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

Date of Decision: 22.07.2021

+ **RFA (COMM) 11/2021 & CM APPL. 21736/2021**

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through Ms.Namrata Mukim, Adv.

versus

M/S. R.K. GOEL ABHAY KUMAR JAIN Respondent

Through Mr.Avinash Trivedi, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This appeal has been heard through video conferencing.

CM APPL. 21736/2021 (Exemption)

Allowed, subject to all just exceptions.

RFA (COMM) 11/2021 & CM APPL. 21735/2021

1. This appeal has been filed by the appellant challenging the judgment and decree dated 10.02.2021 passed by the learned District Judge - Commercial Court-05 (Central) in suit being CS (COMM) No.2687/2019 titled *R K Goel Abhey Kumar Jain vs. The Executive Engineer (MII) Clz & Anr.* directing the appellant herein to pay interest at the rate of 12% per annum on the principal amount of

Rs.56,77,386/- due from the appellant on the final bills for the three work orders for the period from 15.12.2016 to 19.07.2020 and to further pay interest at the rate of 12% per annum on the security amount of Rs.5,72,329/- from 25.07.2018 till 14.10.2020.

2. The learned counsel for the appellant limits the challenge to the judgment and decree to the extent of direction of payment of interest at the rate of 12% per annum from 25.07.2018 to 14.10.2020 on the security amount of Rs.5,72,329/-.

3. Issue notice. Notice is accepted by Mr.Avinash Trivedi, Advocate on behalf of the respondent.

4. With the consent of the learned counsels for the parties, the appeal is taken up for final adjudication at this stage itself.

5. The learned counsel for the appellant submits that the direction to pay interest on the security amount in the Impugned Judgment is contrary to Clause 45 of the General Conditions of Contract which prohibits refund of security deposit till the contractor produces clearance certificate from the Labour Officer. She submits that in the present case admittedly, the respondent did not produce the clearance certificate from the Labour Officer and therefore, was in fact not entitled to a refund of the security amount. However, the appellant on its own refunded the said amount to the respondent on 15.10.2020, therefore, there was no question of payment of any interest on the said amount and the learned Trial Court has erred in directing the same.

6. On the other hand, the learned counsel for the respondent has placed reliance on the judgment of the learned Single Judge of this Court in *North Delhi Municipal Corporation & Anr. vs. Shish Pal*, 2018 SCC OnLine Del 8039 to contend that the appellant was under an obligation to refund the security amount after a period of six months from the date of the completion of the work, where no communication is received from the Labour Officer within the said period. He submits that in such a case there is a deemed clearance from the Labour Officer and the security deposit is liable to be released. He submits that therefore, the learned Trial Court has rightly directed payment of interest on the wrongly withheld security deposit with effect from 25.07.2018 till the date of its actual payment.

7. We have considered the submissions made by the learned counsels for the parties.

8. Before advertng to the submissions, a brief background of the progress of the suit resulting in the present appeal needs to be noticed.

9. The respondent filed the above suit seeking a recovery of Rs.94,23,142/- (Ninety Four Lacs Twenty Three Thousand One Hundred Forty Two only) from the appellant herein for the three Work Orders mentioned hereinbelow:

(1) Improvement/strengthening of road from D-17 to E-332, Azadpur Municipal Colony by Dense Carpeting in C-72/CLZ vide work order no. EE(M-CLZ)-III/SYS/2014-2015/182 dated 23.09.2014.

(2) *Improvement/strengthening of road from F-14/15 to H-3/12 in Model Town by providing Dense Carpeting in C-72/CLZ vide work order no. EE(M-CLZ)-III/SYS/2014-2015/183 dated 23.09.2014.*

(3) *Improvement/strengthening of road from D-16 to D-104, Azadpur Municipal Colony by Dense Carpeting in C-72/CLZ vide work order no. EE(M-CLZ)-III/SYS/2014-2015/184 dated 23.09.2014.*

10. The amount of Rs.94,23,142/- included the security amount deposited by the respondent towards the three Work Orders.

11. During the pendency of the above suit, the parties entered into a partial settlement whereunder the appellant agreed to pay a sum of Rs.69,40,310/- to the respondent on or before 30.06.2020. Based on the said settlement, the learned Trial Court was pleased to pass a part decree vide its order dated 14.08.2020, leaving the question of release of security amount, bank guarantee amount and the interest payable on the principal amount to be adjudicated later. The order dated 14.08.2020 of the learned Trial Court is reproduced hereinunder:

"This case is taken up today as due to COVID-19 case was adjourned from time to time enblock.

Today proceedings were conducted through video conferencing. The matter was partly settled in mediation on 12-3-2020 at Rs. 69,40,310/- which was principal amount out of claimed amount of Rs. 94,23,142/- and interest part on this principal amount was left to be decided by court. It was also settled that the

defendant shall make the payment of Rs. 69,40,310/- by 30-6-2020 otherwise interest at the rate of 9% p.a. shall be payable on this admitted amount.

Counsel for the plaintiff stated that only Rs. 56,77,386/- were paid and that was also on 20-7-2020 and he will file execution for claiming balance settled amount and interest according to mediation settlement.

