

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.9115 OF 2020
IN
COMMERCIAL SUMMARY SUIT NO.1219 OF 2019
ALONG WITH
INTERIM APPLICATION (L) NO.9126 OF 2020
IN
COMMERCIAL SUMMARY SUIT NO.1237 OF 2019

Mahendra Realtors & Infrastructure
Private Limited ...Plaintiff

vs.

The National Co-Operative Construction
and Development Federation of India ...Defendant

ALONG WITH
INTERIM APPLICATION (L) NO.9109 OF 2020
IN
COMMERCIAL SUMMARY SUIT NO.1230 OF 2019

M/s.M.S. Shah and Associates ...Plaintiff

vs.

The National Co-Operative Construction
and Development Federation of India ...Defendants

Mr. Ramesh Ramamurthy a/w. Mr. Saikumar Ramamurthy and
Ms. Jayashree Pillai, for the Applicants/Plaintiffs.
None for the Defendants.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 01, 2021

JUDGMENT

1. These Commercial Division Summary Suits have been instituted for recovery of the amount of RA Bills and security deposit under the terms of contract. These suits have their

genesis in a contract executed between the parties on 4th March, 2017. Hence, all these Suits are being disposed of by a common judgment.

2. The material averments in the Suit No. 1237 of 2019 (which is taken as a lead case) can be stated in brief as under:

(a) The plaintiff is a private limited company. It deals in the business of construction. The defendant is a company registered under Ministry of Agricultural, Govt. of India, Department of Agriculture & Cooperation, New Delhi. Defendant deals in the business of construction and development work on depository work basis. The defendant had invited a tender on 7th January, 2017 for the work of structural repair and allied civil work for SDF Building No.1 to 6 and Gems and Jewellery building nos.1 to 3 in the premises of SEEPZ SEZ (Special Economic Zone) Authority, Mumbai. The estimated cost of the said work was Rs.35,68,32,015/-. The bid submitted by the plaintiff was accepted. The defendant issued a Letter of Intent on 17th February, 2017. In terms of the Letter of Intent, the plaintiff accepted the offer by submitting a letter of acceptance dated 18th February, 2017. A work order came to be issued on 4th March, 2017.

(b) The scope of work was to carry out structural repairs and allied civil works of SDF building nos.5 and 6 at SEEPZ SEZ premises for the estimated cost of Rs.13,70,23,065.67. The work was to be carried out within the stipulated period, of eight months, under the supervision and guidance of M/s. Conspro Management Services, the Project Manager. A formal contract for the said work came to be executed on 4th March, 2017.

(c) The plaintiff completed the work in terms of the contract by 31st October, 2017. The Project Manager certified the completion of work in accordance with the terms of the contract. RA Bills were raised by the plaintiff. Out of them, the defendant paid the amount covered by and upto 5th RA Bill. The 6th RA Bill was raised vide letter dated 8th December, 2017. After adjusting the payment received, including an advance, a sum of Rs.3,22,76,410/- was due and payable under the 6th RA Bill.

(d) The defendant did not disburse the payment under the 6th RA Bill within the specified period, as per the terms of the contract. The plaintiff called upon the defendant to release the payment by letter dated 12th January, 2018. Many reminders followed. Even communication to the concerned officers of SEEPZ SEZ did not yield any result. Ultimately, the defendant on 24th

August, 2018 informed the plaintiff that the balance payment shall be made after receipt of payment from the SEEPZ SEZ Authority and after obtaining approval from the Ministry. Vide communication dated 14th September, 2018, it was informed that the payment was withheld by SEEPZ SEZ Authority and outstanding balance would be cleared no sooner the payment is released by the SEEPZ SEZ Authority.

(e) The plaintiff thus addressed a legal notice to the defendant and the Development Commissioner SEEPZ SEZ and called upon the defendant to pay the outstanding amount along with interest at the rate of 18% p.a. The defendant paid no heed. Hence, these Suits.

3. Commercial Summary Suit No.1230 of 2019 is instituted for recovery of a sum of Rs.3,29,68,393/- along with interest at the rate of 18% p.a. It is in respect of 7th and Final Bill dated 11th October, 2018.

4. Commercial Summary Suit No.1219 of 2019 is instituted for recovery of a sum of Rs.1,05,45,654/- along with interest at the rate of 18% p.a. It is in respect of 11th and Final Bill dated 12th

October, 2018. Additionally, in all the suits there is a claim for refund of security deposit.

5. Upon the service of writ of summons, the defendant entered appearance. Whereupon the plaintiff took out the summonses for judgment in all three Suits. By filing affidavits-in-reply, the defendant had sought an unconditional leave to defend the suit.

