

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

% *Judgment reserved on : 22.01.2015.*
Judgment delivered on : 03.02.2015.

+ **CS(OS) 800/2009**

M/S SAINI CONSTRUCTIONS COMPANY Plaintiff

Through **Mr.R.Rajappan and Ms.Rajasree**
Ajay, Advocates.

versus

DELHI JAL BOARD Defendants

Through **Mr.Suresh Tripathi, Advocate for**
DJB.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 M/s Saini Construction Company (hereinafter referred to as the 'plaintiff') has filed the present suit seeking recovery of an amount of Rs.66,72,626/- along with pendente lite and future interest calculated at the rate of 15% per annum beside costs. Out of the sum of Rs.66,72,626/-, the principle figure is of Rs.51,32,789/- with interest calculated at the rate of 15% per annum which accumulates to

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Rs.15,39,837/-. The contention of the plaintiff is that the penalty amount of Rs.17,58,033.90, earnest money of Rs.7,73,000/- and the performance guarantee of Rs.9,76,700/- was illegally deducted from his final bill which amount is liable to be reimbursed to him. He has also claimed damages in the sum of Rs.10 lacs for the illegal rescission of the contract and the consequential loss of profits which was suffered by the plaintiff and compensation due to the breach of the contract.

2 The plaintiff is a registered Government contractor executing various works with the Government and other local bodies including Delhi Jal Board (hereinafter referred to as the 'defendant').

3 Parties had entered into a contract on 14.04.2005 for execution of work to be carried out by the plaintiff i.e. for providing and laying 800 mm dia rising main/feeder main from Vikas Marg to Vishwakaram Park (Geeta Colony) UGR & BPS in TYA, Delhi under an agreement No.1/2006-2007. The salient features of the contract included a tendered amount of Rs.1,95,33,710/-; the estimated cost of the project was Rs.1,70,09,500/-; the date of contract was 24.03.2006; stipulated date of start was 22.05.2006 and the stipulated date of completion was six months thereafter i.e. on 22.11.2006.

4 The project could not be completed in time. It was accordingly rescinded on 21.05.2007.

5 The case as set up by the plaintiff is that all initial preparations including mobilizing men, material, tools and plants was effected immediately on the date of the award of the work. The plaintiff could not however proceed with the work as the defendant has failed to fulfill its reciprocal promises and obligations under the contract which include as follows:-

- (i) Provide full and hindrance free site for execution of work.*
- (ii) Issue drawings/details for the works.*
- (iii) Provide lay out for the work to be executed.*
- (iv) Obtain necessary permissions from local authorities.*
- (v) Make timely payments for the work executed.*
- (vi) Inspection and approval of material/pipes etc. before procurement and use.”*

6 In spite of all efforts made by the plaintiff which included the arrangements by engaging necessary staff and labour, procurement of M.S. plates and having placed orders for the supply of further quantities of plates to be used in the work, the project could not be completed in time and this was because of the non-compliance of the reciprocal

obligations to be carried out by the defendant.

7 On 24.08.2006, the defendant informed the plaintiff that the road cutting permission from the MCD and PWD was likely to be obtained by 30.08.2006 and the work may not be ready for taking up till 01.09.2006. It was thus an admitted position of fact that more than 100 days were lost without any work being undertaken which was for no fault on the part of the plaintiff.

8 The plaintiff vide letter dated 06.06.2006 informed the defendant about the procurement of M.S. plates and other material which were required to be used in the work; the plaintiff also requested the defendant to get the necessary permission from the local authorities including the DDA and the MCD in order that the work could be completed in time. The defendant however failed to handover the site till the first week of September, 2006.

9 In its letter dated 13.09.2006, the plaintiff requested the defendant to arrange for the road cutting permission from the concerned department but this also met with no avail. The plaintiff also informed the defendant on 13.09.2006 that it had complied with the requirement for laying pipes and placing orders but till the road cutting permission

was obtained, the work could not start.

10 Despite assurances by the defendant to expedite the approval of drawings, the defendant failed to abide by this obligation as well. The plaintiff submitted its drawings on 03.07.2006 which the defendant approved only on 19.10.2006. Accordingly, the plaintiff proceeded with placing of orders with the agency vide its letter dated 26.10.2006.

