

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

+ **RFA No. 818/2006**

% **5th December, 2018**

TRADE FAIR AUTHORITY OF HARYANA AND ORS.

..... Appellants

Through: Ms. Noopur Singhal, Advocate
for Mr. Anil Grover, Advocate
(M. No.9312765888).

versus

AJAY JAIN

..... Respondent

Through: Mr. Sunil Dutt, Advocate (M.
No.9811168148).

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 under Section 96 of the Code of Civil Procedure, 1908(CPC) is filed by defendants in the suit impugning the Judgment of the trial court dated 08.09.2006 by which the trial court has decreed three claims to the respondent/plaintiff as under:-

1. Payment for scaffolding for year 1999 Rs. 47,500
- 2 Balance payment as per letter dated Rs. 1,21,600
05.01.2001 being 10% of security deducted
- 3 Earnest money deposited at the time of tender Rs. 30,000

2. At the outset I may note that counsel for the respondent/plaintiff very fairly does not seek the amount of Rs.47,500/- under claim no.1 and therefore impugned judgment and decree will stand modified accordingly by reducing this amount of Rs.47,500/- from the judgment and decree passed for a sum of Rs.1,99,100/- alongwith interest @ 12% per annum.

3. The only aspect and issue to be addressed by this Court is whether the respondent/plaintiff is guilty of delay in the work awarded to the appellants/defendants under Award no.1017 dated 21.09.2000 pertaining to design of exterior and related work for the Haryana Pavilion at I.I.T.F., Pragati Maidan, New Delhi. Admittedly the work was to commence on 05.10.2000 and was to be completed by 05.11.2000. The issue is whether the respondent/plaintiff has completed the work by 05.11.2000 or the work got delayed thereafter and was completed after 05.11.2000.

4. The counsel for the appellants/defendants has argued that the appellants/defendants were entitled to deduct the penalty for the delayed work in terms of Clause 8 of the Award Letter dated 21.09.2000, and this para 8 reads as under:-

“8. In case the work is not completed within the time period up to 5.11.2000 the agency will be penalized at the rate of Rs.25,000/- per day upto 13.11.2000 and the work will be completed at his risk and cost.”

5. No doubt there is a clause which entitles the appellants/defendants to deduct the penalty for delayed work beyond 05.11.2000 and upto 13.11.2000 at the rate of Rs.25,000/- per day, but the factual issue is that whether or not the respondent/plaintiff had completed the work by 05.11.2000. In this regard, there can be no doubt that the respondent/plaintiff completed the work by 05.11.2000 inasmuch as the respondent/plaintiff had written its Letter dated 06.11.2000 attaching therewith the final Running Bill/Ex.PW1/17 dated 04.11.2000, and the letter dated 06.11.2000 shows that the entire work was complete except laying of the carpet on the floor and which was agreed, that the same would be laid on 12.11.2000. The counsel for the respondent/plaintiff is right in contending that the carpet was to be laid within the next few days after 05.11.2000 because otherwise

the carpet would have been spoiled even before the trade fair would have commenced on 14.11.2000. This letter dated 06.11.2000 reads as under:-

“
2000

6th Nov.

The Administrator
Trade Fair Authority of Haryana
Haryana Bhawan
Copernicus Marg
New Delhi-1

Ref:-Renovation of HARYANA PAVILLION IITF-2000
Sub:- Submission of Third Running Bill

Madam,

With reference to ongoing renovation work of Haryana Pavilion IITF-2000 at Paragati Maidan, New Delhi, please find herewith enclosed our third running bill for payment.

We also wish to inform you that we have completed all the works expect laying of carpet on the floor, as it was agreed to lay this on 12th Nov.2000.

Thanking you,

Your's Sincerely,
For Options Unlimited,

RAJEEV SEHGAL,
DIRECTOR

Encal a.a.”

