

\$~5

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

%

DECIDED ON: 01.05.2013

+

RFA (OS) 44/2013
CM APPL.6917 & 6918/2013

SOUTH DELHI MUNICIPAL
CORPORATION & ANR.

..... Appellant

Through: Mr. Nalin Tripathi, Standing Counsel.

versus

VARINDER JEET SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The present appeal by the defendant - South Delhi Municipal Corporation impugns the judgment and order of the learned Single Judge in CS (OS) 1309/2009 made on 31.01.2013.

2. The plaintiff - respondent in this case - a contractor was awarded, upon his tendering a bid for road widening project at Green Park, a work order. In terms of the order, work was to start on 17.07.2005 and to be completed on or before 16.08.2005. The plaintiff apparently completed the work on 15.02.2007. There is no dispute that the plaintiff completed the work on 15.02.2007. He approached the Court claiming a decree for the sum of ₹28,34,441/- which included the amounts payable towards certain

running bills and interest.

3. The defendant - Corporation - had urged in the suit - a summary one, under the provisions of Order-37, CPC - that in this case the contractor had not prepared a final bill and that in any event the work was completed much beyond the period agreed upon by the parties. It was submitted that in the absence of any bill, the interim determinations by the Engineer-in-Charge of the works, were treated as ad hoc bills and passed/permitted to be paid on certain dates, i.e., 18.10.2006 and 26.09.2007. It was further submitted that as a consequence, there was no liability till the final bill had been drawn and the contract was deemed to have been performed.

4. Learned Single Judge after noticing the circumstances in the case as well as the developments which occurred during its pendency - including the tendering of the amount of ₹13,35,534/-, ₹6,18,271/- and ₹1,23,473/- (last being the security) held that the Corporation/defendant was liable to pay interest two months after the expiry of passing of each bill, i.e., from 18.10.2006 and 26.09.2007. Interest was calculated at 10% on the amounts paid in terms of the said bills, i.e., ₹13,35,534/- and ₹6,18,271/- till the date of actual payment, i.e., 12.10.2009 and 26.10.2009.

5. It is argued on behalf of the appellant that the reasons adopted by the Single Judge is faulty since in this case, no bill was in fact submitted by the contractor. Reliance is placed upon clause-9 of the terms governing the work order, to say that the time period granted for processing and paying the amount claimed under a bill is determined in terms of this condition. In case the tendered value of work is up to Rs.5 Lacs, the time granted to process the bill is three months; in case it exceeds Rs.5 Lacs, time granted is six months.

6. It is argued that in this case, the interim bill was not drawn and the Engineer-in-Charge actually measured the work done and submitted his two estimates which were treated as bills and eventually cleared on the dates concerned, i.e., 18.10.2006 and 26.09.2007. Counsel stressed that this did not satisfy the conditions spelt out in clause-9 which concerns itself with payments made in a final bill.

7. Learned counsel further submitted that the impugned judgment is in error inasmuch as it overlooked the expressed terms of the work order in clause-7, particularly, the condition that -

“in the event of the failure of the contractor to submit the bills, Engineer-in-charge was to prepare or cause to be prepared such bills in which event no claims whatsoever due to delays on payment including that of interest shall be payable to the contractor”

8. This Court has carefully considered the submissions. The plaintiff's claim in the suit was limited to the conceded or admitted amount, i.e., those passed by the concerned authority on 18.10.2006 and 26.09.2007. There is no dispute that the bill amounts so passed were in fact paid - but almost three years later. The main question which the learned Single Judge, therefore, had to deal with was the issue of interest liability. The appellant relies upon clause-7 which precludes the grant of any interest in the event of the contractor's failure to submit the final bill. It is urged that in the absence of a written contract, the plaintiff could not recover any amount towards interest. At first glance, the argument appears appealing, but the Court is unpersuaded having regard to the facts and circumstances in this case. What the contractor is urging in the present case is that in the event of default to furnish the final bill, the authority was empowered to measure the

work done; it has the further jurisdiction to prepare the bill and estimate the amounts which can be the basis for payment of consideration. That eventuality works itself out in the present case. The Engineer-in-Charge measured the works and estimated the amounts payable; it is not also in dispute that no final bill was prepared and all consideration amounts payable towards the work was in fact made over to the contractor upon clearing all these bills during the pendency of the suit. The Single Judge rested her conclusions on the provisions of the Interest Act, 1978 and reasoned that once the authority concerned cleared the final bill, there was no justification for the appellant to hold on to the amounts. There is no dispute that these amounts were paid during the pendency of the suit sometime in 2009. The matter can be looked at from another perspective. If the Corporation's argument were to be accepted, no interest would be payable at all regardless of when it chooses to enter into contract or when it chooses to make the payments, be it three months, three years or even ten years. Such arguments needs to be rejected. The restrictive stipulation vis-a-vis interest can only be interpreted in a reasonable manner. The learned Single Judge taking into consideration the entire conspectus of circumstances held that the period of two months after passing of the bills was a reasonable one within which the Corporation was absolved of any interest liability. We do not see any infirmity with that reasoning and consequently propose to not disturb it.

9. So far as the submission with regard to security amount goes, there is no dispute again that the contractor had finished the entire works and no part of it remained to be completed. Furthermore, the contract is not one of the kind where security amount was to be retained for a certain duration after its completion to monitor the performance. Being works which were

presumably capable of being measured and valuation assessed at site, the Corporation paid the entire amounts, after duly carrying out the inspections. Having regard to this fact and the further circumstance that the 100% bill amount was passed for payment on 18.10.2006 and 26.09.2007, the security deposit too became payable. On this aspect, learned Single Judge held as follows: -

“Counsel for the defendants/MCD has submitted that the contract had been completed by the plaintiff by 15.02.2007. The period of six months if reckoned from the aforesaid date would have expired on 14.08.2007. However, after deduction of 3% penalty on account of extension of time, the defendants/MCD has released a sum of ₹ 1,23,473/- to the plaintiff almost five years later, on 30.01.2013.”

10. This Court does not find any infirmity in the approach and findings of the learned Single Judge who took into consideration all the contract conditions as well as the attendant delay in the payment of bills which had been passed on 18.10.2006 and 26.09.2007.

11. The appeal consequently fails and is accordingly dismissed along with the applications.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

MAY 01, 2013
/vks/