

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 20.10.2011

+ CS(OS) 1676/2007

KAUSHALYA CONTRACTOR & DEVELOPERS (P) LTD.
..... Plaintiff

Through: None.

versus

JASPAL KAUR PUBLIC SCHOOL **..... Defendant**
Through: Mr Jasmeet Singh and
Mr Saurabh Tiwari, Advs.

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 for recovery of Rs 20,20,326/- and a counter claim for recovery of Rs 6,42,500/- The defendant awarded work of renovation of toilet block in the school to the plaintiff, vide award letter dated 17th May, 2006 and the work was to be completed by 25th June, 2006. It is alleged in the plaint that the plaintiff mobilized the machines,

equipments AND labour and started work for renovation of toilet block of defendant school, but, it was asked to carry out extra work, to the tune of Rs 8,27,513.35/-, which was not stipulated in the award letter and, therefore, it could not meet the deadline fixed in the award letter. This is also the case of the plaintiff that the awarded work as well as the extra work was completed by it by the first week of July, 2006. According to the plaintiff, it carried out total work for Rs 28,93,579.85/- which comprised the awarded work for Rs 20,66,066.50 and extra work for Rs 8,27,513.35. This is also the case of the plaintiff that though only a sum of Rs 64,931 was to be deducted towards income tax at source, the defendant deducted a sum of Rs 1,15,743.49. The plaintiff accordingly submitted a final bill of Rs 23,21,064.17 after giving adjustment for the advance payment of Rs 3,91,840/- which it had received from the defendant. The defendant made payment of Rs 4,88,780/- to the plaintiff. It is also alleged that the architect appointed by the defendant informed the plaintiff that a sum of Rs 1,50,000/- had been deducted for rectification of the work carried out by another contractor. Since the balance amount was not paid, the plaintiff has claimed the balance

principal sum of Rs 17,35,750.91 along with interest on that amount, thereby making a total sum of Rs 20,20,326/-

2. The defendant filed written statement contesting the suit and also filed the above-referred counter claim of recovery of Rs 6,42,500/-.

The defendant denied the authority of Mr Jagdish Sharma to instate the suit and sign and verify the pleadings on behalf of the plaintiff. It was also alleged that time was the essence of the contract and, therefore, the work was to be completed at all costs by 25th June, 2006, the reopening date for the school being 03rd July, 2006. It is further alleged that the plaintiff defaulted for adhering to the time schedule and executed work of a sub-standard nature. It is also alleged that the plaintiff did not complete even 40% of the work and raised exaggerated bills. It is claimed that the architect M/s Myriad Perceptions checked the quality of the work done by the plaintiff and accordingly a sum of Rs 9 lakh was paid to the plaintiff. Since the work executed by the plaintiff was sub-standard and defective, the defendant had to get the same re-done through M/s Mbience Interior Designer and Furnishers and pay a sum of Rs 12,43,379/- for the aforesaid rectification and modification and to

complete the balance work which the plaintiff had not executed. It is also alleged that on account of delay by the plaintiff in executing the work, the defendant had to install portable toilets in order to avoid inconvenience to the children. The defendant claims to have incurred additional expense of Rs 67,500/-for hiring mobile toilet. According to the defendant, it is entitled to recover a sum of Rs 5,75,000/- from the plaintiff for the rectification of the sub-standard and inferior work executed by the plaintiff as also for building the work which the plaintiff company did not execute and a sum of Rs 67,500/- paid for hire of mobile toilets, thereby making a total sum of Rs 6,42,500/-.

3. The following issues were framed on the pleadings of the parties:-

- i. Whether the suit has been instituted and the plaint signed and verified by a duly authorized person on behalf of the plaintiff? OPP
- ii. Whether the plaintiff is entitled to recover any balance amount for works done for the defendant and if so how much? OPP
- iii. Whether the plaintiff failed to complete the works awarded? OPD

- iv. Whether the defendant had to get the works completed and rectified from another party and if so to what effect?
OPD
- v. Whether the counter claim has been instituted and signed and verified by a duly authorized person on behalf of the defendant? OPD
- vi. Whether the defendant is entitled to recover any amounts from the plaintiff for any works left incomplete by the plaintiff and/or for rectification of the defective work done by the plaintiff and/or for delay caused by the plaintiff and if so what amount? OPD
- vii. Whether the party entitled to found recovery of any monies from the other, entitled to any interest and if so at what rate and for what period? OPP
- viii. Relief

Issue No. 1

4. No evidence has been let by the plaintiff. The issue is, therefore, against the plaintiff and in favour of the defendant.

Issue No. 5

5. The defendant has placed on record the copy of the resolution passed in the General Body Meeting of Mata Jai

Kaur Charitable Trust on 3rd October, 2007 whereby Mr.George Mathew, Principal of Jaspal Kaur Public School, which is stated to be a school being run by Mata Jai Kaur Charitable Trust, was authorized to commence/institute/defend/file cases for and on behalf of Jaspal Kaur Public School. Since there is no evidence in rebuttal, I hold that the counter-claim has been signed and verified and the suit instituted by a competent person on behalf of Mata Jai Kaur Charitable Trust. The issue is decided accordingly.

