

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CS(OS) 1309/2009 and I.A. No.16391/2010**

Date of Decision: 31st January, 2013

IN THE MATTER OF

VARINDER JEET SINGH

..... Plaintiff

Through: Mr. Vikas Sharma, Advocate

versus

MUNICIPAL CORPORATION OF DELHI AND ANR.

..... Defendants

Through: Mr. Nalin Tripathi, Advocate with
Mr. Anurag Sharma, Advocate

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The plaintiff has instituted the present suit against the defendants/MCD under Order XXXVII CPC for recovery of a sum of ₹28,34,441/-.

2. The admitted facts of the case are that the plaintiff is a contractor and has been executing works of construction for the defendants/MCD for the past several years. In or around the year 2005, the defendants/MCD had invited tenders for improvement/widening of the parking space in Green Park Main Market in C-13/South Zone. In response to the said invitation, various parties, including the plaintiff herein, had submitted their tenders. At the time of submission of tender, the plaintiff had deposited earnest money of ₹44,500/- and the balance amount of security

was to be deducted from the bills thereafter. Finally, the work was awarded to the plaintiff vide Work Order dated 08.07.2005 for a contractual amount of ₹21,85,937/-. The date stipulated for commencing the work was 17.07.2005. However, the work actually commenced on 20.07.2005 and as per the plaintiff, due to the delay on the part of the defendant/MCD, the work was finally completed on 27.10.2007, whereas the defendants' stand is that the work was completed only on 15.02.2007.

3. It is the case of the plaintiff that after completion of the work, the defendants/MCD measured the same and it prepared the first running bill for a gross amount of ₹14,69,937/-. Out of the aforesaid amount, the balance security amount of ₹75,017/- was deducted and upon making other statutory deductions, the defendants/MCD had passed the said bill on 18.10.2006 for an amount of ₹13,35,534/-. The plaintiff claims that after completing further work, measurements were recorded by the defendants/MCD and he had raised the second running bill for a gross amount of ₹7,04,442/-. After deducting the gross value of the work executed and the balance security amount of ₹57,276/- and upon making other statutory deductions, the defendants/MCD passed the aforesaid bill on 26.09.2007 for a sum of ₹6,18,271/-.

4. The plaintiff claims that the work was completed by him to the satisfaction of the Engineers of the defendants/MCD and that the defect

liability period of six months, as provided for in the Agreement, expired on 26.04.2008 and thereafter, the security amount of ₹1,76,793/-, inclusive of the amount of the earnest money was also refundable to him. It is averred in the plaint that despite repeated requests, the defendants/MCD failed to make the aforesaid payments. The plaintiff then issued a legal notice dated 09.04.2009 dispatched by registered post, addressed to the defendants/MCD, calling upon it to pay the aforesaid amount alongwith interest, which was calculated @ 24% per annum on the aforesaid amount, within a period of two months from the date of receipt of the said notice. It is stated by learned counsel for the plaintiff that despite the fact that the aforesaid legal notice was duly received by the defendants/MCD, it failed to make any payment, thus compelling the plaintiff to institute the present suit against the defendants/MCD for recovery of a sum of ₹28,34,441/-, alongwith future and *pendente lite* interest calculated @ 18% per annum.

5. Summons in the present summary suit were issued to the defendants/MCD in the prescribed format on 22.07.2009. Memo of appearance was entered on behalf of the defendants on 07.08.2009. Thereafter, the plaintiff issued summons of judgment to the defendants/MCD which was served upon them on 22.11.2010 whereafter they filed a leave to defend application under Order XXXVII Rule 3(5) CPC, registered as I.A. No.16391/2010. In the said application, the

defendants/MCD had admitted having awarded the work order to the plaintiff and further stated that against the first running bill raised by the plaintiff, an amount of ₹13,35,534/- was passed and released and against the second running bill, an amount of ₹6,18,271/- was passed and released. It was thus averred that having received the payments under the two bills, the plaintiff is not left with any cause of action to pursue the present proceedings.

