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

Reserved on : 16th January 2018
Date of decision : 12th March, 2018

+ **RFA 1022/2016 & CM Nos.47592/2016 (stay)**

**DELHI DEVELOPMENT AUTHORITY
AND ORS.**

..... Appellants

Through: Mr. Rajeev Bansal, Senior Standing
Counsel and Mr. Dhanesh Relan,
Standing Counsel with Ms. Vasudha,
Ms. Gauri and Ms. Komal,
Advocates.

versus

KIRPAL SINGH AHLUWALIA

..... Respondent

Through: Mr. Vivekanand, Advocate with
Respondent in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

CM No.47593/2016 (delay in filing) & 47595/2016 (delay in re-filing)

1. These are applications for condonation of delay in filing and re-filing the appeal. The date of the impugned order is 19th October 2015 and in the usual course the time for filing of appeal expired on 18th January 2016. The Delhi Development Authority (*hereinafter 'DDA'*) applied for a certified copy of the judgment but the same was withdrawn on 10th November 2015. A fresh certified copy was applied for on 10th December 2015 which was issued on 21st December 2015. It is the submission of the DDA that the file was given to the counsels on 15th February 2016. However, the appeal was filed only on 21st October 2016. Two applications have been filed seeking condonation of delay in filing and re-filing. The reasons given in the

application of delay are:-

- Retyping of record running into 303 pages
- Mistake by court clerk of counsel for the Appellants
- Shifting of office of the counsel for the Appellants

2. Primarily the reasons that have been stated relate to mistakes in the counsel's office as the appeal was drafted and the file was received back from DDA sometime in May/June 2016 but got consigned to the record room under the impression that it was a disposed off matter. Learned counsel for the DDA has filed his personal affidavit explaining the delay.

3. The law relating to condonation of delay is well settled in the judgment of ***Postmaster General & Ors. v. Living Media India Limited & Anr.***, (2012) 3 SCC 563 where the Supreme Court has held as under:

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to

accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few”

4. In ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.*** (2013) 12 SCC 649 the Supreme Court held:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

5. A perusal of the present case file reveals that there is no explanation as to why the application for certified copy, which was first filed, was withdrawn and thereafter once the certified copy was issued on 21st December 2015 the file was not entrusted to the counsel till 15th February 2016. Even when there may have been mistakes in the counsel's office, this doesn't mean that the department has no onus to follow up with the counsel. 278 days is very long time for delay and is inordinate. However, the counsel having filed his personal affidavit in this matter, this Court is of the opinion that the delay can be condoned, however subject to heavy cost of Rs.1 Lakh payable by the DDA to the Plaintiff. Delay in filing and re-filing is condoned.

6. Applications are disposed of in the above terms.

RFA 1022/2016 & CM Nos.47592/2016 (stay)

7. This is an appeal impugning order dated 19th October 2015 by which the suit for recovery filed by the Respondent/Plaintiff (*hereinafter 'Plaintiff'*) has been decreed for a sum of Rs.6,55,186/- along with interest @ 8% per annum from date of institution of the suit till the date of decree.

8. The Plaintiff is a contractor undertaking various construction works/jobs for the DDA and other authorities. It was allotted a work named and styled as “*Construction for Additional Studio at Garhi for Lalit Kala Academy at Garhi Village, New Delhi*”. The work was allotted to the Plaintiff on 13th November 1991 on the following terms and conditions:

- “(a) *Estimated Cost* : *Rs.9,15,202 (Rupees nine lakh Fifteen thousand two hundred and two only)*
- (b) *Contract amount* : *57.30% above (fifty-seven point thirty per cent above)*
- (c) *Tender amount* : *Rs.14,39,613/- (Rupees fourteen Lakhs Thirty nine thousand six hundred and Thirteen only)*
- (d) *Time allowed* : *Five (5) months*
- (e) *DSR applicable* : *1989”*

9. The period for completion of the work was 5 months from the 10th day of the acceptance letter. Thus, the commencement was with effect from 23rd November 1991 and was to be completed by 22nd April 1992. It was the contention of the Plaintiff that the DDA committed several breaches of contract including -

- non-providing drawings and designs in time;
- non supply of material like cement and steel in required quantities;
- non communication of instructions and decisions and
- non-payment of sums agreed.