11 On 23.11.2006, the plaintiff informed the defendant that the delay was all attributable to the defendant as it had failed to honour its commitment. This was again explained vide subsequent letter dated 22.12.2006. On 31.01.2007 further hindrances which the plaintiff was facing were brought to the notice of the defendant which included the cables of MTNL, electricity, telephone, the damaged and leaking old water and sewerage line in the alignment. The payments due to the plaintiff were also not released by the defendant.

12 On 09.02.2007, the plaintiff informed the defendant that testing of pipes was being delayed by the third party M/s Meacon. This was also confirmed by the defendant vide its letter dated 24.02.2007. M/s Shiv Durga Land also confirmed on 24.02.2007 that the valves had been received but they were to be checked by a third party namely M/s

Meacon. On 26.02.2007, the plaintiff informed the defendant that 90% of the work already stood completed and other delay was largely due to the lapses on the part of the defendant.

13 On 19.03.2007, the plaintiff again explained to the defendant that the entire delay was attributable to the defendant; on 28.03.2007 payment of Rs. 40 lacs which was due and payable to the plaintiff and which had not been paid was informed to the defendant asking him to make the payment.

14 Vide letter dated 28.03.2007, the plaintiff informed the defendant that the interconnection work had been completed and the delivery of valves was only for the reason that the third party M/s Meacon had not inspected the goods. The plaintiff had in fact placed orders for steel, M.S. plates with SAIL on 03.04.2007 and this was intimated to the defendant on 04.04.2007. The SAIL however failed to supply M.S. plates to the plaintiff and the plaintiff, in the interest that the work should be completed in time, had to procure the same from the local market. Letters dated 16.05.2007 and 21.05.2007 were also addressed to the defendant.

15 The defendant had illegality rescinded the contract on 21.05.2007

and imposed a penalty of Rs.17,58,033.90 which is 9% of the tendered cost in terms of clause 2 of the agreement; it had also forfeited the earnest money of Rs.7,73,000/- and the performance guarantee of Rs.9,76,700.

16 These payments which were illegally deducted from the final bill of the plaintiff were against the terms of the contract as the plaintiff was not at fault for not completing the work in time; delays were all attributable to the defendant. The defendant was unjustified in deducting these amounts. Penalty could not have been imposed. Even otherwise no actual loss had been suffered by the defendant for which the penal clause had been invoked; it was against the legal provisions.

17 The plaintiff pursuant to the rescission of its contract on 21.05.2007 had given a detailed reply on 28.05.2007 informing the defendant about the illegal rescission of contract which was without any notice. Since the time fixed in the contract had expired on 21.11.2006, it was clear that time was no longer the essence of the contract and as such the penalty which had been imposed upon the plaintiff was wholly illegal; the plaintiff was entitled to all the aforementioned amounts along with interest. Present suit was accordingly filed.

18 Written statement was filed by the defendant. The preliminary objection taken by the defendant was that there had been suppression of facts and the amount deducted by the defendant was wholly in terms of agreement between the parties i.e. work order dated 10.05.2006. The contention of the defendant was that the work was awarded to the plaintiff for a sum of Rs.1,95,33,710/-; letter of intent (LOI) was issued to the plaintiff on 24.03.2006 wherein the date of start of the work was intimated to be 08.04.2006. In terms of the LOI, the plaintiff was to deposit the performance guarantee of Rs.9,76,700/- i.e. 5% of the tendered amount within 10 days from the issuance of the LOI. It was made clear in the LOI that necessary orders to commence the work would be issued and the site handed over only after the receipt of the performance guarantee. The original date of start of work was 08.04.2006 but the performance guarantee was submitted by the plaintiff only on 08.05.2006 which resulted in initial delay which was all attributable to the plaintiff. The date of completion of the work was 21.11.2006 i.e. within six months from the date of its start i.e. from 22.05.2006. Clause 1.4.1 of the contract agreement clearly stipulated that the M.S. plates were to be procured from manufacturers like SAIL,

