

18.
01.10.2024
Court No. 2
AGM

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 2093 of 2024

M/s. Ahmed Construction Co.
Vs.
The Chairman & Managing Director, West
Bengal Police Housing & Infrastructure Development
Corporation Limited & Ors.

Mr. Debayan Goswami.
...for the petitioner.

Mr. Subir Kumar Saha. Ld. AGP
Ms. Rima Sarkar.
...for the State.

Mr. Sayan Sinha.
... for the Respondent nos. 1-4.

1. Leave is granted to the advocate on record of the petitioner to implead West Bengal Police Housing & Infrastructure Development Corporation Limited as party respondent in the instant writ petition. The formality of serving a copy of the writ petition upon the added respondent stands dispensed with as the said authority is duly represented by the learned advocate.

2. A report in the form of affidavit has been filed by the Executive Engineer (Head Quarter) - I of the West Bengal Police Housing & Infrastructure Development Corporation Limited annexing document in support of the submission that the admitted amount due to the petitioner has been disbursed on 26th September, 2024.

3. Learned advocate for the petitioner admits receiving the payment.

4. Prayer has been made for payment of interest on account of the delayed payment of the dues.

5. The work in question was complete in June 2020 and the payment was made to the petitioner in September 2024 only after the writ petition was filed by the petitioner and order was passed by this Court.

6. In response to the aforesaid submission, learned advocate representing the authority relies upon the clause in the agreement which mentions that payment will be made as per availability of fund and no such claim for delay in payment would be entertained.

7. It has been submitted that the petitioner was well aware that he would not be entitled to claim interest on account of delay in making payment. As funds were not readily available, the payment of the petitioner could not be disbursed on time.

8. Upon hearing the submission made on behalf of all the parties and on perusal of the documents placed before this Court, it appears that the work was indeed complete in the year 2020 and payment was made only after the Court took cognizance of the matter.

9. Though there is a clause in the agreement specifying that claim for delay in making payment could not be entertained but the same cannot be stretched to such extent that even if the payment is

made after a period of four years, the petitioner cannot claim interest.

10. Had the payment being made within a reasonable period of time, the claim for interest may not have been entertained. In the instant case, payment was made after more than four years of completion of the work. The ordinary period for proceeding with money claim is three years. Here, the said prescribed period of limitation was also exceeded by an year before the payment trickled in.

11. In such circumstances, the Court is constrained to hold that the clause in the agreement made between the parties where no claim for delayed payment will be entertained ought not to stand in the way of the petitioner to seek interest.

12. In view of the above, the respondent no. 1 is directed to pay simple interest at the rate of 5% per annum to the petitioner on the admitted amount on and from its due date till its date of actual payment. Such amount shall be disbursed positively within a period of twelve weeks from the date of communication of this order.

13. In the event interest as directed hereinabove is not disbursed within the specified time period, then the petitioner would be entitled to receive additional interest of 3%, that is, $5\% + 3\% = 8\%$ per annum to be calculated on and from the due date till the date of actual payment.

14. The writ petition stands **disposed of**.

15. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)