6. A reply to the aforesaid leave to defend application was filed by the plaintiff on 08.07.2011, wherein it was admitted that payment of a sum of ₹12,24,982/- was released by the defendants/MCD on 12.10.2009 and further, a sum of ₹7,88,208/- was released on 26.10.2009. As per the plaintiff, after adjustment of the aforesaid amount received from the defendants/MCD, a sum of ₹9,06,952/- is due and payable by the defendants/MCD on account of the component of interest, calculated @ 15% per annum on the aforesaid amounts due to late payment and upon the security amount deposited, which was inclusive of the earnest money that had been paid by the plaintiff.

7. On 16.07.2012, as counsel for the defendants/MCD had stated that the principal amount had already been paid to the plaintiff, thus leaving only the security amount of ₹1,76,793/-, which was to be paid to the plaintiff, learned counsel was directed to obtain instructions from the Department as to the status of the release of the security amount to the

plaintiff and the suit was adjourned to 20.09.2012. On 20.09.2012, counsel for the defendants/MCD had stated on instructions from the Department that the aforesaid security amount would be released to the plaintiff within two weeks. As counsel for the plaintiff had requested on the aforesaid date that a hearing in the case may be deferred till the security amount was actually released in favour of the plaintiff and as he had further stated that the plaintiff was willing to accept a reasonable sum on account of interest payable on the delayed payment as may be fixed by the Court, the matter was adjourned to 22.11.2012.

8. On 22.11.2012, counsel for the defendants/MCD had stated that the security amount of ₹1,23,473/- would be released in favour of the plaintiff after deducting a sum of ₹53,320/- on account of extension of time that was granted to the plaintiff for completion of work. The said deduction made on the part of the defendants/MCD was disputed by the counsel for the plaintiff, who had sought to rely upon the conditions contained in the contract governing the parties to urge that the plaintiff was entitled to claim interest on the principal amount and also on the security amount which had been illegally withheld by the defendants/MCD. As a result, counsel for the plaintiff was directed to place on record a copy of the contract governing the parties alongwith an affidavit furnishing the details of the principal amounts received from the defendants/MCD, including the dates of receipts of the aforesaid amounts.

9. The said affidavit has not been filed by the plaintiff till date. However, counsels for the parties do not dispute the fact that though the first bill of ₹13,35,534/- was passed by the defendants/MCD on 18.10.2006, but a sum of ₹12,24,982/- payable to the plaintiffs, under the aforesaid bill, was released by the defendants/MCD only on 12.10.2009 , i.e., after a period of 3 years. Similarly, the second bill of ₹6,18,271/- was passed by the defendants/MCD on 26.09.2007 but payment for a sum of ₹7,88,484/- was released by the defendants two years later, on 26.10.2009. As regards the security deposit amount, counsel for the defendants/MCD states that a sum of ₹1,23,473/- has been remitted into the account of the plaintiff through electronic transfer only yesterday, i.e., on 30.01.2013.

10. Today, counsel for the plaintiff states that although, the parties had not executed a separate contract in respect of the work awarded, they are governed by the General Rules and Directions issued by the MCD and Clauses 7 and 9 thereof are relevant. Clause 7 of the General Rules relates to "Payment on Intermediate Certificate to be Regarded as Advances" and Clause 9 relates to "Payment of Final Bill". Both the aforesaid Clauses are reproduced hereinbelow for ready reference:-

"CLAUSE 7

Payment on Intermediate Certificate to be Regarded as Advances

No payment shall be made for work, estimated to cost Rs. Twenty thousand or less till after the whole of the work shall have been completed and certificate of completion given. For works

estimated to cost over Rs. Twenty thousand the interim or running account bills shall be submitted by the contractor for the work executed on the basis of such recorded measurements on the format of the Department in triplicate on or before the date of every month fixed for the same by the Engineer-in-Charge. The contractor shall not be entitled to be paid any such interim payment if the gross work done together with net payment/adjustment of advances for material collected, if any, since the last such payment is less than the amount specified in Schedule 'F', in which case the interim bill shall be prepared on the appointed date of the month after the requisite progress is achieved. Engineer-in-Charge shall arrange to have the bill verified by taking or causing to be taken, where necessary, the requisite measurements of the work. In the event of the failure of the contractor to submit the bills, Engineer-in-Charge shall 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 contract. Payment on account of amount admissible shall be made by the Engineer-in-Charge certifying the sum to which the contractor is considered entitled by way of interim payment at such rates as decided by the Engineer-in-Charge. The amount admissible shall be paid by 10th working day after the day of presentation of the bill by the contractor to the Engineer-in-Charge of his Asstt. Engineer together with the account of the material is issued by the department, or dismantled materials, if any.