6. By an order dated 25th February, 2020 this Court was persuaded to grant leave to the defendant to defend the suit on the condition of deposit of the amount of Rs. 3,42,28,633/- (in Suit No. 1237 of 2019), Rs. 2,54,04,776/- (in Suit No. 1230 of 2019) and Rs.81,30,553/- (in Suit No.1219 of 2019) within a period of eight weeks thereof. It was further provided that if the said conditional order was not complied with within the stipulated period, the plaintiff would be entitled to apply for *ex parte* decree against the defendants after obtaining a non-deposit certificate from the Prothonotary and Senior Master of this Court.

7. The defendant has not complied with the condition of deposit. The plaintiff has obtained non-deposit certificate dated 9th

December, 2020 from the Prothonotary and Senior Master, in each of the Suits.

8. In view of the provisions contained in Order Order XXXVII Rule 3(6) of the Code of Civil Procedure, 1908, on failure of the defendant to give security within the time specified by the Court or to carry out such other directions as may have been given by the Court, the plaintiff becomes entitled to judgment forthwith.

9. Nonetheless this Court has considered the justifiability of he claim and its tenability under the provisions of Order XXXVII of the Code. The plaintiff has filed affidavit in support of the claim in each of the suits. The plaintiff has also tendered the original documents for the perusal of the Court. The affidavits and original documents are taken on record.

10. The documents reveal that the notice inviting tender was issued on 21st January, 2017. The letter of intent dated 17th February, 2017 indicates that the bid submitted by the plaintiff was accepted and the defendant awarded the contract of carrying structural repairs and allied civil works of SDF 5,6 & GJ 1

building at SEEPZ-SEZ premises at an estimated cost of Rs. 13,70,23,065.67/-. The work order came to be issued on 4th March, 2017. An agreement came to be executed on 4th March, 2017. The Plaintiff executed the work in terms of the contract. The project management consultant certified the satisfactory completion of the work. Indisputably, the payments were made upto 5th RA Bill. The dispute arose as the payment of 6th RA Bill and the succeeding Bills remained outstanding. The agreement and the RA Bills constitute a written contract within the meaning of Clause (b) of Rule 1(2) of Order XXXVII of the Code.

11. The demand of the amounts covered RA and Final Bills and the fact that no dispute about the quality and quantum of work was ever raised by the defendant, becomes evident from the perusal of the documents placed on record. The claim of the defendant that the payment was to be received from SEEPZ authority and the matter awaited approval of the Ministry does not absolve the defendant of its contractual liability to pay the outstanding amount.

12. In this view of the matter, the claim of the Plaintiff to the extent of outstanding amount of RA and Final Bills and security deposit is wholly justifiable. The question that wrenches to the fore is of the interest which the outstanding amount shall carry. In the contract, there is no stipulation for payment of interest over the amount which remains outstanding. In the backdrop of the nature of contract between the parties, the juridical character of the defendant and the overall situation in the money market, it may be appropriate to award interest @ 10% p.a. from the date of Suit till realization. The suits thus deserve to be decreed. Hence the following order.

ORDER

In Commercial Summary Suit No.1237 OF 2019:-

- 1] The suit stands partly decreed.
- 2] The defendant do pay a sum of Rs.3,42,28,633/- (Rupees Three Crore Fourty Two Lacs Twenty Eight Thousand Six Hundred and Thirty Three) along with further interest @ 10% p.a. from the date of the suit till realization.

In Commercial Summary Suit No.1230 OF 2019:-

- 1] The suit stands partly decreed.

2] The defendant do pay a sum of Rs.2,54,04,776/- (Rupees Two Crore Fifty Four Lacs Four Thousand Seven Hundred and Seventy Six) along with further interest @ 10% p.a. from the date of the suit till realization.

In Commercial Summary Suit No.1219 OF 2019:-

- 1] The suit stands partly decreed.
- 2] The defendant do pay a sum of Rs.81,30,553/- (Rupees Eighty One Lacs Thirty Thousand Five Hundred and Fifty Three) along with further interest @ 10% p.a. from the date of the suit till realization.
- 3] The defendants shall pay the costs of Rs.1,00,000/- (One Lakh), to the Plaintiff, quantified under Section 35 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, in each of the suits.
- 4] The refund of Court-fees, if any, be made as per rules in each of the suits.
- 5] The decree be drawn up and sealed expeditiously.
- 6] Interim Applications, in each of the suits, stand disposed of.

[N. J. JAMADAR, J.]