

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4388 of 2013 (O&M)

Date of decision:15.01.2019

M/s H.R.Goel Buildcon Pvt. Ltd. & another ... Petitioners

Vs.

M/s Trishla Buildtech Pvt. Ltd. ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Shifali Goyal, Advocate
for the petitioners.

Mr. Ranjit Saini, Advocate
for the respondent.

AMIT RAWAL J.

This order of mine shall dispose of two revision petitions bearing Nos.4388 of 2013 preferred against the impugned order dated 11.07.2013, whereby, an application of the petitioner-defendants for appointment of the Local Commissioner has been declined and 7223 of 2013 filed against the impugned order, whereby, on application of the respondent-defendant in a counter claim set up by the petitioners directed to pay the ad valorem court fee on the minimum amount of Rs.13.50 crores.

Trishla Buildtech Pvt. Ltd./plaintiff instituted the suit against the defendants, who are M/s H.R.Goel Buildcon Pvt. Ltd. And Ashok Gupta for recovery of Rs.2,23,71,638/- and as well as for injunction against them from removing any articles detailed in Annexure A in respect of the property described in the plaint on the premise that plaintiff being a

company obtained the requisite permission for construction of Group Housing Societies and defendants were entrusted with the job of carrying out the construction of said group and used to take advance amount from the plaintiff and after completion of part of the work, defendants used to raise the bills for the work done and payments in this regard were made. The details of the amount taken by the defendants from the plaintiffs was attached and so was the bills.

However, defendants did not carry out the construction at the spot as per the terms and conditions of the contract nor used the building material as per the specifications and stopped the construction. In this process, claimed the aforementioned amount.

The defendants contested the suit and preferred a counter claim seeking the recovery of aforementioned amount on the premise that bills raised for such amount was not paid as work of more than Rs.29.00 crores had already executed and sought the indulgence of the Court for appointment of the Local Commissioner to assess the construction work which has been dismissed.

The plaintiff being the defendant in counter claim submitted an application under Order 7 Rule 11 CPC for rejection of the counter claim for non-payment of court fee with regard to recovery of Rs.23.00 crores which has been allowed and petitioner-counter claimants have been directed to pay the ad valorem court fee.

Ms. Shifali Goyal, learned counsel appearing on behalf of the petitioner-defendant/counter claimants submitted that there was no other

remedy to ascertain the extent of work except with the aid of Local Commissioner be it a surveyor or person conversant with the construction work. Pith and substance of the counter claim is injunction and consequential relief of recovery which cannot be primary relief and therefore, the order directing the counter claimants to pay the Court fee is not sustainable in the eyes of law.

Per contra, Ranjit Saini, learned counsel appearing on behalf of the respondent-plaintiff submitted that on plain and simple perusal of relief, it is evident that counter claimants had sought the recovery of Rs.23.00 crores and for the work more than Rs.29.00 crores sought the appointment of the Local Commissioner. The work was completed in 2015, whereas, the application is of 2013. The Local Commissioner could not have assessed the extent of work. It was obligatory upon the person who sought the recovery of amount to prove the same through direct and cogent evidence. He further informed the Court that counter claimants did not pay the court fee and the counter claim has been dismissed. This fact has not been controverted by the learned counsel for the petitioners.

I have heard the learned counsel for the parties, appraised the paper book and of the view of the there is no force and merit in the submissions of Ms. Shifali Goyal.

It would be apt to reproduce the prayer and para no.2 of the counter claim. The same read thus:-

“Counter claim by the defendants for permanent injunction restraining plaintiff, its officials, employees or anybody else

representing the plaintiff in any manner or capacity from interfering or causing any obstruction in the execution of the work by the defendants at site by using their T&P, machinery, shuttering material construction material lying at site or dispossessing the defendants from the site wrongfully, illegally, forcibly or any any other manner and also removing or causing any damage to T&P, machinery, shuttering material construction material, labour hutments, office, staff quarters constructed by the defendants at their own cost at site and also restraining the plaintiff from getting the work done from any other person under execution by the defendants and for recovery of the due amount payable by the plaintiff-company to the defendants so finally determined by the Hon'ble High Court.”

2. That defendants have executed total work at site of the gross value of more than Rs.29.00 crores which can be ascertained by getting the site inspected from Technical Independent Person/Agency appointing the same under the orders of this Hon'ble Court and who will also prepare the inventory of all the abovesaid assets/machinery of the defendants at site. Separate application for appointment of any such independent agency as Local Commissioner is also being filed herewith. As per the work done by the defendants after deducting the payment received from the plaintiff-company, an

amount of more than Rs.13.50 crores are payable by the plaintiff company to the defendant-company which can be determined and ascertained by the independent agency as stated above and plaintiff is also liable to pay interest and damages in addition to the same as per Abstract (page 1 to 3) alongwith measurement detail of the work (pages 1 to 8) are attached herewith as Annexures D-20 and D-21.....”

The terms and conditions of the contract always envisage procedure for measurement of work by maintaining measurement book. For seeking recovery, assistance of local commissioner is not essential requirement of law as the onus heavily relies upon the person who asserts the claim to prove the same through documentary evidence in accordance with law, for, Local Commissioner would not have been in a position to ascertain the work done by the counter claimants or other contractor.

No doubt, the counter claimants had sought injunction as referred to above but also claimed recovery by specifying the amount of Rs.23 crores, though alleged to have executed the work for more than Rs.29.00 crores. Dehor of the fact that petitioners had challenged the order but the time line granted by the trial Court has not been complied with, nor such prayer was made before this Court.

In view of above, order rejecting the application for non-payment of court cannot be faulted with and even for the rejection of the application for appointment of Local Commissioner, for, the reasons assigned herein above.

The impugned orders are hereby upheld.

Revision petitions are dismissed.

(AMIT RAWAL)
JUDGE

January 15, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No