

IN THE HIGH COURT OF BOMBAY AT GOA.**APPEAL FROM ORDER NO. 49 OF 2014.**

WIBRO CONSTRUCTION
COMPANY PVT. LTD., THR.
ITS MANAGING DIRECTOR
AND AUTHORIZED SIGN.
MR. K. ABDULLA.

..... Appellant.

Vs.
STATE OF GOA THR.
THE CHIEF SECRETARY
AND ANR.

..... Respondent.

Mr. Amey Kakodkar, Advocate for the appellant.

Mr. Pravin Faldessai, Additional Government Advocate for the respondents.

Coram:- K. L. Wadane, J.

Reserved on:- 17th March, 2016.

Pronounced on:- 23rd March, 2016

ORDER

The present appeal is filed by the original plaintiff against the order dated 10.7.2014 passed by the Ad-hoc District Judge-I, FTC, Panaji in Civil Suit No. 80/2011, by which the application for temporary injunction has been dismissed.

2. Parties are referred to as per their original status.
3. The plaintiff is a civil contractor duly registered with Department of Public Works of the defendant no.1 and is engaged in business of undertaking construction contracts of public works in the State of Goa. The defendant no. 2 invited tender for the work of

improvement of water supply system to Kadamba plateau. In response, the plaintiff submitted his tender which was accepted and the work was allotted to the plaintiff. The work was to be completed within 360 days from 25.04.2008 but the work could not be completed within stipulated time because of the various breaches of the contract committed by the defendants. The defendant no. 2 by his noticed dated 1.7.2010 wrongly cancelled the contract and the work was rescinded and it was allotted to another agency.

4. The plaintiff filed a suit for recovery of the amount due from the defendants and the defendants have also filed counter claim claiming amount of Rs.5,05,30,835/- being difference of the tender allotted to the plaintiff and after cancellation of the contract it was re-allotted to the new agency at the cost of Rs. 11,15,78,623/-

5. I have heard the arguments of Mr. A. Kakodkar, learned Advocate appearing for the appellant/plaintiff and Mr. P. Faldessai, learned Additional Government Advocate appearing for the respondents/defendants.

6. During the course of arguments, Mr. Kakodkar, learned Counsel has argued that delay in completion of the work was due to inaction on the part of the defendants. They had not provided specifications of the work and other necessary plans, thus the delay was caused due to the breach of the contract by the defendants.

7. On the other hand, Mr. P. Faldessai, learned Addl. Govt. Advocate appearing for the respondents has argued that the plaintiff was supplied with all the necessary plans and the documents inspite of

that the plaintiff could not complete the work within stipulated time. Therefore, the defendants were constrained to cancel contract between the plaintiff and the defendants and work was re-allotted to another agency, therefore, plaintiff is liable to pay the defendants an amount of Rs.5,05,30,835/-.

8. I have gone through the reasons recorded by the learned Trial Court while rejecting the application for temporary injunction. The learned Trial Court relying upon the contents of the cause(29-A) and came to the conclusion that the defendants are entitled to withhold the amount as per the contract agreed by and between the parties and secondly, the plaintiff has not challenged the letter dated 15.5.2014 by which the defendant no. 2 had directed to recover an amount of Rs.1,48,32,189/-.

9. Mr. Kakodkar, learned Counsel appearing for the plaintiff/appellant has argued that as per the aforesaid clause of 29A, the defendant cannot recover the amount from the plaintiff but in fact defendants have recovered the amount from the amount due and payable to the plaintiff. Mr. Kakodkar, has further pointed out that contents of the letter dated 15.5.2014, the extract of the work, the bills due from the defendants amounting to Rs.1,48,32,189/- and transfer entry dated 28.2.2014 by which the amount of Rs.1,48,32,189/- has been transferred to defendants. So relying upon the contents of the aforesaid three documents Mr. Kakodkar, learned Counsel has submitted that this amount is not withheld but it is recovered from the plaintiff which is contrary to the contents of the clause 29A of the

agreement. On scrutiny it reveals that after passing of the order the plaintiff has submitted an application for amendment and the during the course of arguments it was not disputed that such amendment is allowed by the learned Trial Court. On perusal of the contents of the amendment application particularly paragraphs 5 and 6, it appears that the plaintiff has amended its pleadings by which it has challenged the letter dated 15.5.2014 and further seeking directions to the defendant no. 2 to release and pay to the plaintiff an amount of Rs.1,48,32,189/-.

10. The main reasons by which the learned Trial Court has rejected the application is due to the non challenge to the letter dated 15.5.2014, and secondly, the learned Trial Court has observed that the defendants can withheld the amount as per the terms of clause 29A. However, as referred earlier the amount of Rs.1,48,32,189/- has not been withheld but in fact it is recovered from the plaintiff. Such amount of the plaintiff was lying with the defendants on account of various work done by the plaintiff for the defendants, therefore, it cannot be said that the said amount is withheld by the defendants. Now the plaintiff has challenged the letter dated 15.5.2014, in such circumstances and for the reasons stated above, I am of the opinion that the application for temporary injunction has to be reconsidered by the trial Court for which the matter needs to be remanded.

11. Hence, the following order :

- (i) The Appeal from Order No. 49/2014 is hereby allowed.
- (ii) The impugned order dated 10.7.2014, is hereby set aside.

The trial Court is directed to decide the application for temporary injunction afresh after hearing both the parties in accordance with law.

- (iii) The learned Trial Court is further directed to dispose of the temporary injunction application as early as possible and on its own merits without being influenced by any of the observations made herein above as those are made at very preliminary stage of the litigation.
- (iv) Parties are directed to appear before the Trial Court on 11/04/2016.
- (v) All the contentions of both parties are kept open.
- (vi) Appeal stands disposed of.

K. L. WADANE, J.

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