

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

+ **RFA No.151/2012**

% **30th May, 2012**

N.D.M.C. Appellant
Through: Mr. P.C. Sen, Advocate.

VERSUS

SHRI SANJAY JAISWAL Respondent
Through: Mr. A.K. Alagh, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 24.11.2011 decreeing the suit of the respondent/plaintiff for recovery of ₹ 11,92,440/- alongwith costs and interest @ 8% per annum. The suit has been decreed for recovery of moneys inasmuch as although the parking area available to the licensee/contractor/respondent/plaintiff was decreased on account of bomb blast in the parking area at G Avenue, Sarojini Nagar, New Delhi, yet the appellant/defendant insisted on and received the entire licence fees for the entire parking area.

2. On 16.5.2012, the following order was passed:-

“1. This Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 24.11.2011 decreeing the suit of the respondent/plaintiff for ₹ 11,92,440/- along with interest at 8% per annum on the ground that on account of bomb blast in Sarojini Nagar Market, the parking area which was available to the respondent/plaintiff/parking contractor was reduced, and therefore, the appellant/defendant was not entitled to charge parking fee for the complete area.

2. Learned counsel for the appellant has sought to argue that the subject Clause 8 of the contract does not apply in the present case, which reads as under:-

“That the parties hereto agree that the CONTRACOR shall not be eligible for any rebate, refund or modification whatsoever to the CONTRACTOR’S financial commitments/obligations to the Council for whatever reason. However if the area of the parking lot is affected due to execution of any civil/excavation work by any governmental authority, the CONTRACTOR shall submit his report within 7 days of the date of occurrence of the hindrance supported with a photograph and verified by an officer duly authorized in this behalf by Council. After completion of the work, a similar report shall also be submitted to determine the actual period of hindrance. The CONTRACTOR will be entitled for proportionate rebate in the agreed license fee only after submission of the reports in the matter prescribed.”

3. A reading of the aforesaid Clause shows that the intent of the same is that once the parking area available to the parking contractor is reduced, the remission in license fee shall be granted. The expression “civil/excavation” work has to be read in a purposive manner so as to fulfill the intent of the Clause as also the contract.

4. In my prima facie opinion, the NDMC is surely acting unfairly in claiming license fee for the entire parking area, though admittedly, the part of the parking area was no longer available to the respondent/plaintiff after the bomb blast in the Sarojini Nagar

Market.

5. After having partially heard the counsel for the appellant, I put it to the counsel for the appellant, whether the NDMC/appellant has never given any remission in license fee to any parking contractor on such grounds whereby the parking area was reduced. I was in fact inclined to ask the appellant to file an affidavit either of its Chairman or of the concerned director who deals with such issues.

6. At this stage, however, counsel for the appellant says that he would like to take instructions as to whether such an appeal should or should not be pressed, being prima facie against cannons of law, equity and good conscience.

7. List for directions on 24th May, 2012, and on which date either the appeal would be heard on merits or if the appellant/NDMC feels otherwise, it may take steps not to pursue the appeal in the peculiar facts of the present case.

8. It is made clear that no adjournment shall be granted on the next date of hearing.

9. Dasti to counsel for the parties.” (underlining added)

3. No instructions were however forthcoming for 24.5.2012 and therefore though it was recorded on 16.5.2012 that no adjournment shall be granted, this case was again adjourned for today. Today, the counsel for the appellant states that appeal be decided on merits.

4. This is a very unfortunate litigation by a public body which is expected to act justly and fairly in performance of its duties. The limited issue in this appeal is the interpretation of clause 8 of the agreement between the parties which has already been reproduced in the order dated 16.5.2012 above. This clause makes it more than abundantly clear that in case the parking area available to the licensee/contractor is reduced due to

execution of any civil/excavation work by any governmental authority, the concession in the licence fee would be available. As observed in the order of this Court dated 16.5.2012, reproduced above, there has to be a purposive interpretation to clause 8 of the contract i.e. the object/purpose must be forwarded that no licence fee should be claimed for the area which is reduced.

5. The obduracy of a public body like the appellant has gone to the extent that not only the suit was contested to the hilt, and, this obduracy is continued in this appeal, although the suit has been decreed with costs and interest.

