



2024:DHC:8409-DB

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

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Judgment delivered on: 29.10.2024

+ **RFA(COMM) 47/2024****KAPIL KHANNA**

..... Appellant

versus

CONTINENTAL INDIA PRIVATE LIMITED Respondent**Advocates who appeared in this case:**

For the Appellant : Mr Kailash Chandra and Ms Poornima Gupta, Advocates

For the Respondent : Mr Daleep Dhyani and Mr Brijesh Sharma, Advocates

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT****VIBHU BAKHRU, J**

1. The appellant has filed the present appeal impugning a judgment dated 08.08.2023 (hereafter *the impugned judgment*) passed by the learned Commercial Court in CS (COMM) No. 177/2020 captioned *Kapil Khanna Vs. Continental India Pvt Ltd*. In terms of the impugned judgment, the learned Commercial Court has dismissed the suit of recovery filed by the appellant.

2. The appellant had filed the aforementioned suit for recovery of a sum of ₹35,52,935/- along with the *pendente lite* and future interest at



the rate of 12% per annum. It is the appellant's case that the respondent had breached the contract for the payment of work done in respect of the new building and the existing locker building amounting to an aggregate sum of ₹34,18,085/-. In addition to seeking recovery of the aforesaid amount, the appellant had also sought recovery of interest at the rate of 12% per annum with effect from 18.11.2019 to 17.03.2020, which was quantified at ₹1,34,850/-.

3. The appellant (hereafter also referred to as *plaintiff*) carries on the business / profession in the name of sole proprietorship concern – M/s Place Studios. He states that he is an architect by profession and is, *inter alia*, engaged in the profession of architecture, urban designing, master planning, interior design and other allied services.

4. The respondent (hereafter also referred to as *defendant*) is a private company and engaged in the business of manufacturing pneumatic casings, inner tubes and tyres for all types of vehicles.

PLAINTIFF'S CASE

5. It is the plaintiff's case that in December 2018, the defendant had approached him in his office at Delhi for availing consultancy services for designing the new building and existing locker room as R&D building as per Book of Requirements (hereafter also referred to as '*BOR*').

6. The plaintiff claims that on 28.01.2019, he sent a consultancy proposal as per the BOR floated by the defendant. Pursuant to the said



proposal, the defendant issued a Purchase Order (PO no. 133/4900242041 – hereafter ***the first PO***) dated 01.02.2019 for a sum of ₹7,50,000/- plus Goods and Services Tax (GST) as applicable. The first PO mentions the detail as “*Consultant for services required in R&D*”. The first PO also indicated the scope of work/services as well as specified the deliverables. The payment terms as set out in the first PO specified that 20% of the amount due would be payable on approval of the concept; 20% at the stage of estimate and tenders; 20% of the amount due at the stage of providing civil finishes, electrical and plumbing working drawings; and the remaining 40% was payable in four stages during construction.

7. The plaintiff claims that there was an existing locker room building adjoining the building mentioned as ‘new building’. The defendant proposed to merge the two and construct a building to be used as a testing facility (R&D building). The plaintiff claims that the existing building was in a completely torn down condition and had to be practically rebuilt. According to the petitioner, the scope of work was related only to architecture, structural, HVAC and electrical work of the new building.

8. The plaintiff claims that thereafter the officials of the defendant called upon the plaintiff to do additional work with the false promise of payment of enhanced fee. He also claims that the defendant had issued another interim Purchase Order dated 07.06.2019 (PO No. 127/4990244820 – hereafter ***the second PO***) of ₹50,000/- plus GST as applicable, acknowledging the scope of additional works.



9. The plaintiff claims that he had submitted the entire drawings, the requisite details as well as the tender documents, which were received from the defendant.

10. The plaintiff had issued an Invoice dated 20.03.2019 (Ex.PW1/8) (being Invoice no.13) in respect of the first PO for a sum of ₹1,50,000/- plus integrated goods and service tax (IGST) of ₹27,000 being 20% of the amount payable under the first PO at the first stage. Thereafter, the plaintiff also raised a second invoice for the same amount (being Invoice no.02 dated 07.05.2019) being 20% of the total amount payable under the first PO at the second stage. This was followed by Invoice dated 08.07.2019 (Invoice no.05) for 20% of the amount payable under the first PO at the third stage. In addition, the plaintiff also raised an Invoice (Invoice no.06 dated 10.07.2019) for a sum of ₹30,000/- plus IGST of ₹5,400, being 60% of the amount payable under the second PO.