Issues No.2, 3, 4 6 to 8

6. These issues are inter-connected and can be conveniently decided together. The plaintiff has not produced any evidence and in fact after 20th January, 2011, no one has been appearing for the plaintiff. Vide order dated 20th January, 2011, the Court noted that cost of Rs.1,000/- was imposed on the plaintiff on 15th December, 2008, cost of Rs.3,000/- was imposed on it on 10th May, 2010 and cost of Rs.10,000/- was imposed on 22nd September, 2010. It was further noted that the Court had, while passing the order dated 22nd September, 2010, also directed that if the plaintiff failed to pay the costs which

were imposed on 15th December, 2008 and 10th May, 2010 as also the cost imposed on that date, the suit shall stand dismissed for non-prosecution. Since neither the cost were paid nor any witness was produced by the plaintiff and the learned counsel appearing for the plaintiff stated on 22nd January, 2011 that he was not getting any instructions from the plaintiff, the evidence of the plaintiff was closed.

7. The defendant has filed affidavit of Mr. George Mathew, Principal of Jaspal Kaur Public School by way of evidence in the counter-claim. In his affidavit, Mr. George Mathew has stated that the work carried out by the plaintiff was not only sub-standard, defective, shabby, but also below par and far from satisfactory. According to him, the following defects were found in the work carried out by the plaintiff:-

(a) The poor workmanship in the shaft area of toilet led to heavy seepage in all the floors causing substantial damage to other floors and the concrete.

(b) Due to delay in the contract time, the defendant had to install portable toilet to avoid inconvenience to the children, which cost heavily to the school.

(c) The connection pipes used were of substandard quality

as they were already corroding again causing seepage and damage to the concrete.

(d) Tiles were not laid properly on the floor as no level was maintained. Due to this, there was water logging on the floor.

(e) The partitions between the W.C's were not fixed properly, and were shaking. They had to be refixed again.

Mr. George Mathew also stated that the plaintiff did not complete even 40% of the work awarded to it and raised highly exaggerated bills which included bills for the work which it had not done. He has further stated that since the plaintiff did not complete the work in time, the school had engaged the other contractor, namely, Mbience Interior Designers and Furnishers Delhi, to do the balance work in which an additional expense of Rs.12,43,379/- was made towards the costs of rectification of the substandard work done by the plaintiff. Ex.DW-1/2 & Ex.DW-1/3 are the invoices raised by M/s. Mbience Interior Designers and Furnishers in respect of the work executed by it. Ex.DW-1/4 is the certificate dated 21st November, 2007 issued by Punjab and Sind Bank certifying for the payment of Rs.12,43,379/- to M/s.Mbience Interior Designers and

Furnishers Delhi. Ex. DW-1/5 is the letter dated 17th July, 2006 which the Architect of the defendant had returned to the plaintiff pointing out the work not done by the plaintiff. According to Mr. George Mathew, the defendant had to hire mobile toilets for a period of five days after re-opening of the school, i.e. from 3rd July, 2006 to 7th July, 2006 and Ex.DW-1/6 is the invoice raised by Superloo in this regard. Ex.DW-1/7 is the certificate from the bank verifying the payment made to M/s. Superloo. Mr.Mathew has also stated that the defendant has already made payment of Rs.8,80,620/- to the plaintiff, which was verified by the Bank vide certificate Ex.DW-1/8. I see no reason to disbelieve the unrebutted testimony of Mr. George Mathew and, therefore, hold that the work executed by the plaintiff company besides being incomplete was also sub-standard and defective and, therefore, the defendant had to incur expenditure of Rs.12,43,379/- in removing the deficiencies in the work and completing the work which was left unfinished by the plaintiff. There is no evidence of any extra work having been executed by the plaintiff for the defendant. The evidence shows that even the awarded work was not completed by the plaintiff. The testimony of Mr. George Mathew also

shows that the defendant has paid a sum of Rs.8,80,620/- to the plaintiff. It has been admitted in the plaint that the defendant had deducted a sum of Rs.1,15,743.49 from the bill of the plaintiff towards income-tax to be deducted at source. The aggregate of the amount of Rs.12,43,379/- which the defendant paid to M/s. Mbience Interior Designers and Furnishers, Rs.8,80,620/- paid to the plaintiff and Rs.1,15,743.49 deducted towards payment of income-tax comes to Rs.22,39,742.49. The defendant had to pay a sum of Rs.20,04,240/- to the plaintiff. The defendant also paid a sum of Rs.67,500/- to M/s. Superloo on account of the failure of the plaintiff Company to execute the work within the time stipulated for this purpose. After deducting the sum of Rs.20,04,240/- which it was required to pay to the plaintiff, the defendant is entitled to recover the balance amount of Rs.303002.49 from the plaintiff Company. The issues are decided accordingly.

ORDER

In view of my findings, the suit is hereby dismissed with cost.

Counter-Claim 53/2008

A decree for Rs.303002.49 with proportionate costs and

pendente lite and future interest @ 6% per annum is passed in favour of Mata Jai Kaur Charitable Trust which runs Jaspal Kaur Public School and against the plaintiff company.

Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

OCTOBER 20, 2011
BG/'sn'/'vn'