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

Judgment Pronounced on: 27th August, 2014

+ RFA(OS) 87/2010

PT. MUNSHI RAM & ASSOCIATES PVT. LTD. Appellant

Through: Mr. Sandeep Sharma, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ANR..... Respondents

Through: Mr. Arun Birbal, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE SUNIL GAUR

GITA MITTAL, J (ORAL)

1. The appellant assails the judgment dated 31st May, 2010 in CS(OS) No. 1288/1997 whereby the learned Single Judge held that the appellant was entitled to damages which were quantified in the sum of ₹8,87,783.55/- with costs, counsel's fee having been quantified at ₹75,000/-. We are informed that the respondent has paid the decretal amount including the costs which was awarded by the impugned judgment and decree.

2. The appellant had filed the suit initially praying for a decree for permanent and mandatory injunction, in which an amendment was permitted during the pendency of the suit to incorporate prayer for a decree for damages/ compensation to the tune of ₹66,43,087.5/- with

interest @ 24% per annum from 13th July, 1994 till realization.

3. The facts giving rise to the suit and the present appeal are within a narrow compass and are being noted hereafter. The Delhi Development Authority, respondent before us, had invited tenders for construction of houses at Sarita Vihar, Delhi in the year 1992 in terms of 'Self Finance Scheme'. The estimated cost of the work was ₹1,48,34,098/-. The appellant was the successful bidder who had offered to execute the works @ 61.75% of the estimated costs (work at the cost of ₹2,39,94,150/-), which was accepted by the DDA. The contract was awarded to the appellant who was communicated by letter dated 4th December, 1992. It is submitted that a formal letter of acceptance was executed on 10th December, 1992 and the binding contract was executed on 18th December, 1992 stipulating the date of start of work as 22nd December, 1992. The appellant claimed to have mobilized his labor force at the site earmarked by the DDA.

4. Troubles of the appellant began thereafter when, it was claimed that, on 23rd December, 1992, when its work force was about to start the work, one Mr. Moti Goel, with certain other individuals, visited the site and threatened the appellant's work force with dire consequences if they commenced construction. These individuals claimed ownership of the land as well as being the beneficiary of an injunction order of the court. The appellant claims to have invited attention of the DDA to this fact by letter dated 24th December, 1992 and requested it to hand over peaceful possession of the entire site without loss of time, as it had been stranded with men and machinery at the site of the work. This was followed by communication dated 3rd February, 1993. The appellant demanded from

the DDA to hand over the site or alternative site in the same locality or in Jasola village, failing which loss of profitability at 5% damages and other charges would be claimed. It appears that the DDA by letter dated 23rd March, 1993 intimated the appellant that efforts were being made to have the site vacated and possibility of handing over an alternative site in Jasola village was being explored.

5. The appellant appears to have finally written to the DDA a letter dated 20th May, 1993 informing it that no final decision had been communicated by the DDA and if it was not in a position to provide a site or able to secure the vacation of the interim order, the contract may be closed. The DDA responded finally by letter dated 16th June, 1994 informing the appellant that in terms of Clause-13 of the Agreement, the contract would stand closed. It appears that thereafter in July, 1993, the DDA issued a press note in 'The Times of India' inviting fresh tenders with regard to work in question. The appellant sent a legal notice dated 13th July, 1994 to the DDA claiming a sum of ₹66,43,087.5/- as damages.

6. Instead of pursuing that claim, it appears that in the year 1995 the appellant-plaintiff filed CS (OS) No. 946/1995 praying for a decree of declaration that the plaintiff was entitled to an alternative site. During the pendency of this Suit, the appellant-plaintiff filed another suit CS(OS) No. 1288/1997. Subsequently, the appellant-plaintiff filed an application CM No. 1294/2000 in CS (OS) No. 1288/1997 seeking incorporation of an alternative prayer for damages. The amendment application was allowed by order dated 13th February, 2001 and the appellant- plaintiff was permitted to incorporate in its plaint a bald plea that it was entitled to compensation/ damages to the tune of ₹66,43,087.5/- with interest @24%

per annum w.e.f. 14th July, 1994

7. These two suits were listed before the court on 5th May, 2003 and issues were framed in both the suits separately. An order was passed in CS (OS) No. 1288/1997 directing consolidation with CS (OS) No. 946/1995. It was also directed that CS (OS) No. 1288/1997 shall be the lead case.

8. On 20th October, 2005 a statement was made on behalf of the appellant-plaintiff that CS (OS) No. 946/1995 is not pressed in view of the claim for damages in respect of the same cause of action having been permitted. CS (OS) No. 946/1995 was therefore dismissed as withdrawn.

9. Both sides examined solitary witnesses. The court thereafter proceeded to judgment which came to be pronounced on 31st May, 2010 which has been assailed before us on the limited prayer for enhancement of the damages which have been awarded.

10. We have heard learned counsel for the parties who have carefully taken us through the record. Learned counsel for the appellant contends that the issue of damages on account of loss of profit suffered by the appellant, no evidence is required and that the appellant was entitled to 15% of the contract value. This submission is to be noted only for the sake of rejection. It is well settled that a party is required to lay down factual basis for its claim in the plaint by adequate pleadings. In the instant case, there is not a whit of a pleading explaining the break- up of the claim of ₹66,43,087.5/-. There is no whisper or assertion that this claim is premised on loss of profit suffered by the plaintiff.

11. Learned counsel would contend that the plaintiff-appellant has given the break-up in the legal notice which was sent by it to the DDA. It

is well settled that a party can lead evidence only in support of the factual matrix on which pleadings have been laid in the plaint. The appellant-plaintiff was required to give details of this claim and no reliance can be placed on the legal notice, more so when no such submission was made before the learned Single Judge.

12. We may note that appellant has not proved any document including the legal notice in its evidence on record. The examination-in-chief was by way of affidavit of the plaintiff. We do not see any evidence in this regard other than a blanket assertion that the plaintiff is entitled to “compensation/ damages to the tune of ₹66,43,087.5/- along with interest @24% per annum w.e.f. 13th July, 1994”. The learned Single Judge has carefully considered the matter and has arrived at the conclusion that the DDA was in breach of the contract. On evaluation, the learned Single Judge has awarded damages of ₹8,87,783.55/-.

13. The DDA has not assailed the finding returned in the judgment and decree dated 31st May, 2010 either by way of an independent appeal or by way of cross objections filed in the appeal. Nothing has been placed before us which would enable us to take a different view.

14. For the above reasons, we find no merit in this appeal, which is dismissed with costs.

GITA MITTAL, J

SUNIL GAUR, J

AUGUST 27, 2014

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