Since the parties have reached at part compromise in mediation, so the suit is partly decreed in terms of mediation settlement qua principal amount. Decree be prepared in terms of the mediation settlement dated 12-3-2020 and this settlement shall be treated as part and parcel of the decree.

As per counsel, question of release of security amount and bank guarantee amount is still left to be decided along with interest part payable on principal amount. In my view, these left over disputes can be decided without evidence on basis of contract and admitted documents and there is no need to take evidence on the same. Both parties are permitted to file additional documents if any by next date.

Put up this matter on 02.09.2020 for consideration on the left over disputes."

(Emphasis supplied)

12. As the appellant failed to make the payment of Rs.69,40,310/- on or before 30.06.2020 in terms of the settlement, the respondent filed an execution application being Execution No.343/2020. In reply to the said execution application, the appellant, as far as the security deposit is concerned, submitted as under:

"6. That it is submitted that out of the total Gross amount payable to the contractor, Security Deposit, Income Tax, Vat, Labour

Cess, Sample Testing Charges are deducted by the JD/Corporation, which are paid by the corporation in the following manner:

a. That as per clause 45 of Circular No. D-92/EE(P)-III/NDMC/2014-15 dated 10.06.2014, the Security Deposit shall not be refunded until the contractor produces the Clearance Certificate from the Labour Officer. As such, the security amount can be refunded to the DH only after lapse of five (5) years from the date of completion of work for warranty Clause i.e. Maintenance Period due to dense carpet work, and submission of Clearance Certificate from the Labour Officer alongwith final bill. Copy of Circular No. D-92/EE(O)-III/NDMC/2014-15 dated 10.06.2014 is annexed herewith as Annexure-A. That Security deposit amounting to Rs. 5,72,329/- will be paid after finalization of final bill, submission of labour report & expiry of warranty clause i.e. Maintenance Period of Five years.

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8. That admittedly as per the settlement dated 12.03.2020, the JD was required to make payment by 30.06.2020, however, the payment has been made only on 20.7.2020 as such, the JD/Corporation is ready to make the payment of Rs. 8,97,920/- i.e. Rs. 5,72,329/- towards security deposit and Rs.2,77,612/- towards difference between VAT & GST and Interest to the DH after finalization of final bills, submission of labour report and expiry of maintenance period of five (05) years.”

13. Based on the above reply, the learned Execution Court vide its order dated 23.10.2020, directed the appellant to pay the admitted liability including the security deposit within 7 days of the said order.

14. The question before the learned Trial Court in the suit, therefore, was as to when the security amount became due and payable by the appellant to the respondent and the rate of interest which the respondent was entitled to on the said amount of security deposit and the period thereof.

15. The learned Trial Court in its impugned judgment in a cryptic manner has awarded interest at the rate of 12% per annum with effect from 25.07.2018 till 14.10.2020 without elaborating as to how and why the amount of security deposit became payable by the appellant to the respondent on 25.07.2018. The relevant finding/direction of the learned Trial Court vis-a-vis the issue of security amount is reproduced hereinbelow:

“The security amount of Rs.5,72,329/- was required to be returned by the defendant to the plaintiff on 25-07-2018 but it was actually paid on 15-10-2020. Thus, defendant is required to pay interest on this security amount of Rs. 5,72,329/- @ 12% per annum from 25-07-2018 till 14-10-2020.”

16. As the learned counsels for the parties have made submissions on the issue of refund of security deposit, therefore, one option before us was to remand the matter back for proper consideration by the learned Trial Court, however, as the learned counsels for the parties have submitted that the said issue needs to be decided on the basis of the judgment of this Court in ***North Delhi Municipal Corporation and Anr. vs. Shish Pal*** (Supra), we with the consent of the counsels have considered the said issue on merit as well.

17. In the above referred judgment, a learned Single Judge of this Court, after considering Clauses 17 and 45 of the General Conditions of Contract, has held as under:

“Question No. 2 - Refund of Security deposit

62. In respect of each work order, the Contractors have to deposit 10% as the security deposit at the initial stage. Upon the payment of the final bill and after issuance of labour clearance certificate, the security deposit is liable to be refunded. The Contractors have, in some of the appeals included the security deposit amount in the principal amount claimed and in some other cases the refund of security deposit has been sought for separately. In either case, there is no doubt that the security deposit is liable to be refunded after the submission of the documents, certificates from the Labour Officer. Clause 17 and Clause 45 relating to refund of security deposit reads as under:

"CLAUSE 17

Contractor liable for damages, defects during maintenance period:

If the contractor or his working people or servants shall break, deface, injure or destroy any part of building in which they may be working, or any building, road, road kerb, fence, enclosure, water pipe, cables, drains, electric or telephone post or wires, trees, grass or grassland, or cultivated ground contiguous to the premises on which the work or any part is being executed, or if any damage shall happen to the work while in progress, from any cause whatever or if any defect, shrinkage or other faults appears in the work within twelve months (six months in the case of work costing Rs. 5.00 lacs and below except road work) after a certificate final or otherwise of its completion shall have been given by the