11. The defendant paid a sum of ₹1,62,000/- against Invoice no.5 under payment advice dated 02.09.2019. Similarly, the defendant also paid a sum of ₹32,400/- in respect of Invoice no.6 dated 10.07.2019. The plaintiff claimed that it did not raise invoices for the remaining 40% of the amount under the first PO as the same were construction linked and the defendant did not keep the plaintiff informed as to the stage of construction. The plaintiff claimed that he had completed the entire work but the defendant had failed and neglected to pay the amounts due. He claimed that he had done additional works and had pursued the



defendant to pay for the same but the defendant had failed and neglected to do so.

12. The defendant, thereafter, stopped communicating with the plaintiff and refrained from answering his telephone calls. The plaintiff claims that the defendant failed to make the payments as due.

13. In the aforesaid context, the plaintiff claims that he is entitled to the following amounts due from the defendant:

“(i) Outstanding dues against tax invoice no. 05 dated 08.07.2019	Rs.1,77,000/-
(ii) Outstanding dues against invoice no. 06 dated 10.07.2019	Rs.35,400/-
(iii) Unbilled amount of fee/charges i.e. 40% of the value of the Purchase orders dated 01.02.2019 and 07.06.2019 plus IGST @ 18%	Rs.3,77,600/-
(iv) Amount due against new P.O sought for additional works based on the costing of Existing building additional works as per Annexure one cost details- 7.5% of cost of construction of Rs.2,99,61,562.00 amounting to Rs.22,47,116/-plus I.G.S.T. @ 18% extra. Total amount comes Rs.26,51,597/-	Rs.26,51,597/-
(v) Amount due against new P.O sought for additional services for Plumbing & fire-fighting not mentioned in the B.O.R for New Building as well Cost for new building additional services i.e. fire-fighting (F.M. Global) Rs.9,89,482/-, PHE work (Plumbing) Rs.3,44,735/-, networking Rs.50,000/- and L. T. Panels for building/electrical room Rs.4,50,000/- = Rs.18,34,217 .00 Additional works value= Fee@ 7.5% of Rs.18,34,217.00 = Rs.1,37,566/- plus G.S.T.@18% extra. Total amounts comes Rs.1,62,328/-	Rs.1,62,328/-



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(vi) 4 Visits of Principal Architect, Architect and Consultants. 4 x 3,000/- per visit total of Rs.12,000/- + 18% GST applicable. = Rs. 14,160/-	Rs.14,160/-
Total principal amount due	34,18,085/-
Add: Pre-suit Interest @ 12% per annum with effect from 18.11.2019 from the date of filing the application for pre- institution mediation to the date of institution of the present suit/plaint i.e. 17.03.2020	Rs.1,34,850/-
Total	Rs.35,52,935/- ”

THE DEFENDANT’S CASE

14. It is the defendant’s case that no further amounts were due to the plaintiff as he had failed to deliver the services as per their contract. The defendant stated that the plaintiff was required to complete the work as per the first PO and as per the consultancy proposal furnished by it. However, the plaintiff had failed to complete the same. The defendant also referred to the BOR, which was communicated to the plaintiff and claimed that the same clearly specified that the plaintiff was to provide services not only in respect of the proposed new building but also the extant building, which was to be included in the new R&D building.

