to him by the defendant. In my view, considering the nature of transaction between the parties, interest should be awarded to the plaintiff, on the principal amount at the rate of 10% per annum with effect from one month after submission of the bill, after giving a reasonable time of one month to the defendant to make payment. Calculating at 10% per annum, the amount of interest, with effect from 8<sup>th</sup> September, 2005, which is one month after the date of

submission of the final bill, on the principal amount of Rs.10,17,120/-, the date of filing of the suit, comes to Rs.2,96,660/-. The amount of interest on the security deposit of Rs.94,556/- calculated at the rate of 10% per annum for the period from 7<sup>th</sup> August, 2006 till the date of filing of the suit comes to Rs.18,911/-.

10. Coming to cost, the learned counsel for the plaintiff prays only for award of Court Fee paid by the plaintiff.

11. Hence, a decree for recovery of Rs.3,15,571/- is hereby passed in favour of the plaintiff and against the defendant with cost quantified at the amount of Court fee. If the defendant does not pay the aforesaid amount to the plaintiff within 60 days from the date of this order, the amount will carry pendente lite and future interest at the rate of 12% per annum. Decree sheet be prepared accordingly.

**(V.K. JAIN)**  
**JUDGE**

**January 25, 2011**  
**vk**