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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14356 of 2012
Date of decision:21.12.2015

M/s. Ludhiana Builders ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sunil Chadha, Senior Advocate, with
Ms. Swati Verma, Advocate, for the petitioner.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. Samarth Sagar, Advocate,
for respondent No.3.

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Rakesh Kumar Jain, J.

The Municipal Corporation, Ludhiana (hereinafter referred to as the "respondent-corporation") allotted 50% of the construction work, namely, "strengthening of Hambran Road by laying DBM & SDBC from R.D.O. to 5100 Meter M.C. Limit" to the petitioner-firm vide Work Order G33 No.39 EED dated 13.05.2008. The estimated cost of the total work was of ₹6,68,65,479/-, out of which the work allotted to the petitioner-firm was to the extent of 50%. The petitioner completed the work to the satisfaction of the respondent-corporation, which has been duly entered in the Measurement Books No.1886 and 2620. The respondent-corporation has paid to the petitioner the amount of first three running bills but the amount of fourth-cum-final bill of ₹67,19,464/- was not paid though the work stands completed long ago and the petitioner-firm has made various requests in regard thereto.

As a consequence, the present petition has been filed in which, after notice, counsel for the respondent-corporation made a statement that the payment has been sanctioned on the final bill of the petitioner-firm and the same shall be paid within two weeks and in the reply filed by the Additional Commissioner (Tech-D) of the respondent-corporation, the reason has been assigned for delay in payment is due to the loss of original case file as per the report of the Assistant Commissioner (Tech)-D dated 07.12.2012. However, it is submitted that the final bill has now been prepared relying upon the duplicate bill and vouchers.

The issue involved in this case at present is not of the payment of the principal amount but of the interest.

Counsel for the respondent-corporation, while contesting the petition, relied upon a decision of this Court in the case of **M/s Dharam Pal Contractors Hot Mix Plant Danewala, Sardoolgarh vs. The State of Punjab and others,** CWP No.14621 of 2014 decided on 05.11.2014 to contend that the writ petition in the contractual matter involving delay in payment is not maintainable. He has also referred to a decision of the Supreme Court in the case of **State of Uttarakhand and another vs. Archana Shukla and others,** (2011) 15 Supreme Court Cases 194 to contend that if there is a conflict between the law and the equity, the law has to prevail over equity as the equity can only supplement the law, but it cannot supplant or override it.

Counsel for the petitioner has submitted that firstly the respondents have not raised any objection in their reply about the maintainability of the writ petition, rather the outstanding payment of the fourth-cum-final bill has been made and secondly he has relied upon a decision of the Supreme Court in the case of **Food Corporation of India and another vs. Seil Ltd. and others,** (2008) 3 Supreme Court Cases 440 in which it has been held that *"it is now no longer res integra that contractual disputes involving public law element are amenable to writ jurisdiction"* and also another judgment of the Supreme Court in the case of **ABL International Ltd. v. Export Credit Guarantee Corpn. Of India Ltd.,** (2004) 3 SCC 553 in which it is held as under:-

> "It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent."

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As regards the interest, it is submitted that though the respondent-corporation has to pay 18% per annum interest on the delayed payment but the petitioner would be satisfied if 7% per annum interest is granted.

I have heard learned counsel for the parties and perused the available record.

There is no dispute that the petitioner was entitled to the amount of the fourth-cum-final bill which was prepared way back on 25.03.2011 and the respondent-corporation could not make the payment because they had lost the original case file of the work executed by the petitioner and did not pay it despite repeated reminders and representations. Since the respondent-corporation has admitted the lapse on its part in the reply, therefore, the action of the respondent-corporation was totally arbitrary and unreasonable for which the writ petition is always maintainable as it offends Article 14 of the Constitution of India. Moreover, the judgments relied upon by the petitioner in **Food Corporation of India's case (supra)** has not been noticed by the Coordinate Bench of this Court in **M/s Dharam Pal Contractors Hot Mix Plant Danewala, Sardoolgarh's case (supra)** and has basically relied upon a decision of the Guwahati High Court in the case of **Abdul Kasem Ali Ahmed v. State of Assam and others,** 2007(1) GLT 784, decided on 07.02.2007, whereas the decision relied upon by the petitioner in **Food Corporation of India's case (supra)** is of the year 2008, having been decided on 11.01.2008.

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Further, in **Food Corporation of India's case (supra),** the Supreme Court has held that the High Court, in an appropriate case, may grant such relief to which the writ petitioner would be entitled to in law as well as in equity.

Since the parties are bound by the agreement and in the agreement, on the basis of which the work has been executed by the petitioner, there is no stipulation of non-payment of interest on the delayed payment, therefore, the petitioner is entitled to interest on the delayed payment.

Consequently, the present writ petition is hereby allowed and the direction is issued to the respondent-corporation to pay to the petitioner interest @ 7% per annum from the date the payment of the fourth-cum-final bill become due till the date it has been actually paid and since the respondent-corporation has unnecessarily contested this petition on the misconceived notions and keeping in view the harassment faced by the petitioner at the hands of the respondent-corporation, the writ petitioner is also held entitled to the costs of ₹1,00,000/- which shall be paid to it by the respondent-corporation within a period of 3 months from today.

December 21, 2015 **(Rakesh Kumar Jain)**
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