

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
(Appellate Side)

M.A.T. 383 of 2020

+

I.A. No. CAN/1/2020
(Old No. CAN/2726/2020)

With

F.M.A 792 of 2022

+

I.A. No. CAN/1/2020
(Old No. CAN/2727/2020)

M/s. Bharati Enterprise & Anr.

Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Rai Chattopadhyay

For the Appellant : Ms. Sanghamitra Nandy, Adv.

For the Appellant in : Mr. Sayantan Rakshit, Adv.
(M.A.T. 383 of 2020)

For the Bidhannagar Municipal : Mr. Sirsanya Bandopadhyay, Adv.
Corporation : Mr. Arka Kumar Nag, Adv.
Mr. Tirthankar Dey, Adv.
Mr. J. Dey, Adv.

For the Respondents in : Mr. Debabrata Saha Roy, Adv.
(MAT 383 of 2020) : Mr. Subhankar Das, Adv.

Heard On : 26.07.2022, 03.08.2022, 05.08.2022,
12.08.2022 & 22.08.2022

CAV On : 29.08.2022

Judgment On : 06.09.2022

Arijit Banerjee, J.:

1. These two appeals arise out of a judgment and order dated February 20, 2020, whereby two writ applications filed by the appellants being W.P. 2992 (W) of 2020 and W.P. 2995(W) of 2020, involving similar points of fact and law, were disposed of by granting liberty to the writ petitioners to take forward their claim for interest to an appropriate forum.

2. The appellants claim to have participated in a tender process initiated by the Bidhannagar Municipality (presently Bidhannagar Municipal Corporation, and in short 'BMC') in the year 2015. Two work orders were issued in favour of the appellants. They claim to have completed the work to the satisfaction of BMC in the year 2015 itself. However, their bills were not paid nor the security deposit and earnest money refunded. They made representations to the appropriate authorities which were in vain. Accordingly, they approached the writ Court by filing two writ petitions being W.P. No. 29853(W) of 2017 and W.P. No. 29856 (W) of 2017. The primary prayer in such writ petitions was for a direction on the respondents to disburse the bills of the writ petitioners including security money along with 18 per cent interest for the work which had been completed on June 29, 2015.

3. By two similar orders dated January 5, 2018, the two writ petitions were disposed of by directing the Commissioner of BMC to consider the representations filed by the writ petitioners and dispose of the same within 4 weeks from the date of communication of the order, if necessary after

affording opportunity of hearing to the petitioners, by recording proper reasons.

4. Pursuant to such order, the Commissioner, BMC, passed a reasoned order holding *“that the writ petitioner was not entitled to receive payment for the work purportedly executed by him without the authentic completion certificate from the concerned executive engineer”*.

5. The orders of the Commissioner, BMC were challenged by the appellants herein by filing two writ petitions which were disposed of by two similar orders dated March 5, 2019 by a learned Single Judge of this Court. The operative portion of such orders reads as follows:-

“In such view of the matter even on the face of the records there appears to be no good reason why the writ petitioners have been deprived of its original claims in terms of running/final account bill amounting to Rs. 59,32,024/- including the security money. Since the amount of the bill is dated October, 2015 and since the reasoned order at annexure P/6 was passed on September 7, 2018, I am not minded to award interest to the petitioners. In the event that the respondent Corporation more particularly the respondent Nos. 2 and 3 make payment of the said amount along with security deposit within a period of four weeks from the date of communication of this order, no interest shall be payable. In the event of any default in addition to proceedings for contempt of Court, the amount shall carry interest at the rate of 10 per cent

per annum (simple) from today till the date of recovery. The writ petition is allowed as above.”

6. The appellants say that within the time period indicated in the aforesaid order, the respondent authorities paid the bill amounts including security deposit. However, neither the earnest money nor any interest was paid by the respondents.

7. The appellants thereafter made a representation dated July 10, 2019, to the Commissioner, BMC, praying for refund of the earnest money as also interest for delayed payment of the bill amount and earnest money. Such representation not having been considered, the appellants approached this Court a third time by filing W.P. No. 15669(W) of 2019 and a similar writ petition in respect of the other work order. The said writ petition being W.P. No. 15669(W) of 2019 was disposed of by a learned Single Judge by an order dated August 14, 2019 by directing the Commissioner, BMC, *“to consider and take a decision in accordance with law in respect of the petitioner’s representation dated 10th July, 2019 within a period of six weeks from the date of communication of this order. After giving an opportunity of hearing to the petitioners or their authorise representative and thereafter communicate the decision to the petitioners within one week.”* A similar order was passed on the other writ petition.