15. The defendant stated that in terms of the first PO, the payments were to be made in the following stages:

STAGE I	TWENTY (20) PERCENT amount payable upon concept approval by Client;
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STAGE II	TWENTY (20) PERCENT amount payable upon estimate (i.e. BOQ) and Tender Out;
STAGE III	TWENTY (20) PERCENT amount payable, out of which; i) Ten (10) Percent amount payable upon- 100% delivery of Civil and structure drawing; and ii) Ten (10) Percent amount payable upon- 100% delivery of balance drawings i.e. for Services related to electrical, plumbing, finishes, HVAC, firefighting, etc. as clarified under S. No. 1 to 10 of Scope of Work in the said Purchase Order.
STAGE IV	FORTY (40) PERCENT amount payable out of which: i.10% on 30% of completion of works at site ii.10 % on 60 % of completion of works at site iii.10% on 100% of completion of works at site iv.10% after completion of Snag List for the complete Project and submission of as-built drawings by the Plaintiff. It is further clarified that the Plaintiff was obliged to visit the site and perform the Services mentioned under S. No. 11 to 13 of the Scope of Work under the said Purchase Order.



16. The defendant claimed that it had already paid 40% of the PO for the services as provided by the plaintiff upto stage II. It stated that the plaintiff is not entitled for a sum towards stage III and stage IV as the services were not completed by the plaintiff.

17. The defendant alleged that the plaintiff did not submit the final CAD files and finished drawings required for the construction (civil work) and other services such as HVAC, fire-fighting, electrical, IT, plumbing etc. The plaintiff had declined to send CAD drawing which is the basic requirement for any project.

THE TRIAL

18. Based on the rival contentions, the learned Commercial Court framed the following issues: -

- “1) Whether the suit of the Plaintiff is not maintainable as alleged in preliminary objection no. 1 to 5 in the written statement? OPD.
- 2) Whether the Plaintiff is competent to sign, verify and file the suit for recovery against the defendant? OPD.
- 3) Whether the written statement of the defendant has not been filed, signed and verified by competent person, if so, its effects as alleged in preliminary objection in replication? OPP.
- 4) Whether the Plaintiff is entitled to the suit amount as claimed for? OPP.
- 5) Whether the plaintiff is entitled to the interest, if so, at what rate and for what period? OPP.”



19. The plaintiff examined himself as PW-1. He also tendered his affidavit in lieu of examination-in-chief. He affirmed that he was a proprietor of 'M/s Place Studios' and is an architect by profession. He stated that sometime in the month of December 2018, the defendant company had approached him for hiring him as a consultant for the R&D Building. He accepted that the defendant had sent the BOR (Ex.PW1/2). He submitted that he had furnished the proposal, which was accepted and the defendant had issued the first PO (Ex.P-2). He also testified that the defendant had issued the second PO without discussing the details of the increased scope of work and without considering his approval for the same. He testified that he had furnished all the relevant drawings and documents as described in the purchase order as well as had done extra work at the request of the defendant. He stated that the construction had proceeded in full swing on the basis of the drawings supplied by him but payments due to him were not released. He claimed that the defendant had burdened him with new scope of work but despite various requests, no fresh purchase order was issued for the additional and extra work done by him.

20. He claimed that he sent an email dated 07.10.2019 requesting the defendant for gist of the cost of the additional work along with a fee for additional works based on the cost of the existing building, additional service works for plumbing and fire-fighting etc. in the R&D Building. He submitted that although the payment advice dated 02.09.2019 was sent against tax Invoice bearing no.5 dated 08.07.2019 and tax Invoice bearing no.6 dated 10.07.2019; the defendant did not make any payment



against the said tax invoices. He claimed that his demand for the payment of fees at the rate of 7.5% of the cost of construction for the additional and extra works was based on the guidelines issued by the Council of Architecture of India. He acknowledged that the plaintiff had received a sum of ₹3,54,000/- against Invoice no.13 dated 20.03.2019 (Ex.PW1/8) and Invoice no.2 dated 07.05.2019 (Ex.PW1/9) but the defendant had not paid the amount due under the remaining invoices.

21. The plaintiff produced the ledger account (Ex.PW1/7) setting out the amounts claimed by it.

22. The plaintiff testified that he had already submitted the relevant drawings to the defendant for completion of civil works.

