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

\+ RFA 960/2017

EAST DELHI MUNICIPAL CORPORATION & ANR ..... Appellants
Through: None.

versus

WILSON BHATI ..... Respondent
Through: Mr. Manoj Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

O R D E R

% 13.04.2018

1. The issue in the present case is covered against the appellant in terms of the judgment delivered by a learned Single Judge of this Court in bunch of cases with one case being RFA No.1009/2017 titled as ***East Delhi Municipal Corporation Vs. Pawan Kumar Suri*** decided on 22.3.2018. The relevant conclusions of the learned Single Judge are contained in paras 71 to 79 of this judgment and these paras read as under:-

> "***Conclusions and Findings***
>
> 71. The General Conditions of Contract i.e., clauses 7 and 9 which are admittedly part of the work orders issued by both the NrDMC and the EDMC are being tested in these batch of cases. A contract which stipulates that the consideration would be paid in an unforeseen time in the future based on certain factors which are indeterminable, would in effect be a contract without consideration. Even if the contract is held to be a valid contract, then the concept

of `reasonableness' has to be read into the same. Section 46 of the Contract Act and the explanation thereto is clear that “what is a reasonable time is a question of fact in each case.” A Corporation which gets works executed cannot therefore include terms in the contract which are per se unconscionable and unreasonable as –

a) There is no fixed time period as to when the funds would be available;

b) There is also no fixed mechanism to determine as to when and in what manner the head of account is to be determined and as to how the Contractor would acquire knowledge of these two facts;

c) There is also no certainty as to how many persons are in the queue prior to the Contractor and for what amounts;

d) There is enormous ambiguity in the receipt under the particular heads of accounts.

72. These clauses in effect say that the Contractor is left with no remedy if the Corporation does not pay for the work that has been executed. Such a Clause would be illegal and contrary to law. Such clauses, even in commercial contracts, would be contrary to Section 25 read with Section 46 of the Contract Act.

73. The clauses do not specify an outer time limit for payment. <u>The expression reasonable time has to be `a time'. The concept of time itself is ensconced with specificity and precision. Clause 9 is the opposite of being precise.</u> It is as vague and ambiguous as it could be because it depends on factors which are totally extraneous to the contract, namely -

- Allotment of funds to the Corporation by the Government;
- Allotment of funds in a particular head;
- Allotment of funds for payments who are in queue prior to the contractor;

74. Thus, these factors, which are beyond the control of the Contractor and which would govern the payment of consideration, make the said clauses of the contract completely unreasonable. The clauses have to thus, be read or interpreted in a manner so as to instill reasonableness in them.

75. By applying the above said principles, in respect of final bills raised by Contractors for works executed, that have been approved by the Engineer-in-Charge, the Clauses have to be read in the following manner:

a) Reasonable time for making of payments of final bills in respect of work orders up to Rs.5 lakhs shall be 6 months and work orders exceeding Rs.5 lakhs shall be 9 months from the date when the bill is passed by the Engineer-in-Charge.

b) The queue basis can be applicable for the payments to be made in chronology. However, the outer limit of 6 months and 9 months cannot be exceeded, while applying the queue system.

c) The payments are held to become due and payable immediately upon the expiry of 6 months and 9 months and any non-payment would attract payment of interest for the delayed periods.

d) A conjoint reading of Clauses 7 & 9 along with the amendment dated 19th May, 2006, clearly shows that for the payment of bills, the contractors have to follow the queue basis and as and when the amount is available under the particular head of account, the amount would be payable. The amendment does not, however, have a condition that no interest is payable for delayed payment. Such a condition exists only in Clause 7. Clause 9, therefore, when read with the amendment has to mean that the Corporation itself considers 6 months and 9 months to be the reasonable periods for which the payments of the final bills can be held back. Obviously, therefore, if payments are made, whether on a queue basis or otherwise, beyond the period of 6 months and 9 months, interest is payable.

e) To the extent that queue basis is applied only for clearing of payments which do not extend beyond the period of 6 months and 9 months period, it is reasonable. However, if the queue basis is applied in order to make Contractors wait for indefinite periods for receiving payments, then the same would be unreasonable and would have to therefore be read down.

f) The Security amount/Earnest money deposited would be refundable upon the fulfilment of the conditions contained in Clauses 17 and 45 of the General Conditions of Contract. Interest would be payable on delayed payments.

Final Decree on facts

76. The Trial Court, in its judgment dated 26th September, 2016, has directed a decree for the entire sum along with interest. The interest rate is being modified and insofar as refund of security amount is concerned, interest is being granted only from the date of filing of the suit, as the records do not reflect either compliance or non-compliance with Clauses 17 and 45 of the General Conditions of Contract. However, insofar as the Principal amount is concerned, the same has been calculated based on the final bills passed and interest is being awarded after the expiry of the nine month period, as specified in Clause 9.

77. On the basis of the facts, the pleadings and the evidence recorded, the Contractor's suit is liable to be decreed as under:

(1) Decree for the sum of Rs.16,72,963/- (Rs.5,44,747 + Rs.5,65,171 /- + Rs.5,63,045/-) towards principal amount in respect of work order Nos.190, 191 & 272, all passed on 22nd January, 2014 along with interest @ 8% per annum calculated upon the expiry of 9 months from the dates of passing of final bills.

(2) A decree for the sum of Rs.1,69,458/- is passed for refund of security amount along with interest @ 8% simple interest p.a. from the date of institution of the suit till date.

78. The Corporation is directed to compute the payments to be made to the Contractor in terms of the principal, security deposit and interest as decreed above, within four weeks. The payment shall be made within 8 weeks thereafter, failing which, interest @ 12% per annum would be payable, upon expiry of the said period till date of payment.

79. The impugned judgment/decree is modified in the above terms. Decree sheet be drawn accordingly. Appeal stands disposed of along with all pending applications. No order as to costs."

2. This appeal will accordingly stands disposed of upholding the

impugned judgment with the further direction that the rate of interest will be 12% in terms of para 78 of the judgment dated 22.3.2018 in RFA No.1009/2017 and on the circumstances so arising as stated in para 78 of the said judgment.

3. This appeal is accordingly dismissed with the aforesaid observations.

VALMIKI J. MEHTA, J

APRIL 13, 2018

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