The Plaintiff submits that the work was completed on 29th December 1993 and despite the maintenance period being over as per the contract on 30th June 1994, DDA did not record the maintenance completion. Plaintiff claims that he carried out all the deficiencies which were pointed out by DDA and thereafter submitted the final bill. Some disputes had arisen between DDA and Lalit Kala Academy, and in view thereof the completion of the work by the Plaintiff was not recorded by DDA. The final bill for an amount of Rs.30,23,029/- was raised out of which payment of Rs.22,08,870/- was paid.

Thus, the outstanding balance was Rs.8,14,155/-. Out of the balance sum, DDA paid a sum of Rs.74,842/- and also refunded 90% of the security amount. Thus, the total claim after making adjustments was for Rs.6,46,038/-. Plaintiff filed a suit claiming recovery of a sum of Rs.6,46,038/- along with interest @ 24% per annum i.e. a total sum of Rs.13,43,759/-. The Plaintiff also sought *pendente lite* interest @ 24% per annum till realization.

10. In its written statement the broad case of the DDA was that there was no breach on its part and that the progress of work by the Plaintiff was very slow. DDA claims that it issued letters of reminder due to the delayed work by the Plaintiff and in fact the DDA was giving provisional extensions. Various letters are mentioned in the written statement to the effect that the Plaintiff was making various excuses to cover up his own faults. DDA claims to have issued letter dated 28th December 1995 that it would be engaging another agency at the risk and cost of the Plaintiff. DDA thereafter submits that the final bill is not accompanied with any details of the measurements and relevant drawings and was, therefore, liable to be rejected. DDA also contends that the Plaintiff never raised any such pleas during the execution of the work but only after receiving the substantial payment, unwarranted claims were being raised. Thus, DDA submits that no amount is payable to the Plaintiff.

11. The following issues were framed on 27th May 2005:

- “1. To what amount if any, is plaintiff entitled to recovery from the defendant? (OPP)*
- 2. Whether the plaintiff is entitled to the interest if any, to what amount and for what period? (OPP)*
- 3. Relief.”*

12. The parties examined one witness each. The depositions of both the witnesses have been fully summarized by the Trial Court in Paragraph 10 of the impugned order. A perusal of the depositions reveals that there has been a large amount of correspondence between the parties. The admitted position, however, remains to be that the final bill was for a sum of Rs.30,23,029/- and the amount paid of Rs.22,08,873/- is admitted. The final bill, Ex.PW-1/49 is not disputed. PW1 has deposed in his cross examination that while processing the final bill in DDA, he was only told about the deductions to the tune of Rs.50,000/- to Rs.60,000/-. PW1 further confirmed that he has submitted the details of the measurements in the final bill. His cross examination is relevant and is set out below:

“It is correct that at the time of finalizing the bill the D.D.A has deducted certain amounts. It is correct that I was aware of the fact that the certain deduction has been made by the D.D.A.

Q. I put it to you that D.D.A had clearly stated that the certain deductions were made whether you are aware of such deductions or whether the D.D.A has intimated to you with respect of such deductions. What you have to say?

Ans. It is correct that at the time of final bill I was told about the details of the deductions made by the D.D.A. It was with regard to the flooring and missing of some water taps.

The deduction was to the extent of amount of Rs.50-60 thousand. The deductions were made by reduction in the rates of the extra items of blue stones. The deductions were also on account of labour reports and steel consumption at penal rate.