6. There is no doubt that the appellants/defendants have not in any manner disputed the contents of the Letter dated 06.11.2000

written by the respondent/plaintiff to the appellants/defendants, and even if the work was not completed then surely the appellants/defendants would have contradicted the contents of the Letter dated 06.11.2000. I may note that with respect to the same work order, there were various other disputes and these have been decided by the impugned Judgment dated 08.09.2006. As per the impugned judgment various letters which are Ex.PW1/D2 to Ex.PW1/D5 and Ex.PW1/16 were written by the appellants/defendants to the respondent/plaintiff which were not found to be responded to by the respondent/plaintiff, and thus the contents of those letters were used against the respondent/plaintiff. Therefore by the very same logic the appellants/defendants are deemed to have accepted the contents of the Letter dated 06.11.2000 which is reproduced above. Once the work was completed by 05.11.2000 and Running bill alongwith the Letter dated 06.11.2000 is given by the respondent/plaintiff to the appellants/defendants, it cannot be held that the respondent/plaintiff was guilty of delay in work beyond 05.11.2000.

7. Ld. counsel for the appellants/defendants have sought to place reliance upon the Letter dated 10.10.2000 / Ex.PW1/8 issued by the appellants/defendants to the respondent/plaintiff on the aspect of respondent/plaintiff being guilty of delay beyond 05.11.2000, but surely this letter has no bearing on whether the work was completed by 05.11.2000 as this letter is dated 10.10.2000 and was written just about four days after the commencement of work. It's pertinent to note there could have been some delay but the issue is not about any delay for the period from 05.10.2000 to 10.10.2000 but of a delay and non-completion beyond 05.11.2000. I therefore reject the argument urged on behalf of the appellants/defendants by placing reliance upon the Letter dated 10.10.2000/Ex.PW1/8.

8. Ld. counsel for the appellants/defendants then sought to place reliance upon Ex.PW1/D12 to show that certain items of work as per the contract were not done, however, it is noted that the appellants/defendants have already reduced payment made to the respondent/plaintiff for certain works not done, and therefore, such works stand deducted from the said work order. The document Ex.PW1/D12 is pursuant to a Report prepared by the officials of the

appellants/defendants dated 30.12.2000 pointing to both the delay and the defective nature of work and the deduction was only made for the defective nature of work.

9. Ld. counsel for the respondent/plaintiff is also justified in placing reliance upon Letter dated 05.01.2001/Ex.PW1/18 written by the appellants/defendants to the respondent/plaintiff, and the para 6 of this letter states that a penalty of Rs.1.93 lakhs was imposed upon the respondent/plaintiff both for delay and unsatisfactory completion of work. Therefore if the appellants/defendants have once deducted an amount of Rs.1.93 lakhs out of the total payment made to the respondent/plaintiff as penalty towards unsatisfactory completion of work and an assumed delay, the appellants/defendants have thus already deducted the penalty with respect to any assumed delayed work, and thus no further deduction can be allowed to the appellants/defendants from the final bill.

10. Ld. counsel for the appellants/defendants very vainly canvassed that the trial court ought not to have granted interest and in any case not at 12% per annum, however considering that we are talking of payments due in the year 2000, and in the year 2000 if loan

was taken by the respondent/plaintiff from any bank, surely at that time, the respondent/plaintiff would have to pay interest @ 12% per annum simple, and therefore there is no illegality in the trial court awarding interest @ 12% per annum simple.

11. In view of the aforesaid discussion, this appeal is partially allowed and the impugned judgment and decree in favour of the respondent/plaintiff is reduced by a sum of Rs.47,500/- from the decretal amount of Rs.1,99,100/- i.e now the money decree against the appellants/defendants in favour of the respondent/plaintiff will be Rs.1,51,600/-. The rest of the judgment with respect to interest and costs will remain as it is. The Parties are left to bear their own costs so far as this appeal is concerned.

12. The decretal amount has been deposited by the appellants/defendants in this Court. Out of the aforesaid amount, the respondent/plaintiff is entitled to withdraw a sum of Rs.1,51,600/- alongwith interest till the date of deposit in this Court as a principal amount, and since this amount deposited in this Court is lying in a fixed deposit, on this amount payable to the respondent/plaintiff of Rs.1,51,600/- alongwith interest @ 12% per annum till the date of

deposit in this Court interest has accrued in favour of respondent/plaintiff and this amount which is payable to the respondent/plaintiff will be the amount of Rs.1,51,600/- with interest @ 12% per annum till the deposit in this Court and future interest accrued thereon as per the fixed deposit made. The balance amount alongwith interest accrued thereon be refunded back to the appellants/defendants.

DECEMBER 05, 2018

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VALMIKI J. MEHTA, J



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