23. The defendant examined Sh. Ravish Sharma (its legal counsel) as DW-1. He testified that the scope of work was shared with the plaintiff and the BOR was communicated to him by an email dated 14.12.2018 (Ex.DW1/2). He stated that the same clearly specified that the plaintiff was required to provide services not only for proposed new building but also for the existed building (locker room building) of the defendant, which needed to be merged with the proposed new building. He submitted that the plaintiff had submitted a consultancy proposal dated 28.01.2019 (Ex.DW1/3). He testified that the plaintiff had not submitted the CAD files and finished drawings required for construction, which was the basic requirement of the project. He testified that the plaintiff had failed to submit the final drawings despite repeated request and the same resulted in delay of works. He submitted



that the plaintiff had failed to perform the obligation entrusted to him and therefore, the defendant was compelled to engage another consultant – M/s Nirman Engineering Consultants Pvt. Ltd. through purchase order dated 24.09.2019. He also testified that the second PO (Ex.DW1/12) was not issued for additional work but only for augmenting the first PO at the insistence of the plaintiff. He submitted that the plaintiff had started disputing the scope of work under the first PO. Although the defendant had rejected the said claim, it issued the second PO to buy peace and avoid any further delay to the project.

24. The learned Commercial Court had evaluated the evidence and had decided issue nos.1 and 2 in favour of the plaintiff. However, the remaining issues were decided in favour of the defendant. The learned Commercial Court reasoned that the BOR (Ex.PW1/2 and Ex.DW1/2) was admitted by the plaintiff and mentioned the scope of work, boundary condition, project schedule requirement. The plaintiff had pursuant to the same furnished a consultancy proposal dated 28.01.2019 (Ex.DW-1/3). The learned Commercial Court found that the said proposal was for new building as well as for existing locker room building. The learned Commercial Court also noted that the first PO included the scope of work services and deliverables at various stages. The learned Commercial Court also examined various communications and concluded that there was no confusion that the documentation for the existing locker room was a part of the plaintiff's existing work as the BOR had clearly referred to the same. The learned Commercial Court also observed that the plaintiff was unable to establish that the



defendant was insisting on additional work, which was not a part of the plaintiff's proposal.

25. The learned Commercial Court also found that the plaintiff had neither made any averments nor led evidence regarding completion of the works covered under his scope of works under the first PO. The plaintiff had relied upon the list of drawings and documents furnished during the period 21.02.2019 to 23.08.2019 (Ex.PW1/3) but the same was denied by the defendant. The said list only showed the drawings and documents which were sent by mail on various dates. However, neither the emails nor the documents and the drawings sent by the plaintiff had been filed or proved.

26. The learned Commercial Court also evaluated the communications and had concluded that the plaintiff had not furnished the CAD files, which were demanded by the defendant. In view of its finding, the learned Commercial Court rejected the plaintiff's claim for the amounts claimed as due and payable.

REASONS AND CONCLUSION

27. The dispute between the parties, essentially, relates to whether the plaintiff had performed any additional work beyond the scope of the first and the second PO and was consequently entitled to the payment of the same. The dispute also extends to whether the plaintiff had completed the works as provided under the first and second PO and was, thus, entitled to the payments for the same.



28. According to the plaintiff, he had performed the additional work on the assurance that he would be paid additional consideration for the same. However, there is no evidence on record that the plaintiff had in fact performed any additional work. The plaintiff claimed that he was not informed of the locker building (an extant building which was also required to be designed). The plaintiff contended that he was misled into believing that only new building is required to be designed but the existing building was in a complete set of disrepair with only some bare outer walls.

29. However, we find no material on record to establish that the plaintiff had in fact executed the additional work or was persuaded to do so on the representation that he would be paid additional sums for the same.

30. Admittedly, the BOR (Ex.PW1/2) was shared with the plaintiff. It is relevant to refer to the said BOR. The same is reproduced below:

“Book of Requirements – Consultant for Designing (New Building & Locker Room as R&D Building), Modipuram

1. Basic Information

Continental India Private Limited is planning to hire a consultant to design and issue good for construction drawings for proposed new building architectural, structural, HVAC(20 to 45 Degree) and electrical cabling and routing based on the ground layout of the machines and lighting and power points details as per our requirement. Note that locker room building (existing building) should be merged with the new proposed R&D building since both buildings will be used as one Tire Test Center.