All such interim payments shall be regarded as payment by way of advances against final payment only and shall not preclude the requiring of bad, unsound and imperfect or unskilled work to be rejected, removed, taken away and reconstructed re-erected. Any certificate given by the Engineer-in-Charge relating to the work done or materials delivered forming part of such payment, may be modified or corrected by any subsequent such certificate(s) or by the final certificate and shall not by itself be conclusive evidence that any work or materials to which it relates is/are in accordance with the contract and specifications. Any such interim payment, or any part thereof shall not in any respect conclude, determine or affect in any way powers of the Engineer-in-Charge under the contract or any of such payments be treated as final settlement and adjustment of accounts or in any way vary or affect the contract.

Pending consideration of the extension of date of completion interim payments shall continue to be made as herein provided, without prejudice to the right of the department to take action under the terms of this contract for delay in the completion of work, if the extension of date of completion is not granted by the competent authority.

The Engineer-in-Charge in his sole discretion on the basis of a certificate from the Asstt. Engineer to the effect that the work has been completed upto the level in question make interim advance payments without detailed measurements for work done (other than foundations, items to be covered under finishing items) upon lintel level (including sunshade etc.) and slab level, for each floor working out at 75% of the assessed value. The advance payments so allowed shall be adjusted in the subsequent interim bill by taking detailed measurements thereof.

CLAUSE 9

Payment of Final Bill

The final bill shall be submitted by the contractor in the same manner as specified in interim bills within three months of physical completion of the work or within one month of the date of the final certificate completion furnished by the Engineer-in-Charge whichever is earlier. No further claims shall be made by the contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. Payments of those items of the bill in respect of which there is no dispute and of items in dispute, for quantities and rates as approved by Engineer-in-Charge, will, as far as possible be made within the period specified hereinunder, the period being reckoned from the date of receipt of the bill by Engineer-in-Charge or his authorized Asstt. Engineer, complete with account of materials issued by the Department and dismantled materials.

- (i) If the Tendered value of work : 3 months
is upto Rs.5 lacs
- (ii) If the Tendered value of the work : 6 months
exceeds Rs.5 lacs

11. Counsel for the defendants/MCD states that Clause 7 itself stipulates that in the event of failure on the part of the contractor to submit the bills, the Engineer-in-Charge would prepare or cause to be prepared such bills in which event, no claims whatsoever on account of delay of payment including interest would be payable to the contractor and in the present case, as the plaintiff had admittedly not raised any final bill after completing the work and the bills had to be prepared by the

Engineer-in-Charge of the defendants/MCD for payment, the plaintiff cannot claim entitlement to any interest on the said amount.

12. The arguments advanced by the other side is refuted by the counsel for the plaintiff, who submits that the interest that the plaintiff claims from the defendants/MCD is not for the period prior to passing of the bills, but is for the period thereafter till the dates when the payments were actually released. He further states that Clause 9 of the General Rules and Directions stipulates that if the tendered value of the work is upto ₹5 lacs, then as far as possible, payment in respect of such work would be cleared within a period of three months and if the tendered value of the work exceeds ₹5 lacs, then payment would be made within a period of six months and the present case falls in the latter category. He points out that the first bill was passed by the defendants/MCD on 18.10.2006 and the second bill was passed on 26.09.2007, but the payments were released as late as in October, 2009, thus entitling the plaintiff to receive interest on the amount paid so belatedly. In support of the aforesaid submission, learned counsel seeks to rely upon the following decisions:-

- (i) **CS(OS) 1797/2007** entitled Jagbir Singh Sharma vs. MCD and Ors. decided on 15.07.2008.
- (ii) **CS(OS) 2218/2007** entitled M/s Roshan Lal Vohra & Sons vs. MCD & Ors. decided on 26.08.2008.
- (iii) **CS(OS) 943/2008** entitled M/s Jagbir Singh Sharma vs. MCD & Ors. decided on 20.11.2008.

