



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision:- 16.09.2022***

- + RFA 318/2021 & CM APPL. 31717/2021 (Int. Stay), CM APPL. 31719/2021 (Cond. of Delay of 193 days in filing Appeal)
- + RFA 323/2021 & CM APPL. 31999/2021 (Int. Stay), CM APPL. 32001/2021 (Cond. of Delay of 382 days in filing Appeal)
- + RFA 324/2021 & CM APPL. 32063/2021 (Int. Stay), CM APPL. 32065/2021 (Cond. of Delay of 193 days in filing Appeal)
- + RFA 325/2021 & CM APPL. 32069/2021 (Int. Stay), CM APPL. 32071/2021 (Cond. of Delay of 382 days in filing Appeal)
- + RFA 371/2021 & CM APPL. 38630/2021 (Int. Stay), CM APPL. 38632/2021 (Cond. of Delay of 193 days in filing Appeal)

NORTH DELHI MUNICIPAL CORPORATION & ANR.

..... Appellant

Through: Mr.D.K.Sharma, Adv.

versus

DEEPAK KUMAR

..... Respondent

Through: None.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The present decision disposes of five regular first appeals assailing five judgments all dated 03.09.2019 passed by the learned ADJ, Tis Hazari Courts, Delhi in five different recovery suits filed by the respondent/plaintiff. Since the issues involved in all these appeals are identical, the same are being disposed of by this common judgment.
2. For the sake of convenience, the facts of the RFA 318/2021 are being referred to and the parties will, hereinafter be referred to as per their position before the learned Trial Court.



3. The present regular first appeal under Section 96 of the Code of Civil Procedure (hereinafter, CPC) seeks to assail the judgment and decree dated 03.09.2019 passed by the learned ADJ, Tis Hazari Courts, Delhi in CS No.178/2017. Vide the impugned judgment, the learned Trial Court has decreed the suit of the respondent/plaintiff for a sum of Rs.3,54,848/- along with interest @ 6% per annum w.e.f. 26.01.2015.

4. The defendant no.2/The Executive Engineer (M-1), City Zone, NDMC invited tenders on behalf of defendant no.1/NDMC for the improvement of lane in Gali Imam Wali by pdg. RMC in ward no.79, City Zone and Improvement of Channel and approach to Park at Parade Ground road in Ward No.79, City Zone. The plaintiff approached the defendant no.2 for carrying out the said work and the defendant no.2, after being satisfied that the plaintiff fulfilled the requisite conditions for carrying out the aforesaid work, awarded the work order in his favour on 28.02.2014 and 20.05.2014 for which purpose the parties entered into two agreements on 06.03.2014 and 31.05.2014. The plaintiff completed the aforesaid work within the stipulated time to the satisfaction of the defendant no.2 and without any negative remark in the period prescribed for the defect liability.

5. Upon completion of the work, the defendant no.2 made the final measurement of the work and all the bills pertaining to the aforesaid work orders submitted by the plaintiff were duly passed and recorded in the measurement books of the defendant no.1. However, since no payment towards the final bills was received by the plaintiff and that too despite repeated representations and legal notice, the plaintiff filed a suit claiming the outstanding payment of the final bill with interest.

6. The suit was defended by the defendant/appellant by filing its written



statement wherein it was *inter alia* urged that as per the terms and conditions of the Notice Inviting Tender (hereinafter, NIT), the payment of bills was dependent on availability of funds with defendant no.1 from time to time in the particular head of account. It was further averred that any payment to the plaintiff was only to be made after clearance of the past liabilities of the defendant and therefore the plaintiff could not be paid till sufficient funds were available with the defendant. It was finally claimed that the plaintiff, having accepted the general conditions of the NIT, was bound by Clause 9 of the same which clearly provided that the payment would be released subject to the availability of funds with the appellants.

7. After completion of pleadings, the learned Trial Court framed the following issues:

1. *Whether the plaintiff was entitled to recover a sum of Rs. 5,07,497/-? OPP*
2. *Whether the plaintiff is entitled to recover pedentelite and future interest @12% p.a. ? OPP*
3. *Relief*

8. Upon consideration of the evidence led by the parties, the learned Trial Court, vide its impugned judgment has decreed the suit of the respondent/plaintiff for a sum of Rs. 3,54,848/- with interest @6% and has directed that interest will be payable after expiry of 6 months of the date of the passing of the bill. The relevant findings of the learned Trial Court read as under-

“14. ISSUE NO. 2

Whether plaintiff is entitled to any interest? If yes, then at what rate and for what period?

15. The onus to prove this issue was upon plaintiff. The present case



pertains only to work order no. 1 and 554. According to the plaint, the final bill was for the sum of Rs.3,54,848/-. The bill was passed on 25.06.2014 and 26.05.2014. In the preceding issue I have already held that the plaintiff is not entitled to receive a sum of Rs. 40,860/-, which is the security amount, as he had not submitted the clearance certificate. Therefore, the principal amount on which the interest is to be calculated is Rs. 3,54,848/-.