2. The scope of work:



The following are in the scope of work for the Consultant:

- 2.1. Detailed design & drawings (Architectural, Structural, HVAC and Electrical) of the proposed new building and existing locker room building should be done by the Consultant, based on the concept and the indicative Data Sheets provided by CIPL. Any value engineering (alternative solution to the original concept given by CIPL, which can bring some benefits) is encouraged from the consultant but must be discussed in advance with pros and cons and cost implications with the CIPL team for a final agreement.
- 2.2. Seek all required inputs for making the entire detailed design from the respective technical owner of CIPL team.
- 2.3. The Design and initial drawing should be briefed to the CIPL technical teams and approval will be given by Continental team before final drawings made.
- 2.4. Ensure the drawings for the mentioned sites are done as per Continental requirements and Continental standards (BCS) as these designs will be finalized by CIPL first and any change in drawing required during execution needs to be redesigned and re-submitted to CIPL.
- 2.5. Exterior finish, false ceiling, external developments with landscape and roads around building is to be included in the consultant scope of work. Consultant should provide best in class and financially feasible options to meet Continental's requirement.

3. Boundary conditions:

- 3.1. The continental scope of work:
 - 3.1.1. Continental will provide the machine layout for the building.
 - 3.1.2. Continental will provide all process requirements from room temperature/humidity etc. for the HVAC designing.
 - 3.1.3. Continental will provide all the electrical requirements for the machines, for cable routing purpose.
 - 3.1.4 Note: The new building will be installed with tire bursting machines hence it should be considered in design. Continental will provide the impact of the tire bursting in noise level for the corresponding room/area design.



4. Project schedule required from date of PO:

- 4.1 The Timeline of design and final drawing will be 4 weeks from date from issue of PO.

5. Deliverables with the offer:

- 5.1. Detailed quotation
5.2. Credentials of the team member proposed for this project
5.3. Confirmation on the project design schedule.”

31. It is apparent from the above that the plaintiff was duly informed that the scope of work entailed to designing and issuing good for construction (GFC) drawings for a proposed new building. The same included architectural, structural, HVAC, and electrical cabling and routing drawings based on the ground layout of machines and lighting and power point details as per the requirement of the defendant. The BOR also specifically stated that *“locker room building (existing building) should be merged with the new proposed R&D building since both buildings will be used as one Tire Test Center”*.

32. It is also apparent from the BOR that the scope of work was quite comprehensive. In addition to the above, it is also established that the meetings were held between the parties prior to the issuance of the first PO. This is evident from the e-mails [Ex.PW1/4 (colly)] exchanged between the parties.

33. The e-mails exchanged between the parties indicate that the principal issue related to the payments be made to the external consultants. The plaintiff claimed that the defendant was liable to pay for the same as the cost was almost equal to the consideration as agreed under the first PO. The plaintiff had called upon the defendant *“to take*



a relook into the situation & consider the solution” as suggested by him. The plaintiff suggested that the defendant hire the external consultants (electrical as well as HVAC consultants) and pay the fees directly to them and the plaintiff would complete the project at the costs as agreed inclusive of plumbing plus fire fighting consultant and structural consultant fee. It is material to note that in his communications, the plaintiff did not focus on execution of extra works on assurance of payments for the same. It is evident from the communications exchanged between the parties that the controversy pertains to the extent of work including the plaintiff’s scope of work.

34. In his e-mail dated 22.05.2019, the plaintiff had articulated his grievance that the initial SOP that was shared with him did not indicate the extensive work that he and his team were doing therefore, the costs of executing the work had gone up. The plaintiff set out the requirements which were missing from the SOPs sent to him at the initial stage. The said broad requirements as set out in his e-mail are reproduced below:

1. “We were sent the initial S.O.P without the diagrammatic input considerations that was hared (*sic* shared) with us in our first meeting. We are talking about the colourful services inputs that were shared to us by your team that clearly showed the scale & scope of works expected from us, however it was shared with us post issuance of P.O to us, hence this information was missing which led us to believe it’s a regular storage building & a mechanical testing facility with our much work.
2. There was no mention that we will have to do the existing building documentation ourselves & you do not have the complete documentation including elevations & sections & structural information of the site.