The deductions including the extra items rates comes to about Rs.3 lacs. It is wrong to suggest that the maintenance period has not expired on 30.06.1994. It is wrong to suggest that the delay in recording completion certificate and finalization of final bill occurred due to the fault of the plaintiff. It is wrong to suggest that there was no dispute between Lalit Kala Academy and the defendant D.D.A. It is wrong to suggest that the delay was attributable to the plaintiff. It is wrong to suggest that the work is treated complete when the work is completed to the satisfaction of the Chief Engineer. It is wrong to suggest that the delay in handing over the work to Lalit Kala Academy occurred because the work done was not completed. It is wrong to suggest that I have not completed the work of the value of Rs.30,23,029.62p. The defendant has paid only about of Rs.22 lacs. It is wrong to suggest that the D.D.A has paid Rs.23,45,066.08p. We have given the details of measurement in our final bill. It is wrong to suggest that no details of measurement were given by the plaintiff with the final bill. I have submitted the analysis of rates for extra items. It is correct that I have not disputed with regard to the measurement of the work done during the course of execution. It is correct that Ex.PW1/D1 was received by me. I had gone to the office of the Executive Engineer after receiving of Ex.PW1/D1 for the acceptance of the bill for payment.

Q. I put it to you that after receiving Ex.PW1/D1 dated 30.07.1997 for the acceptance of the bill for payment whether

you had filed any objection with respect to the discrepancy in the bill. What you have to say?

Ans. I accepted the bill under protest.

Q. Did you file any separate objection?

Ans. I have not written any letter but protested verbally.

It is wrong to suggest that I did not have any grievance against the final bill prepared and paid by the D.D.A. It is wrong to suggest that I did not attend the joint measurement and for this reason the D.D.A has recorded the measurement unilaterally. I did not approach the D.D.A for joint measurement. It is wrong to suggest that since I did not approach D.D.A for joint measurement so the D.D.A got it done unilaterally. It is correct that the measurement taken by the Engineer in Chief and bill prepared is binding on the contractor. Volunteered however we signed and accept the measurement and bill under compulsion to receive the payment.

13. On behalf of DDA, DW1 - Executive Engineer (Planning), who deposed, did not have personal knowledge of this project. He admitted that the architectural and structural drawings were refused during the currency of the project. He was not clear as to whether any reply was given by DDA to the final bill Ex.PW-1/49. Most of the remaining suggestions are denials by the witness.

14. The Trial Court then records that DDA's witness admitted that no notice for joint measurement was given to the Plaintiff and that the measurements were recorded in the absence of the Plaintiff. After reviewing

the entire correspondence, the Trial Court upheld the final bills submitted by the Plaintiff. The Trial Court has analyzed the difference in the payments made and the measurement chart in para 22. The Trial Court, thereafter, decreed the suit for Rs.6,55,186.32 along with interest of 8% per annum.

15. In the present appeal, the fundamental argument of the DDA is that since joint measurements were not called, the final bill of the Plaintiff cannot be accepted. It is further submitted that the Plaintiff has not discharged his onus.

16. It is relevant to note that the witness of DDA clearly admitted in his cross examination as under:

“Since I was not there at the time of execution of work, so I cannot say whether the final bill dated 21.10.1994 submitted by plaintiff was verified at site or not.”

17. Since the final bill was submitted to the DDA and the witness could not confirm whether the site verification was conducted or not by DDA in respect of the final bill Ex.PW-1/49, the final bill has to, therefore, be treated as having being accepted by DDA. Without conducting any site verification or measurements, there can be no justification for DDA to hold back the payments. The witness could also not confirm whether any notice was given to Plaintiff for taking final measurements. Relevant portion of DW-1's cross examination is extracted herein below:

“I cannot say as to whether any notice of final joint measurement of the work done was given to the plaintiff and as to whether the final measurements were recorded in the absence of the plaintiff.”

The evidence on record, thus, appears to show that the final bill was not seriously disputed by DDA.