*16. The Hon'ble Delhi High Court in **Raj Kumar Jain (supra)** in Para 74, has held:*

- a. reasonable time for making of payment of final bill in respect of work orders upto Rs. 5 lac shall be six months and work orders exceeding Rs. 5 lac shall be nine months from the date when the bills is passed by the Engineer Incharge;*
- b. The queue basis can be applicable for the payments to be made in chronology. However, the outer limit of six months and nine months cannot be exceeded, while applying the queue system;*
- c. the payments are held to become due and payable immediately after six months and nine months and any non payment would attract payment of interest for the delayed periods.*

17. In the present case, applying the principles ennciated in above said case, the work order was for less than Rs. 5 lac and the outer limit for making the payment was six months from the date when the bill was passed. Thus, six months would expire on 25.01.2015. The interest would be payable from 26.01.2015. Thus, in view of the discussions, the suit of the plaintiff is liable to be decreed as under:

- a. Plaintiff is entitled to a sum of Rs. 3,54,848/-*
- b. interest@ 6% p.a. on the principal amount of Rs. 3,54,848/- from 26.01.2015 till realization."*

9. In support of the appeal, Mr. D.K. Sharma, learned counsel for the defendants submits that the impugned judgment is liable to be set aside as while awarding interest on the amount towards the payment of final bill, the learned Trial Court has failed to appreciate the effect of Clause 9 of the terms and conditions of the NIT as per which, the plaintiff was made fully



aware at the time of issuing of the work orders that payment for the work done by the plaintiff would be made only on the basis of availability of funds in the particular head of account. He, therefore, contends that once it was made clear to the plaintiff that payment of bills would depend upon availability of funds, which condition was acceded to by the plaintiff while accepting the work orders, he cannot now claim interest merely because the payment of final bill for the amount of payment was delayed. He further submits that the amount towards the final bill has already been paid by the defendants and therefore prays that the appeal be allowed and the impugned judgment be set aside qua the direction to pay interest.

10. I have considered the submissions of learned counsel for the defendants and perused the record. Since the entire fulcrum of the defendants' claim that no interest was payable despite the payment having been inordinately delayed hinges on Clause 9 of the general conditions of the NIT, it would be apposite to, at the outset, note the said clause. The same reads as under-

"Clause 9

Payment of Final Bill

The final bill shall be submitted by the contractor in the same manner as specified in interim bills within three months of physical completion of the work or within one month of the date of the final certificate completion furnished by the Engineer- In-Charge whichever is earlier. No further claims shall be made by the contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. Payment of those items of the bill in respect of which there is no dispute and of items in dispute for quantities and rates as approved by Engineer-In-Charge, shall be made as under:

The payment of passed bills will depend on availability of funds in particular head of account from time to time in MCD Payment of



bills shall be made strictly on queue basis i.e. first the passed liabilities will be cleared and after that the release of payment for passed bills will be in order of demanding received at HQ under particular head of account.”

11. A perusal of the aforesaid clause makes it clear that though the payment towards the work done by the plaintiff was undoubtedly to be released only as per availability of funds with the defendants, the same cannot, however, be read to imply that the defendants could withhold the payment for years together and then refuse to pay interest. The clause does not deal with the question of interest. I find that the clause merely made the plaintiff aware that payment would be made when funds were available with the corporation under the concerned head, this could not be construed to imply that no interest would be payable even if the payment is delayed. Infact, the clause nowhere bars the payment of interest on delayed payments. In my considered opinion, the reliance of the defendants on clause 9 to deny interest on the payments is, therefore, wholly misplaced.

12. The plaintiff duly complied with the terms and conditions of the NIT and completed the work awarded to him in the stipulated time and was therefore certainly entitled to receive the payment for the said work on time. Once the defendants had themselves passed the bills for the payment of work done by the plaintiff, there was no justification for not releasing the payment for years together as has been done in the present case. In fact, I find that even though the final bill was passed on 25.06.2014, the learned Trial Court has still awarded interest only w.e.f. 26.01.2015 by taking into account a window period of more than six months to the defendants for making the due payment. The defendants, having made the due payment



only after the passing of the impugned judgment i.e. almost after five years after the plaintiff became entitled to receive the same, cannot take shelter under Clause 9 of the General Conditions of the NIT to deny interest to the plaintiff.

13. I may also note that the learned Trial Court, while awarding interest in favour of the plaintiff had relied on a decision of this Court in **EDMC v. Rajkumar Jain [2018(249) DLT 57]**, wherein this Court held that in respect of work orders upto Rs. 5 lakhs, the reasonable time for making payment of a final bill was to be six months and in cases where the work order exceeded Rs. 5 lakhs, the payment was to be made within nine months. I, therefore, find no infirmity in the directions issued to the defendants by the learned Trial Court to pay interest w.e.f 26.01.2015 on the amount payable towards the final bill which was admittedly passed by the defendants more than six months ago.¹

14. For the aforesaid reasons, I find no merit in the appeals which are accordingly dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

SEPTEMBER 16, 2022
sr