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

+ RSA 341/2014

DDA

Through Mr.Sanjeev Rajpal, Adv. Appellant

versus

ATREE ASSOCIATES

Through Mr.S.K. Chanwani, Adv. for Mr.M.S. Rahman, Adv. Respondent

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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29.02.2016

The appellant, Delhi Development Authority, has put up a challenge to the judgment dated 19.07.2010 passed in Suit No.1300/06 by the Civil Judge (West) whereby the suit for recovery of Rs.2,05,389/- was dismissed as well as against the judgment and order dated 23.07.2014 passed in RCA No.38-A/13/2010 by which the judgment of the Trial Court was affirmed and upheld.

The appellant/plaintiff had invited tenders for work of construction of houses at Motia Kalan and for internal development work. The respondent company which participated in the tender was selected and work was allotted to the respondent vide communication dated 31.12.1986. One of the terms of the work contract was that the respondent/defendant would strictly adhere to the time limit fixed for completion of work. When the work could not be completed within the time-frame, several correspondences were made

with the respondent/defendant.

The Superintendent Engineer of the appellant/plaintiff, vide letter dated 14.06.1994 sought explanation from the respondent/defendant as to why penalty be not levied in terms of the Clause 2 of the agreement. No satisfactory reply came forth. As such, it is alleged, a compensation of Rs.2,05,389/- was saddled on the respondent/defendant, to be paid to the appellant/plaintiff within a period of 15 days from the letter dated 20.01.1995 intimating such levy of compensation. When the aforesaid amount was not paid and when the bank guarantees expired, it was decided by the appellant/plaintiff to recover the amount from the pending bills of the respondent/defendant. It transpired that none of the pending bills survived; hence, a suit for recovery of Rs.2,05,389/- with interest @18% p.a. was filed.

The suit was contested by the respondent/defendant as being not maintainable; not in consonance of Clause 5 of the work agreement which provided for extension of time for completion of work as well as on the ground that after the extension of time and non repudiation of the work contract, time did not remain the essence of contract and, therefore, the said amount of compensation could not have been recovered from the respondent/defendant.

It was averred on behalf of the respondent/defendant that the work was completed on 31.03.1993 and any levy of fine after the aforesaid date is illegal and unwarranted. The suit also was stated to be barred by limitation as the cause of action arose on 09.07.1987 when the work was to be completed. Thereafter, if at all the cause of action accrued, it was on 31.03.1993 when the work was completed. An additional plea of the suit

being barred under Order 2 Rule 2 CPC was also taken as the matter was referred to the arbitration where the arbitrator gave an award on 20.10.1995 holding that the delay was attributable to the appellant/plaintiff and not the respondent/defendant.

The Trial Court, on the basis of pleadings, framed issues as hereunder:

- “1. *Whether the plaintiffs are entitled for recovery of the amount as prayed for in the present suit?*
2. *Whether the present suit is not maintainable, in view of preliminary objection no.3, raised in the written statement by the defendant?*
- 2a. *Whether the levy of compensation for delay in the amount of Rs.2,05,389/- as alleged in the plaint is illegal and unjustified and not in accordance with the terms of the contract?*
3. *Relief.”*

The parties examined one witness each and exhibited documents.

Ms.Niti Sharma, Executive Engineer, DDA, (PW1), stated before the Trial Court that arbitration award referred to above was passed on 20.10.1995 (Ex.PW1/D1).

Mr. Mukesh Attri, one of the partners of the defendant (DW1), deposed before the Trial Court that the letter dated 28.05.1990 (Ex.PW1/B) was received by the respondent/defendant and that as per the agreement, the work had to be completed by 09.07.1987 but the work was actually completed on 31.03.1993.

The Trial Court was of the opinion that once the respondent/defendant was permitted to complete the work after extending the time, the time factor would be deemed to have been waived and since no further time limit was fixed, it would have been unsafe to hold that time was the essence of the

contract. The Trial Court, therefore, decided issues No.1 and 2, namely, whether the appellant/plaintiff was entitled to recover the compensation amount and whether the suit was maintainable in view of preliminary objection, against the appellant/plaintiff and in favour of the respondent/defendant.

The suit, therefore, was dismissed.

The First Appellate Court upheld the findings returned by the Trial Court by noting that when the work was not completed within the stipulated time, letter dated 25.08.1990 (Ex.PW1/B) was sent to the defendant/respondent for getting the work done. Thereafter again letter dated 28.05.1990 was issued seeking explanation from the respondent/defendant. The Appellate Court was of the view that the records did not reflect that any action was taken against the respondent/defendant and that the respondent/defendant was permitted to complete the work but without specifying any time limit. The Appellate Court also took note of the arbitral award as also the fact that the award was never challenged and thus it attained finality.

Traditionally, time is taken to be the essence of contract under a situation when non performance of the work within the time frame leads to repudiation of the contract. Under exceptional circumstances, a party can be allowed to complete the work beyond the specified date before he could ask for any payment. If there is a provision in the work contract regarding extension of time for completing the work, it presupposes that the time frame does not remain fundamental to the genre of the specific contract.

Thus both the courts were justified in dismissing the claim of the appellant/plaintiff in recovering the amount of compensation from the

respondent.

The learned Advocate for the appellant/plaintiff submitted that the courts below erred in holding that the time was not essence of the contract on the ground that no action was taken on the respondent/defendant and that both the courts overlooked the order dated 20.01.1995 (Ex.PW1/D) which was passed against the respondent/defendant for the period 27.01.1991 to 22.03.1993.

Both the arguments are specious and not fit to be entertained. What the Courts below have stated is that when the respondent/defendant was permitted to complete the work without specifying the extended time limit, time could not have been treated as an essence of contract and that after completion of work, if any punitive order was passed, the same was not tenable in the eyes of law.

Thus, in the absence of any substantial question of law emerging from the records of the case, the present second appeal is dismissed. No costs.

ASHUTOSH KUMAR, J

FEBRUARY 29, 2016

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