3. There was no mention of the facility to be designed as per FM Global standards (this is a huge miss in the S.O.P) - This alone could have doubled the sub-consultants fee in the beginning itself.
4. There was no mention in the S.O.P that both the buildings shall be fully air-conditioned, that too for Indian testing as well as international testing standards (this alone is a big increase in consultants costs).
5. There was no clarity on the number of re-works that would or could be required & our sub-consultants are saying that there cannot be a fixed fee for undefined scope of works.”

35. In view of the above, it is clearly admitted by the plaintiff that the entire scale and scope of work was shared with him *albeit* after issuance of the first PO. If, at any stage, the scope of work referred to in the BOR exceeded the scope of work as agreed, the plaintiff would in normal course have raised an objection to the said effect. There was no necessity for the plaintiff to have accepted the first PO or to proceed with it without seeking an appropriate amendment immediately on becoming aware of the scale and the scope of work. However, the plaintiff’s conduct does not indicate that he had at that stage expressed any disinclination for proceeding with the contract.

36. The contention that the plaintiff had performed any extra work on an assurance of the additional payment, is not supported by e-mails exchanged by the parties.

37. The objections raised by the plaintiff in his e-mail dated 22.05.2019 was countered by Mr. Praful Raj, Purchase Manager of the defendant in his e-mail dated 22.05.2019. The said e-mail [part of Ex.PW1/4 (Colly)] is set out below:

“Dear Kapil,



This is not at all acceptable, hence as agreed in the PO terms with Continental you need to complete the job.

If this will continue Continental will be forced to take legal actions accordingly.

I hope you understand the sensitivity of the matter and provide the solutions on priority.

Thanks..”

38. Notwithstanding that the defendant had disputed the issues raised by the plaintiff in his e-mail dated 22.05.2019, it is apparent that the defendant agreed to pay additional amount of ₹50,000/- and to issue the second PO (Ex.P3). The second PO mentions the description as “Augmentation order for R&D Consultant”. It is apparent from the above that the second PO was merely to augment the first PO (Ex.P2) which was for “Consultant for services required in R&D”. It is material to note that the second PO did not mention any additional work. It is also relevant to note that the plaintiff did not reject the second PO. It is also necessary to note that the scope of work as set out in the first PO is quite extensive. It is evident from a plain reading of the same that it is in conformity with the consultancy proposal furnished by the plaintiff (Ex.DW1/3). The scope of work as set out in the said proposal is set out below:

- “1. Preparation of space planning layout options as per design as per brief of client.
2. Preparation of concept design for client approval.
3. Preparation of design development of the entire project.



4. Preparation of Bill of quantities & preliminary estimate for approval of client before tendering the construction work
5. Assistance in vendor selection (In the event client design).
6. Incorporation of structural drawings with the architectural drawings.
7. Incorporation of electrical & lighting drawings with the architectural drawings & tender document for the same.
8. Incorporation of plumbing, sewerage & fire fighting drawings with the architectural drawings & tender document for the same.
9. Incorporation of HVAC design with Architectural drawings & tender document for the same
10. Coordinated M.E.P. services drawings for all areas of project. Preparation of working drawings & details for the project, that is, design development & construction details for on-site execution. * Preparation of working drawings & details for the project, including all the finishes that is, civil & exterior & interior finishes for the entire project.
11. Maximum of one Site Visit in one month by the architect appointed on this project after commencement of job for the estimated time period of 8-10 Months only after tendering. All visits shall be arranged by client at their cost for food, lodging, travel etc. or paid by client @ Rs.3,000/- per visit after design approval stage, i.e site visits.
12. The 3D rendering views shall be 4 views as part of this contract.
13. Checking of construction within two-three weeks of submission of bill if required by P.M.C.”



39. It is material to note that the proposal also provided that fees of certain consultants would be included and the fees of certain other consultants would not. Clauses XI and XII of the Annexure-I to the proposal are relevant and are set out below:

“XI. Consultants included in fee of project.

1. Structural consultant.
2. Electrical consultant.
3. Plumbing consultant.
4. HVAC Consultants.

“XII. Consultant excluded for hiring by M/s. Place Studios.