8. Pursuant to the aforesaid order the Commissioner, BMC, disposed of the representation of the appellants by a reasoned order, the operative portion whereof reads as follows:-

“From the above submission it is revealed that as per the direction of the Hon’ble High Court the Corporation had already disbursed the entire amount claimed by the petitioner. Considering the facts and circumstances of the above matter, it is directed that the petitioner is entitled to receive the payment of earnest money for the work purportedly executed by him without any interest thereof. The Controller of Finance, Bidhannagar Municipal Corporation is directed to disburse the earnest money deposited by the petitioner for the abovementioned work at an early date.”

9. It is not in dispute that subsequently the appellants have received the earnest money. However, being aggrieved by the refusal of the respondents to pay any interest, the appellants once again and for the fourth time approached the learned Single Judge claiming interest, by filing two writ petitions being W.P. No. 2992 (W) of 2020 and W.P. No. 2995 (W) of 2020, being the present writ petitions.

10. Before the learned Single Judge the appellants contended that there had been wrongful withholding of their legitimate dues on account of the bill amount including security deposit and refund of earnest money, entitling them to receive interest thereon. Learned Advocate for BMC disputed the claim for interest. The learned Judge disposed of the two writ petitions by the common order impugned in these two appeals, observing: *“This dispute cannot be decided in a writ petition. Petitioners are at liberty to take forward their claim for interest in appropriate forum.”*

11. Being aggrieved the writ petitioners have filed the present appeals.

12. Learned Advocate for the appellants argued that admittedly there was delay on the part of BMC in disbursing the bill amount including security money and also earnest money. Payments on account of bill amount including security deposit and on account of earnest money were made only after the writ petitioners obtained orders from Court directing the respondents to make such payment. They are entitled to receive interest on the delayed payment by way of compensation for the loss they have suffered by reason of wrongful withholding of their legitimate dues.

13. On behalf of BMC, learned Counsel argued, firstly, there is no provision in the subject contract for payment of interest. Secondly, the appellant's claim for interest is barred by limitation. Thirdly, the order of the learned Single Judge dated March 5, 2019 passed in W.P. No. 26178 (W) of 2018, relevant portion whereof has been extracted above, has attained finality. The learned Judge had directed that if the payment was made within the stipulated time period, no interest shall be payable. This direction was not assailed by the appellant before a higher forum. Payment was made within the stipulated time period. Hence, the appellants cannot claim any interest. That order is binding on the parties.

14. We have considered the rival contentions of the parties.

15. We are in agreement with learned advocate for BMC. In the first writ petition, the appellants had prayed for a direction on the respondents to disburse the bill amount including security money along with interest at the

rate of 18% per annum. The learned Single Judge referred the matter to the commissioner, BMC for taking a decision.

16. In the second writ petition a learned Single Judge directed payment of the bill amount including security money within a stipulated period of time i.e., four weeks from the date of communication of the order. It was categorically stated in the order that if payment was made within the prescribed time period, no interest would be payable. If payment was not made within the prescribed time period, the principal amount shall carry interest at the rate of 10 per cent per annum till the date of recovery. That order attained finality and is binding on the parties, not having been challenged before a higher forum. It is not in dispute that BMC paid the principal bill amount including security deposit within four weeks from the date of communication of that order. Hence, the appellants' claim for interest does not survive any more. They having accepted the terms of the order dated March 5, 2019, to the effect that if payment of the principal sum was made within the prescribed time period, no interest would be payable to them, and BMC having paid the principal sum within the stipulated time period, the appellants' claim for interest stood extinguished in so far as interest on the bill amount including security money is concerned.

17. The order under appeal is cryptic. It merely records that the writ petitioners' claim for interest is disputed by BMC. The order does not record what the dispute is. However, we agree with the conclusion of the learned Single Judge. We are also of the view that since the appellants' claim for interest is not an admitted one and the disputes raised by BMC have been

indicated hereinabove, the writ Court is not the appropriate forum for adjudication of such claim of the appellants. The appellants would be at liberty to approach the appropriate forum with their claim for interest on alleged delayed refund of earnest money if they are entitled to do so in law. If any competent forum is approached by the appellants with their claim, it shall be decided in accordance with law without being influenced by any observation in the present judgment and order.

18. M.A.T 383 of 2020 with I.A. No. CAN/1/2020 (Old No. C.A.N. 2726 of 2020) and F.M.A 792 of 2022 with I.A. No. CAN/1/2020 (Old No. CAN 2727 of 2020) are accordingly disposed of.

19. There will be no order as to costs.

20. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)