18. DDA relies upon Ex.DW-1/34 as the duly approved final bill. A perusal of the 12th final bill relied upon by DDA shows that it is based on the unilateral measurements claimed to have been conducted by it. No signatures have been obtained from the Plaintiff in respect of this bill. No notice was given about the conduct of these measurements. Thus, the case of DDA of payments having being made as per the final bill is clearly flawed. While the Plaintiff has submitted its final bill Ex.PW-1/49, the DDA relies upon Ex.DW-1/34. The payments made by DDA were accepted by the Plaintiff under protest and, thereafter, the suit came to be filed. The 12th and final bill relied upon by DDA bears the signatures of the Assistant Engineer-II and is dated 16th June 1997. The circumstances of the preparation of this final bill are unclear. Interestingly, the 12th and final bill (*DW-1/34 at page 1133 of LCR*) has the following remarks:

- 1. Work has been done as per agreement**
- 2. No T&P has been issued to the contractor for further work.*
- 3. Arrangement of water made by the contractor*
- 4. No minor labour has been engaged against this work*
- 5. All necessary recoveries have been effected from this bill*
- 6. The contractor has cleared the site*
- 7. The completion certificate has been recorded in MB.No.10304/P.99*
- 8. No labour complaint has been received so far”*

19. Further, after recording the above remarks, the measurements appear

to have been done without the presence of the contractor. It is not the case of the DDA that the Plaintiff was called for joint measurements. The Plaintiff's witness has also not been cross examined on as to what errors, if any, were made in the final bill submitted by him. There is no analysis undertaken as to the difference in the works enumerated in the Contractor's final bill and the DDA's final bill. Under such circumstances, the question before the Court is as to whose bill is to be accepted. Both the bills are unilateral. However, a responsibility was cast upon the DDA to conduct joint measurements and having not done so, it would be unfair simply go by the DDA's measurements. The noting extracted above clearly shows that the Engineer remarks that the work has been executed '*as per the agreement*'. This can only mean that the DDA had no grievance as to the Plaintiff's execution of works. DW1 also had no personal knowledge about the case and was merely going on the basis of the Final bill approved. In the cross examination of PW-1, there is nothing to show that there were any discrepancies in the Plaintiff's final bill. The findings of the Trial Court are relevant and are extracted herein below:

“(13) At the very Outset I may observe that there is no dispute between the parties in so far as the amount so released to the plaintiff is concerned. As per the plaintiff, he has done the work for a sum of Rs.30,23,029.62p out of which only Rs.22,08,870.80 has been paid by the defendant/DDA leaving the balance of Rs.8,14,155.82. Out of the said amount only Rs.74,842.50p along with 90% security amount i.e. Rs.83,275/- was paid by DDA to plaintiff, thus leaving an amount of Rs.6,46,038.32/- to be paid by DDA alongwith interest @ 24% i.e. Rs.697,721/- making the total amount as Rs.13,43,759/- to be paid by DDA to

plaintiff. There is also no dispute regarding the date of submission of final bill by the plaintiff vide its letter dated 21.10.1994 which is Ex.PW1/49 for gross value of work done of Rs.30,23,029.62P and after deducting Rs.22,08,873.80P already paid under previous bills before 21.10.1994, the net payable amount claimed by the plaintiff was Rs.8,14,155.82P. In this regard I may observe that Kirpal Singh Ahluwalia (PW1) has denied the suggestion during his cross examination that he had not completed the work of the value of Rs.30,23,029.62P and has deposed that the defendant had had paid only about of Rs.22 lacs and denied the suggestion that the DDA has paid Rs.23,45,066.08p. The defendants/DDA on the other hand have not filed or produced any cogent proof /details of payment of Rs.23,45,066.08P to the plaintiff upto final as suggested in cross-examination of Kirpal Singh Ahluwalia (PW1).