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TISCO, ESSAR, JINDAL and ISPAT. The plaintiff however procured plates contrary to the spirit of the agreement. The plaintiff had intimated the defendant that he had placed orders for 350 M.S. plates in May, 2006 and this was a false claim; what was received at the site between 20.10.2006 to 11.11.2006 reflected that the pipes that were made were from the plates purchased from the open market. Till February, 2007, the claimant could only arrange 560 meters of pipes against the requisite amount of 1740 meters. It was noted that up to the date of completion of work i.e. up to 21.11.2006, only 28% of the work was completed. The plaintiff had in fact stated in its communication that the delay in arrangement of M.S. plates was attributable to him because of the family problems which were faced by him. On 27.11.2006, the plaintiff in its communication had sought extension of time till February, 2007; from February, 2007 up to the date of rescission of the contract (21.05.2007), the plaintiff could execute only 50% of the total work. Even after the lapse of five months from the date of issuance of the work order, in terms of clause 1.20 of the contract agreement, the valves in question could not be arranged by the plaintiff; inspite of that, the plaintiff desired the defendant to approve the drawings; the drawings were not

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approved because the specification with regard to valves were already there and forming part of the contract. The approval of the drawings sought by the plaintiff was only a delaying tactic. When the plaintiff was unable to arrange the valves in question, finding no other alternate, the defendant had to arrange for the same. Clause 1.12.4.1 also clearly envisaged that the contractor was to obtain the road cutting permission from the designated authorities. It was made clear in the contract that delay in getting road cutting permission was to be accounted towards the plaintiff alone; the plaintiff did not pursue the matter with the designated authorities as it appeared that no application to the said effect was ever made by the plaintiff. Since the work could not be completed within the extended stipulated period, show cause notice was issued to the plaintiff on 12.09.2006 seeking an explanation as to why penalty under clause 2 of the agreement be not imposed to him to which he replied vide letter dated 20.09.2006, the plaintiff was reminded of the slow pace of the work but to no avail. It is the defendant who had in fact suffered losses because of the complete inaction of the plaintiff. The plaint is wholly frivolous; it is liable to be dismissed.

refuting the contention of the defendant.

20 On the pleadings of the parties, the following issues were framed on 27.01.2010:-

“ (i) Whether the recession or termination of contract dated 24.03.2006 vide letter dated 21.05.2007 by the defendant was lawful? OPP

(ii) Whether the time was of the essence both at the inception and during the performance of the contract dated 24.03.2006? OPP

(iii) Whether the penalty imposed under Clause 2 of the contract dated 24.03.2006 was lawful? OPP

(iv) Whether forfeiture of security deposit and encashment of performance guarantee by the defendant was lawful? OPP

(v) Whether the plaintiff is entitled to damages and loss of profit? OPP

(vi) Whether the plaintiff is entitled to sums referred to in Paragraph 22 at Page 21 of the plaint amounting in all to Rs 5,62,713.85/-? OPP

(vii) Whether the plaintiff is entitled to interest? If so, what would be the amount, rate and period? OPP

(viii) Whether the plaintiff has suffered any loss or damage as a consequence of any act of omission and/or commission of the plaintiff. If so, to what extent? OPD

(ix) Reliefs”.

21 The plaintiff in support of its case had produced one witness. Sh.

Hawa Singh Saini had appeared into the witness box. On behalf of the defendant, P.K. Atray, Executive Engineer (Project), W-1, Delhi Jal Board had entered the witness box. The documentary evidence adduced by the respective parties had been proved.

22 Arguments have heard. Record has been perused.

23 Issuewise findings read as under:-

Issue Nos (i) to (viii)

24 All these issues will be decided by a common discussion. The case of the parties is based largely on the documentary evidence.

25 The crux of the whole dispute centers around the work agreement dated 10.05.2006 which had been executed between the parties. The communications exchanged between the parties also become relevant.

26 Vide Ex.P-1 dated 24.03.2006 a letter was addressed by the Executive Engineer of the Delhi Jal Board to the plaintiff informing him about the acceptance of the tender of the plaintiff. The plaintiff had been directed to deposit the performance guarantee of Rs.9,76,700/- within 15 days from the said letter. This letter clearly specified that only on the receipt of the performance guarantee, necessary orders to commence the work will be issued and the site of the work shall be handed over

thereafter.

27 On 10.05.2006, the defendant informed the plaintiff that his performance guarantee was accepted on 08.05.2006; he was requested to contact the Assistant Engineer for taking possession of the site and the date of start of work was reckoned as 22.05.2006. This had led to a one month delay.

