

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 411 OF 2019
WITH
CIVIL APPLICATION NO. 488 OF 2019
IN
APPEAL FROM ORDER NO. 411 OF 2019

Yogesh Construction Pvt. Ltd.

.. Appellant

Versus

Municipal Corporation of Greater Mumbai and
Ors.

.. Respondents

-
- Mr.Udaya Sonkar Samudrala a/w. Ms.Sarita Yadav for Appellant
 - Mr. Ganesh Gole a/w. Mr. Om Suryawanshi for Respondent – MCGM
 - Mr. Dipak Sathwane, SE
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 21, 2022

P.C.:

1. On 20.07.2022 this Court passed the following order:

“After hearing this Appeal from Order for some time, the Court has given certain suggestions to the appellant in terms of clause No.96 as per the general conditions of contract which is the subject matter of the dispute between the parties. This Court has suggested that the lis between the parties can be effectively remedied before the statutory committee and thereafter the Appellate Authority designated in the works contract executed between the parties.

2. Mr. Samudrala has fairly submitted that in so far as the outstanding 5th running (final bill) of the appellant is concerned the Corporation has agreed to release the said bill and the appellant accepts the same.

3. Mr. Gole on behalf of the Corporation submitted that since the appellant had abandoned the works contract and committed breach, the respondent – Corporation had to engage an alternate agency to complete the balance work for which the Corporation has incurred an expenditure of Rs.5,84,400/-.

4. Be that as it may, in the event if the appellant agrees to go

before the statutory committee as stated in the works contract, this Court shall pass further appropriate directions in respect of the same.

5. *Mr. Samudrala seeks one day accommodation to take instructions from the appellant.*

6. *Stand over to 21 July 2022.”*

2. Mr. Ramchandra Chavan, Director of appellant - company is personally present in the Court. He has seen the order dated 20.07.2022 passed yesterday. This Court had interacted with Mr. Ramchandra Chavan and informed him about the clauses under the works contract dated 05.10.2007. Clause 96 of the works contract reads as under.

“Clause No. 96 – Finality of Decision and non arbitrability

“If any dispute, difference or claim is raised by either party relating to any matter arising out of the contract, the aggrieved party may refer such dispute within a period of 7 days to the concerned Addl. Municipal Commissioner who shall constitute a Committee comprising of three Officers i.e. concerned D.M.C. or Director (E.S. & P.), Chief Engineer other than the Engineer of the Contract and concerned Chief Accountant. The Committee shall give its decision in writing within 60 days.

Appeal from the Order of the Committee may be referred to Municipal Commissioner within 7 days. Thereafter the Municipal Commissioner shall constitute the Committee comprising of three Addl. Municipal Commissioners including Addl. Municipal Commissioner in charge of Finance Department. The decision given by this Committee shall be final and binding upon the parties.”

3. It is seen that clause 96 provides that in the event if any party has any dispute / claim, the aggrieved party can refer the dispute to the concerned Additional Municipal Commissioner who shall constitute Committee comprising of 3 officers viz. concerned D.M.C. or Director

(E.S. & P), Chief Engineer other than the Engineer of the Contract and concerned Chief Accountant and the said Committee shall give its decision. Time frame is also provided in the said clause.

4. The dispute raised in the suit filed by the appellant is narrow and only in respect of seeking a restraint on the respondent - Corporation from encashing the remaining two bank guarantees since the Corporation had encashed one of the bank guarantee out of the three bank guarantees at the then point in time. Both parties have in their submissions alleged rival claims against each other. Hence in terms of clause 96, it would be appropriate if both parties are directed to resolve their disputes in entirety by following the process envisaged under clause 96 of the works contract.

5. Some of the rival claims have been noted in the order passed yesterday. That apart ,both the parties shall be at liberty to file their respective claims afresh including the claim for non-encashment of the two bank guarantees held by the Corporation before the Committee constituted by the Additional Municipal Commissioner (AMC). The AMC is directed to constitute the Committee within a period of one week from the date of this order. The AMC shall intimate the appellant about the constitution of the Committee. Appellant and the Corporation, both shall be entitled to file their respective claims

alongwith supporting documents before the Committee within a period of two weeks from the date of intimation by the AMC.

6. The issue of limitation under clause 96 stands expressly condoned in respect of any rival claims made by both parties before the Committee. In view of the above, Appeal from Order stands disposed of. The appellant makes a statement that he shall withdraw L.C.Suit (St.) No.3767 of 2018 from the trial court unconditionally.

7. Once respective claims are filed before the Committee, parties shall be entitled to file reply / rejoinder to the same within two weeks thereafter. The Committee shall accord an opportunity of hearing to both parties after four weeks and conclude and pass a reasoned and speaking order with respect to the rival claims within a period of 8 weeks thereafter. In term of clause 96, appeal to the Municipal Commissioner and appellate Committee shall be available to the aggrieved party as provided.

8. In the event if the appellate Committee's decision is adverse to the appellant, then in that case, Corporation shall not encash the balance two bank guarantees for the further period of two weeks after the decision is communicated to the party to enable the appellant to take recourse to law and file appropriate proceedings if so advised.

9. With the above directions, Appeal from Order stands disposed of.
Civil Application No. 488 of 2019 also stands disposed of.

[MILIND N. JADHAV, J.]

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