Engineer-in-Charge as aforesaid arising out of defect or improper materials or workmanship the contract shall upon receipt of a notice in writing on that behalf make the same good at his own expense or in default the Engineer-in-Charge cause the same to be made good by other workmen and deduct the expense from any sums that may be due or at any time thereafter may become due to the contractor, or from his security deposit or the proceeds of sale thereof or of a sufficient portion thereof. The security deposit of the contractor shall not be refunded before the expiry of twelve months (six months in the case of work costing Rs. 5.00 lacs except dense carpet works) after the issue of the certificate final or otherwise, of completion of work or till the final bill has been prepared and passed whichever is later. In case of dense carpet works the Security Deposit of the contractor shall not be refunded before the expiry of 5 & 7 years of maintenance from last day of the month in which a particular road is completed in case of binder of penetration 60/70 grade & CRMB 60 binders respectively.

CLAUSE 45

Release of Security deposit after labour clearance:

Security Deposit of the work shall not be refunded till the contractor produces a clearance certificate from the Labour Officer. As soon as the work is virtually complete the contractor shall apply for the clearance certificate to the Labour Officer under intimate on to the Engineer-in-Charge. The Engineer-in-Charge on receipt of the said communication, shall write to the Labour Officer to intimate if any complaint is pending against the contractor in respect of the work. If complaint is pending on record till after 3 months after completion of the work and/or no communication is received from the Labour Officer to this effect till six months after the

date of completion it will be deemed to have received the clearance certificate and the security Deposit will be released if otherwise due."

63. Clauses 17 and 45 relating to security deposits have also been interpreted in the Circular dated 10th June 2014, as under:

"Clause 17:- The security deposit shall not be refunded before expiry of one year from the date of completion of work.

Clause 45:- Security deposit shall not be refunded till the contractor produces clearance certificate from the Labour Officer.

64. A perusal of all the aforementioned Clauses reveals that:

a) For refund of security deposit, a clearance certificate is needed from the Labour Officer;

b) Once the work is completed, the Contractor would apply for the clearance certificate under intimation to the Engineer-in-Charge;

c) The Engineer-in-Charge has to communicate to the Labour Officer if there is any complaint in respect of the work executed;

d) If after completion of the work, 3 months have elapsed and no communication is received, after date of completion, there is a deemed clearance certificate and the security deposit is liable to be released.

65. Thus, irrespective of the date of payment of the principal amount, the security deposit cannot be held back beyond a period of 6 months **from the date when application is made to the Labour Officer for issuance of the clearance certificate.** These Clauses do not brook any delay in so far as the refund of the security deposit is concerned. Moreover, there is no clarity whatsoever as to how the refund of Security deposit is subject to the queue

system and availability of funds. The Clause itself does not contemplate any such condition. Thus, the security deposit is liable to be refunded upon the compliance of the conditions in Clauses 17 and 45 of the General Conditions of Contract. The Supreme Court also directed immediate payment of Security deposit in its order dated 5th January 2018.

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85. 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:

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

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93. The above process is contrary to the General Conditions of Contract. It is therefore, necessary and important that all the steps of the Contract are followed by the Contractors and the Corporations. The following guidelines are being passed:

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8. For refunds of Security deposit and Earnest Money deposit, the Contractor should unscrupulously comply with the conditions in Clauses 17 and 45. For refunds to be made, payment of final bill need not be awaited. Once the conditions of Clauses 17 and 45 are complied with and the final bill is passed, refunds ought to be made;”

(The emphasis in bold is of this court)

18. A reading of the above judgment would clearly show that for a contractor to lay a claim of refund of security deposit, the contractor is to make an application to the Labour Officer for issuance of clearance certificate under intimation to the Engineer-In-Charge. The Engineer-In-Charge is thereafter under an obligation to communicate to the Labour Officer if there is any complaint in respect of the work executed by the Contractor. If after the date of completion of the work, three months have elapsed and no communication is received from the Labour Officer, there is a deemed clearance certificate and the security deposit is liable to be released. In paragraph 65 of the judgment, it has been directed that the security deposit must be refunded within a period of six months from the date when the application is made to the Labour Officer for issuance of the clearance certificate. Therefore, for the period of refund to commence, the Contractor must make an application to the Labour Officer for issuance of the clearance certificate. In the absence of such an application, question of any deemed clearance cannot arise.

19. In the present case we have enquired from the learned counsel for the respondent as to whether the respondent made any application to the Labour Officer for seeking clearance and if so, the date(s) thereof. The learned counsel for the respondent fairly admits that no such application was made by the respondent. Therefore, the occasion for refunding the security amount in terms of Clauses 17 and 45 of the General Conditions of Contract and/or the judgment of this Court had

not arisen in the facts of the present case. Once it is held so, the question of payment of interest on such amount also did not arise.

20. Accordingly, the direction of the learned Trial Court in the Impugned Judgment directing the appellant to pay interest on the security amount of Rs.5,72,329/- to the respondent at the rate of 12% per annum from 25.07.2018 till 14.10.2020 is set aside.

21. The appeal is allowed to the above extent. The Decree passed by the learned Trial Court shall stand modified to the above extent.

22. There shall be no order as to costs.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

JULY 22, 2021
RN/U.