(14) Secondly I may observe that the only cross-examination/suggestion given on the aspect of final bill of the plaintiff Ex.PW1/49 as put during cross examination of Kirpal Singh Ahluwalia (PW1) was that he had not given details of measurements in the final bill wherein the plaintiff specifically deposed that he had given the details of measurement in his final bill and has denied the suggestion that no details of measurement were given by the plaintiff with the final bill. There is no further cross question or suggestion during the cross examination of the plaintiff (PW1) as to how the items and measurements given/enclosed with the Ex.PW1/49 were not detailed and what else was required to be given. Even otherwise, after submission of his final bill dated 21.10.1994 which is Ex.PW1/49, the plaintiff has proved having written letters for processing and verification and payment of its final bill

Ex.PW1/49 but the defendant has failed to show that it had ever pointed out any short coming in the final bill Ex.PW1/49 or asked for any other further clarifications. In fact the evidence on record confirms that the defendant DDA did not reply to the same nor commented upon it nor jointly verified the same at site in terms of Clauses 8 and 8A of the contract Ex.DW1/1 (at pages 24/18 and 25/19) nor specifically disallowed and rejected any measurement or rate or item claimed in Ex.PW1/49 in terms of clause 7 of the contract Ex.DW1/1 (at page 24/18). Hence, the measurements and items and amounts claimed by the plaintiff stood proved and admitted in terms of the above clauses. [This aspect is confirmed on the joint reading of letters dated 20.2.1995, 1.3.1995 and 13.3.1995 which are Ex.PW1/50. Ex.PW1/51 and Ex.PW1/52; Letter dated 13.03.1995 which is Ex.PW1/53; Letter dated 24.11.1995 which is Ex.PW1/55; Letter dated 26.12.1995 which is Ex.PW1/56; Letter dated 21.5.1996 which is Ex.PW1/57; Letter dated 15.11.1996 which is Ex.PW1/58; Letter dated 18.12.1996 which is Ex.PW1/60; Letter dated 8.5.1997 which is Ex.PW1/61; letter dated 23.5.1997 which is Ex.PW1/62 and Letter dated 29.7.1997 which is Ex.PW1/63; Letter dated 8.8.1997 which is Ex.PW1/64; Letter dated 15.9.1997 which is Ex.PW1/65; Letter dated 12.5.1998 which is Ex.PW1/66 and Letter dated 15.10.1998 which is ExPW1/67].

(15) Thirdly a specific suggestion has been made to the witness of the defendant i.e. Sh. S.K. Garg (DW1) as to whether any verification had been made at the site in respect of the final bill raised by the plaintiff on 21.10.1994 to which the witness S.K. Garg (DW1) neither admitted nor denied the same but simply stated that he was not present

there at the time of execution of the work and cannot inform about the same. He has also admitted that no notice of joint measurement was given to the plaintiff and that the measurements were recorded in the absence of the plaintiff which is despite having admitted that the final measurements have to be recorded in the Measurement Book in terms of Clause 8 and 8A. Hence, under the given circumstances, I find that the said entries being made without any notice to the plaintiff are self serving to the interest of the defendant/ DDA and have been made in violation of the existing rules and cannot be read as such. In this regard I may observe that there is no notice of joint measurement and no reply to the bill dated 21.10.1994 which is Ex.PW1/49 and hence the Final Bill raised by the plaintiff is deemed to be final and binding.

(16) Fourthly I may observe that the plaintiff has been able to prove that after he came to know that the defendants were proposing to delete certain items/ measurements already paid and proposing reductions and deductions in their final bill, the plaintiff protested and objected to the same vide letter dated 29.7.1997 which is Ex.PW1/63 in a complaint made to the Vigilance and protested against the proposed final bill.

(17) Fifthly the final bill prepared by the defendant on 24.12.1998 which is Ex.DW1/P-3 which is based upon unilateral final measurement which have not been recorded in terms of Clause 8 (A) of the agreement Ex.DW1/1, are not binding upon the plaintiff, more so in view of the fact that the plaintiff had signed the measurement book Ex.PW1/69 and the final bill Ex.DW1/P-3 under protest. Even the witness of the defendant Sh. S.K. Garg (DW1) has in his cross-examination

admitted that the document Ex.DW1/P-3 from pages 353 to 379 is the final bill of the plaintiff as prepared by the defendants and that at point A on Ex.DW1/P-3 at running pages 379, the plaintiff has signed and accepted the payment in respect of the final bill 'Under Protest' on 24.12.1998. It is also admitted by DW1 that the measurement book containing final bill was also signed by the plaintiff 'Under Protest' as evident from Ex.PW1/69 at point A.