28 On 24.08.2006 vide Ex.PW-1/9 the Executive Engineer wrote to the plaintiff informing him that the road cutting permissions from the MCD and PWD were likely to be obtained on 30.08.2006. It is this letter has been heavily relied upon by the learned counsel for the plaintiff to substantiate an argument that the road cutting permissions were to be obtained by the defendant on his behalf which position is disputed by the learned counsel for the defendant whose categorical submission is that this road cutting permissions in terms of the contract between the parties had to be obtained by the plaintiff himself and there was no obligation on the part of the department to obtain this on his behalf. This letter cannot override the terms of the contract.

29 In this context, clause 1.12.4.1 is relevant. This clause clearly stipulates that the plaintiff has to obtain the road cutting permission

from the designated authorities including the DDA, MCD and PWD; it was the plaintiff who was required to follow up with the authorities; further since the work undertaken was admittedly to be carried out by trenchless technology, no requirement of the entire alignment of the road was necessary as is the case set up by the plaintiff. Documentary evidence establishes the submission of the learned counsel for the defendant that the road cutting permissions had to be obtained by the plaintiff and not by the defendant. Testimony of PW-1 is also relevant. He admitted that he did not write any letter to any civic agency for seeking permission to cut the road; DW-1 on oath reiterated that the road cutting permissions were to be taken by the plaintiff himself from the MCD and the PWD. This is also clear from clause 1.12.4.1 of the agreement between the parties. Ex.PW-1/9 written by the plaintiff to the defendant could not override or supercede the terms of the contract which made it obligatory upon the defendant to obtain the road cutting permission. Admittedly he had not written even one single letter to any civic agency in this context. This was the substantial reason for the delay in the execution of the work and attributable to the plaintiff alone.

obligatory upon the defendant to obtain on his behalf, the other reasons for the delay and which were again attributable to the defendant were:

(a) The approval of drawings was not carried out by the defendant within time;

(b) M.S. plates and M.S. pipes/the valves could not be procured till the approval of drawings was done and this was the consequence of the delay in the approval of drawings.

(c) M.S. pipes were to be approved by a third party M/s Meacon which again had not approved the same in time which was for no fault of the plaintiff. The insistence of the department that the pipes/plates should be procured from the SAIL had made it impossible for the plaintiff to adhere to this condition as inspite of repeated reminders and letters written to the SAIL, the pipes/plates were not available to him. The plaintiff was not permitted to purchase these plates from the open market.

(d) Payments were not released in time.

31 The first contention of the plaintiff that road cutting permission was to be obtained by the defendant has already been answered against the plaintiff.

32 Qua the other grievances of the plaintiff, they are also against the terms of the contract.

33 Clause 1.4.1 of the special conditions of contract required the plaintiff to arrange the M.S. plates from reputed manufacturers like SAIL, TISCO and JINDAL. Till September, 2006, these plates had still not been obtained by the plaintiff. Ex. P-4 is a letter dated 06.06.2006 addressed by the plaintiff to the defendant informing him that he had booked the M.S. plates with SAIL vide his letter dated 30.05.2006 (Ex.PW-1/3). Plaintiff also informed the defendant that he had purchased 50 M.T. of plates from the open market. 800 MM Dia were being cast at Noida with M/s Bamrah Fabrication. However this was a false plea. On 05.09.2006, the defendant was constrained to inform the plaintiff that the plates had still not been procured; he had been directed to arrange for them and get the inspection carried out as early as possible or else he would be liable for compensation for delay. The site inspection further revealed that what was received at the site between 20.10.2006 up to 11.11.2006 were plates which had been purchased from the open market and not from the manufacturers as detailed in terms of the contract. To use the plates below specification was not

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permitted unless specific permission was taken from the competent authority. This was processed by the department vide its letter dated 09.02.2007 (Annexure R-4). After this permission, the inspection of the pipes was not possible by the third party agency which was again a delay attributable to the plaintiff alone. As against 740 meters of pipes which the plaintiff had to arrange, till February, 2007 only 560 meters of pipes were arranged and only 28% of the work stood completed by the plaintiff; the period of contract had in fact expired by that time; the stipulated date of completion of work being 21.11.2006. The letter of the department dated 12.09.2006 informed the plaintiff about this lapse on his part. It was informed to him that the raw material has not been procured and the pipes which the plaintiff had stated had been procured had not been tested. A warning was also given to the plaintiff to complete the work without further delay or else he would face the action for breach of contract.