(iv) **CS(OS) 1503/2008** entitled Dev Dutt Sharma vs. MCD & Ors. decided on 25.01.2011.

13. Counsel for the defendants/MCD disputes the submission made by the other side that Clause 9 of the General Rules and Directions is applicable to the facts of the present case. He states that the plaintiff had failed to raise a final bill on the defendants/MCD as per the provisions of Clause 9 of the General Rules and Directions and in such circumstances, he cannot claim entitlement to any interest. It is further stated by learned counsel that the MCD follows the policy of payment to the contractor on a first in and first out basis and therefore the plaintiff had to await his turn for the payment due to him to mature, upon the MCD receiving the grants from the Govt. of NCT of Delhi.

14. As noted above, the only dispute pending in the present case relates to the interest, if any, payable to the plaintiff for the duration of the delay in the release of the amounts payable by the defendants/MCD and also on the security deposit amount, which has been released after a substantial delay upon deducting a penalty of 3% on account of extension of time in execution of the contract.

15. It is settled law that if a person is deprived of the use of money to which he is legitimately entitled, he has a right to be monetarily compensated for the said deprivation. [Ref: **(1992) 1 SCC 508** : Secretary, Irrigation Deptt. Govt of Orissa vs. G.C. Roy; **(2004) 5 SCC**

65 : Ghaziabad Development Authority vs. Balbir Singh, and **(2009) 8**

SCC 507 : Sri Venkateswara Syndicate vs. Oriental Insurance Company Ltd. and Anr.]. The object behind awarding interest to a party, who has suffered loss, due to a legitimate deprivation of the enjoyment of the use of money that he was entitled to rightfully, is to balance the equities and while doing so, the facts involved in each case must be examined by the Court.

16. The statutory provisions with regard to payment of interest are laid down in Section 3 of the Interest Act, 1978, that provides that in any proceedings for the 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 a 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, then interest will be claimed, till the date of institution of the proceedings.

17. In the present case, admittedly, the plaintiff had issued a notice dated 09.04.2009, calling upon the defendants/MCD to clear the outstanding dues with interest payable @ 24% per annum. In view of the

provisions contained in Section 3 of the Interest Act, 1978, the plaintiff is entitled to claim interest from the date, the principal amount was due and payable to him by the defendants/MCD. Even if the submission of the counsel for the defendant/MCD that the plaintiff failed to raise a final bill is accepted, it is an undisputed position that the defendants/MCD had passed the first bill of the plaintiff on 18.10.2006, but the said amount was finally paid three years later, on 12.10.2009 and the second bill was passed on 26.09.2007 but was paid two years later, on 26.10.2009.

18. As regards the security deposit amount, as per Clause 17 of the General Rules and Directions, the defendant/MCD could have retained the aforesaid amount only for the duration of the defect liability period of six months reckoned from the date of completion of the contract. 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.

19. In the aforesaid facts and circumstances and having regard to the nature of the transaction between the parties, this Court is of the opinion that the plaintiff is entitled to receive interest from the defendants/MCD, calculated @ 10% per annum after the expiry of two months from the

date when the first and the second bills were passed by the defendant/MCD, i.e., on 12.10.2009 and 26.10.2009 respectively. Further, the plaintiff is granted interest calculated @ 10% per annum on the security deposit amount of ₹1,23,473/- that was lying with the defendant/MCD, after excluding the period of six months from the date of completion of the work, i.e., from 15.02.2007, which would then commence from 15.8.2007.

20. The suit is decreed as above, with costs and counsel's fee quantified at ₹10,000/-. It is further directed that if the defendants/MCD fails to pay the decretal amount to the plaintiff within a period of two months from the date of passing of this order, then the awarded amount shall carry *pendentelite* interest @12% per annum, till realization. Decree sheet be drawn accordingly.

21. The suit is disposed of alongwith the pending application.

JANUARY 31, 2013
rkb/mk/sk

(HIMA KOHLI)
JUDGE