6. The admitted facts are that the respondent/plaintiff was allotted for a period of one year from 1.12.2007 to 30.11.2008 an area of approximately 5679 sq. mtrs. on a monthly licence fee of ₹ 2,83,778/- in the parking lots at G Avenue Sarojini Nagar, New Delhi. Part of this parking on account of a bomb blast was closed for an indefinite period. This aspect was duly communicated by the respondent to the appellant vide respondent/plaintiff's letters dated 11.8.2008 and 18.9.2008 seeking remission in the licence fees, however, the appellant for 'unexplained' reasons seems not to have relented. Ultimately, the subject suit came to be filed.

7. In the suit, relevant issues with respect to entitlement of the respondent/plaintiff were issue Nos.1 and 3 and these issues have been dealt with by the trial Court in the following terms:-

“ISSUE NO.1 & 3

I. Whether the plaintiff is entitled for the recovery of ₹ 11,92,440/- OPP

III. Whether the plaintiff is not entitled for the relief claimed in view of clause 6(a) of the agreement? OPD

12. An appraisal of the evidence on record reflects that the plaintiff had bid for the parking lot Sarojini Nagar Market which was accepted and possession was handed over to him vide Ex.PW1/2 w.e.f. 01.12.2007 for a period of one year. The defendant had also fixed the tariff for parking of cars and scooters. An agreement was entered into and executed between the parties. On account of emergent security reason, portion of the parking lot i.e. at ‘G’ Avenue and in the newly developed area measuring a total of 3912 sq meters was declared a ‘No Parking Zone’ by the Delhi Police for security reasons. Though vide Clause 6(a) of the agreement, the parking lot was allotted on an “As is where is” basis, vide Clause-8 of the Agreement, the defendant had categorically agreed, that in the event of the parking lot being effected due to execution of any work conducted by any Governmental Authority, the contractor would be entitled for a proportionate rebate in the agreed license fees. The loss of use of the subject area was solely by the restriction imposed by the State. This was duly communicated to the defendant and was also confirmed in writing by the Delhi Police. There is no cogent explanation as to why remission for this temporary hindrance, by the Government Authority was not given to the plaintiff. Apart from the agreement, equity demands that the plaintiff should pay only for the area which could effectively be put at his disposal. The attitude of the defendant which is also a limb of the Government, is highly unjustified in not considering the plaintiff’s request for remission. The plaintiff cannot be made to pay for the area which he could not use on account of restrictions imposed by the government. The plaintiff is therefore entitled to remission of

in the licence fees for 3912 sq. meters for a period of 183 days.
This has been quantified by the plaintiff as ₹ 11,92,440/-.

13. In view of the same, the plaintiff is entitled to a decree for recovery of ₹ 11,92,440/- on account of remisison in the licence fees as worked out by him for a period of 183 days for being prevented to put the same to use on account of government restrictions.

The issues 1 and 3 have been decided as above.”
(underlining added)

8. An appellate Court is not entitled to interfere with the findings and conclusions of the trial Court unless the findings and conclusions are perverse or illegal. I do not find any perversity or illegality in the impugned judgment decreeing the suit of the respondent/plaintiff in view of clause 8 of the agreement between the parties and the conclusions of the trial Court reproduced above.

9. The Supreme Court in the recent judgment of ***Ramrameshwari Devi and Others v. Nirmala Devi and Others, (2011) 8 SCC 249*** has held that it is high time that actual costs should be imposed otherwise the guilty party would end up in benefiting by contesting frivolous litigations. As per the ratio of the judgment of the Supreme Court in ***Ramrameshwari Devi and Others (supra)***, I find that the present is a fit case for imposition of costs. I am empowered to impose actual costs by virtue of ***Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15***. I am also imposing costs

inasmuch as in spite of giving opportunity to the appellant to act in accordance with equity and fairness in terms of the order dated 16.5.2012, the relevant authorities in the appellant body obviously do not seem to care.

10. In view of the above, the appeal is dismissed with costs of ₹ 40,000/-. Costs be paid within six weeks from today. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MAY 30, 2012

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