34 In this context, the plaintiff vide his letter dated 13.09.2006 (Ex.D-4) informed the Department that the order of supply of pipes had been placed and would be procured shortly and the same would be informed to the department. On 20.09.2006, the plaintiff (vide Ex.D-5)

informed the department that due to some family circumstances, he could not purchase the M.S. plates but the order had been placed for the purchase of the same and the same would be received shortly.

35 This letter has been highlighted by the learned counsel for the defendant to support his submission that family circumstances could not be a justifiable reason on the part of the plaintiff for not completing his work in time. The details of the family circumstances have also admittedly not been spelt out. This was no satisfactory explanation on the part of the plaintiff. This letter as has been rightly pointed out by the learned counsel for the defendant in fact is an admission of the plaintiff that till 20.09.2006, the raw material i.e. M.S. plates had still not been procured; the question of testing of the pipes thus did not arise. This letter is also relevant to the extent that the plaintiff in this communication admitted that in case he is not able to complete the work in time, action may be taken against him as per the terms of the work order. It also falsifies his plea in his letter dated 06.06.2006 (Ex.P-4) that he had booked the M.S. plates with SAIL on 30.05.2006 as admittedly no follow up action was taken with SAIL after this date.

36 Even up to November, 2006, inspite of commitment of the
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plaintiff that 50 pipes would be procured at the site, only 33 were brought. The further contention of the defendant that up to December, 2006, 60 more pipes would be brought and still no pipe was brought is also correct. This is evident from the letters dated 26.10.2006 (Ex.D-9), letter dated 09.11.2006 (Ex.D-10) and letter dated 27.12.2006 (Ex.D-13) written by the plaintiff to the department.

37 Qua the procurement of valves which had to be procured by the plaintiff in terms of clause 1.20 of the contract, even five months from the date of issuance of the work, the valves could not be arranged. The plaintiff insisted that till the approval of the drawings was done, the valves would not be procured. The letter of the plaintiff dated 03.07.2008 (Ex.PW-1/7) seeking an approval of drawings was only a ploy to delay the matter as the procurement of the valves was not correlated with the approval of the drawings as the specifications were already a part of the contract and approval of design or drawings was not necessary. The letter of the department dated 19.10.2006 (Ex.PW-1/10) had requested the plaintiff to immediately procure the valves. This letter was replied by the plaintiff on 26.10.2006 (Ex.PW-1/11) informing the defendant that an order for procurement of valves had

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been placed upon the manufacturer who still requested two weeks time to complete the job. The letters of the department dated 22.02.2007 and 28.03.2007 are also clearly reflective of this point.

38 The claim of the plaintiff that the payments were not released to him in time is also incorrect. The letter of the defendant dated 22.02.2007 (annexure R-2) clearly stated that the second running bill would be calculated at the rate of Rs.17 lacs and not Rs.35 lacs as the plaintiff had failed to abide by its commitment and this letter also detailing in eight paragraphs, all the lapses which had been committed by the plaintiff till that date had accordingly informed him that the second running bill would be approximately Rs. 17 lacs as the claim of Rs.35 lacs was wrongly made. This amount of Rs.17 lacs was accordingly released to the plaintiff within time.

39 Another aspect which is relevant is that although the performance guarantee had to be deposited by the plaintiff within 15 days from the issuance of the letter of intent i.e. up to 10.04.2006 but this performance guarantee was finally deposited only on 08.05.2006. This was also a reason for the delay which the plaintiff in his letter dated 07.04.2006 (Ex.DW-1/1) had attributed unavoidable circumstances and even

presuming that there was a bank strike, it does not answer the delay of one month. The work was thereafter re-scheduled and the original start of work was changed from 08.04.2006 to 22.05.2006 and the date of completion was accordingly then fixed six months thereafter i.e. up to 21.11.2006.

40 A show cause notice was issued by the department to the plaintiff on 12.09.2006 (Ex.D-3) reminding him of clause 2 of the consequence of the breach of the contractual provision. His letter dated 20.09.2006 (Ex.DW-1/7) was hardly an explanation; in fact while requesting for further time for completion, the plaintiff had agreed in this letter that if the work was not completed in time, action may be taken against him as per the conditions of the contract.

41 The department rescinded the contract on 21.05.2007 and it was well within his right to do so in terms of the terms and conditions of the contract.