(18) Lastly as regards the allegations of the defendants that the plaintiff is not entitled to the remaining amount on account of non performance of the work with the stipulated time and slow pace of work which was due to negligence and mismanagement of the plaintiff as reflected in the site book for the month of June, July and August 1992 and the failure of the plaintiff to inform the defendant about the required progress from time to time is concerned, I may observe that the defendant has waived its right to raise all these objections in view of the fact that they themselves have acquired the payments as regards the said work and the right of the defendants to recover the liquidated damages in terms of Clause 2 of the Agreement does not arise, particularly so since the work done is not in dispute. It is only the delay which is the issue in question. The plaintiff in the present suit is claiming balance payment/unpaid amount of his final bill enclosed with letter dated 21.10.1994 which is Ex.PW1/49. Hence the application of Clause 10 of GCC relation to delay in supply of stipulated material and also condition no.1 of specifications and special condition of the contract as relied upon by the defendants are irrelevant in respect of the claims made by the plaintiff in the final Bill which is Ex.PW1/49."

20. It is relevant to point out in the agreement dated 14th November, 1991 executed between the parties that the work's order was subject to the conditions of contract. Clause 8A of the conditions of contract reads as under:

*“CLAUSE 8A. Before taking any measurement of any work as has been referred in clause 6, 7 and 8 thereof **the Engineer-In-Charge or a subordinate deputed by him to give reasonable notice to the contractor.** If the contractor fails to attend at the measurements after such notice or fails to countersign or to record the difference within ____ from the date of measurement in the manner required by the Engineer-In-Charge ____ any such event the measurements taken by the Engineer-In-Charge or by the ____ deputed by him as the case may be shall be final and binding on the contractor, the contractor shall have no right to dispute the same.”*
(Page 1581 in LCR. Blanks unclear)

Interestingly, this clause is not a part of the retyped clauses of the contract placed on record in the Appeal and it is not clear as to why the DDA chose not to place the entire contract in the appeal and also not provide clear copies of the contract in the Trial Court. A perusal of the above clause shows that before taking any measurements of any work, reasonable notice is to be issued to the contractor. It is only when notice is issued and the contractor fails to attend at the time of measurement, then the measurements taken by the Engineer-in-Charge shall become final and binding. In the present case, admittedly, no notice was issued to the contractor. In fact, DW-1 specifically admits that no notice was given. This is a clear violation of the conditions of the contract itself. Thus, for the following reasons, bill submitted by the Plaintiff/contractor deserves to be accepted.

(1) 12th and final bill clearly notes that the work has been done as per the

agreement.

(2) It is admitted that no notice was given to the contractor as required under the conditions of contract.

(3) DW-1 did not have any personal knowledge of this matter and also admits that he was not aware if any notice was given.

(4) That PW-1 was not aware of the discrepancies in any manner in the final bill submitted by him.

21. In view of above facts and circumstances and evidence on record, the Trial Court has rightly decreed the suit in favour of the Plaintiff and does not warrant any interference. The order sheet of the suit reveals that the Plaintiff's cross examination concluded on 12th July 2007. Plaintiff's evidence closed 8 years after the suit was filed and DDA's evidence took another 7 years. Both the parties appear to be equally responsible for the delay in the suit. In the facts and circumstances of this case, the rate of interest is modified to 6% from the date of filing of the suit till the date of deposit of the decretal amount as per the directions given in this appeal.

22. As per order dated 22nd December, 2016, an amount of Rs. 15,83,050/- has been deposited in this Court by the DDA, vide Demand Draft No.330986 dated 6th January, 2017. The same is being maintained by the Registry in a FDR. The calculation of the decretal amount shall be done by the Registry and the amount shall be released in favour of the Plaintiff within 2 weeks along with the costs of Rs.1 lakh awarded above. The remaining amount, if any, shall be returned to DDA. Appeal is disposed of in the above terms along with all pending applications.

PRATHIBA M. SINGH, J.
Judge

MARCH 12, 2018/dk