42 Time was the essence of the contract. This is clear from the express condition contained in the contract. Clause 1.12.2.1 provided that the contractor will submit a detailed bar chart for procuring and laying of pipelines which shall be subject to the employer's approval

and in preparing this bar chart, the contractor shall plan his activities such that laying of pipes is closely related with the procurement schedule and no pipe shall remain stacked at the site for the period more than one month. Clause 5 provided for time extensions for the delay. It specified that the time allowed for the execution of the works as specified in schedule 'F' or extended time in accordance with these conditions shall be the essence of the contract and the execution of the work shall commence from the 15th day or such time period as mentioned in the letter of the Award. In this case there being express stipulations in the contract laying down the time line within which the contract had to be completed and the initial date of the contract being 05.05.2006 which was thereafter extended to 05.11.2006, all show that time was in fact the essence of the contract. The communications exchanged between the parties and discussed supra in fact are also indicative of this fact. Whether time is of the essence or not depends either in the express stipulation contained in the contract or if there is no such express stipulation, the same has to be gathered from the intention of the parties; the intention of the parties in the absence of an express stipulation in the contract may be deciphered from the nature of the

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contract itself and its surrounding circumstances. It may be a mixed question of law and fact.

43 Learned counsel for the defendant has placed reliance upon a judgment of the Apex Court in delivered in (2003) 5 SCC 705 ONGC Vs. Saw Pipes to substantiate this claim on the penalty clause contained in the contract. This is also to buttress the argument of the plaintiff that unless damages are actually proved, the defendant cannot make a claim for the same.

“It is apparent from the aforesaid reasoning recorded by the arbitral tribunal that it failed to consider Sections 73 and 74 of Indian Contract Act and the ratio laid down in Fateh Chand's case (supra) wherein it is specifically held that jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; and compensation has to be reasonable. Under Section 73, when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breach of it. This Section is to be read with Section 74, which deals with penalty stipulated in the contract, inter alia [relevant for the present case] provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss

is proved to have been caused by such breach. therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him. Burden is on the other party to lead evidence for proving that no loss is likely to occur by such breach.”

44 The submission of the defendant on this score appears to be well founded. The contract had pre-estimated the general liquidated damages which would be incurred by the department in case of breach and as such there was no necessity to prove the actual loss and damages which were suffered by the department.

45 A Bench of this Court in OMP No.80/2005 M/s J.K. Cement Works Vs. Delhi Jal Board had in this context while dealing with the similar contention of the party who was responsible for the delay in the contract and who was penalized for liquidated damaged had noted that where the Government itself had on a pre-estimate calculated the extent of damages, no further proof was required to be given by the department to show the actual loss suffered by them. The judgment reported as AIR 1970 SC 1955 Maula Bux Vs. Union of India relied upon by the learned

counsel for the plaintiff is inapplicable in the facts of this case.

46 Thus the rescission/termination of the contract by the department vide its communication dated 21.05.2007 was wholly within legal parameters. Clause 2 of the contract has postulated a penalty which the department was right in invoking in view of the clear and categorical terms of the contract which provided that because of breach and breach being attributable to the acts of the plaintiff, clause 2 of the said terms entitled the defendant to impose penalty. The forfeiture of the security deposit and earnest money and encashing of the performance guarantee in the sum of Rs.9,76,700/- was also legal in terms of 4.1A and 1 of the contract. The plaintiff has failed to prove its case. It has failed to establish the damages, if any, suffered by the plaintiff for the rescission of the contract. As discussed supra, the rescission of the contract by the department on 21.05.2007 was within the parameters of the contract permitting the defendant to rescind it as the plaintiff has failed to abide by its obligations. It is in fact the defendant who has suffered damages as the work could not be completed by the plaintiff within this stipulated time. Apart from the fact that a mere one line description has been given about the claims have been made by the plaintiff i.e. his claims for

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compensation and other overheads, no other details have been furnished.

No evidence, oral or documentary, has been led on this score. Even at the time of the arguments, no such argument has been addressed by the learned counsel for the plaintiff. Plaintiff is not entitled to the reliefs as claimed for by it. The claim of the plaintiff must fail.

47 Suit of the plaintiff is accordingly dismissed.

INDERMEET KAUR, J

FEBRUARY 03, 2014

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