Upon approval of final layout & sign off by client, concept design shall be prepared before preparation of estimate for the project. Any changes post concept design approval shall be on chargeable basis on mutually agreed actual area as per points through 1 to 3 of scope of work

1. Acoustic Consultants.
2. Landscape Consultants.
3. Utility Consultant.”

40. The relevant extract of the Annexure-I to the Consultancy Proposal specifying the work that has been excluded from the petitioner’s scope of work is set out below:

“xiii. The following work is excluded from the scope of M/s. Place Studios:

- Permanent Placement/ every day visit of architect’s staff at site.
- Project Management for the project.
- Procurement of materials by the architect
- Any utility design or related works, such as, air, gas etc.



- Hiring of Landscape or lighting consultant for the job.
- Soil Testing for the project.
- Site Survey for the project,
- Sanctioning of plans, designs & drafting from anyone except client such as authority, building, management e.t.c.”

41. In view of the above, we do not find any merit in the plaintiff’s claim that he had executed any work, which was beyond the plaintiff’s scope of work as agreed between the parties. Further, the plaintiff has also been unable to establish that the defendant had agreed to pay any amount other than as mentioned in the two POs (the first PO and the second PO).

42. The next question to be examined is whether the plaintiff had established that he was entitled to the amount as mentioned in the two POs.

43. The consultancy proposal submitted by the plaintiff as well as the first PO expressly provided that the payments would be made on different stages. The payment terms as stipulated in the first PO are set out below:

“Payment Terms

Amount due at concept approved by client. 20%

Estimate and tender out. 20%

Amount due at concept approval and amount due at providing the civil, finishes, electrical & plumbing working Drawings, i.e. 100% drawings delivery including services of the fee 10% @ Civil & Structure drawing & 10% for balance services. 20%”



44. Admittedly, the plaintiff had been paid a sum of ₹3,54,000/-. The plaintiff has also acknowledged the same. According to the defendant, the said payments were made in accordance with the first PO and commensurate with the stages achieved. According to the defendant, the plaintiff had provided services till Stage-II and therefore was paid 40% of the amount due under the purchase order. The defendant claims that the plaintiff had not completed the services as contemplated upto Stage-III and Stage-IV and therefore was not entitled to any further payments. It was the specific case of the defendant that the plaintiff had not furnished the CAD files and finished drawings required for construction of civil works and other services such as HVAC, firefighting, electrical, IT, plumbing etc. It is the defendant's case that the CAD drawings were basic requirements for any project and the same were, thus, included in the plaintiff's scope of work. However, the plaintiff has denied the same.

45. Admittedly, the plaintiff had not furnished the CAD files and had demanded additional payments for the same. The onus to establish that the plaintiff had completed the work as agreed, rested on him. However, the plaintiff failed to establish that he had submitted the complete drawings as required including the drawings incorporating HVAC, firefighting, electrical, IT, plumbing etc. Since the defendant had disputed that complete drawings were provided, the plaintiff was required to produce the drawings that were supplied to establish his case that all drawings were in fact provided. However, the plaintiff neither produced the drawings nor the e-mails forwarding those drawings. He



merely provided a list referring to certain drawings, which he claimed had been supplied to the defendant. The defendant in its affidavit (Ex.DW1/A) had specified that the plaintiff had failed to submit the final finished drawings despite repeated requests and therefore, the defendant was compelled to engage another consultant (M/s Nirman Engineering Consultants Private Limited) and had issued a purchase order for a sum of ₹6,25,000/- to the said consultant). Paragraph 18 of the said affidavit is set out below:

“18. I say that the Plaintiff failed to submit the final finished drawings despite repeated requests by the answering Defendant causing delay in work and loss to the Defendant due to which Defendant was compelled to engage another consultant M/s Nirman Engineering Consultants Private Limited through Purchase Order No.124/4900249003/24.09.2019 valued at Rs.6,25,000/- for the Project. I further say that the Answering Defendant has suffered loss on account of non-performance of the work by the Plaintiff, which caused consequential loss in completing the work. Due to non-performance by the Plaintiff, the answering Defendant has suffered huge loss and reserves its right to recover the same from the Plaintiff at a later stage.”

46. The defendant also filed a copy of the purchase order (Ex.DW1/12) issued to M/s Nirman Engineering Consultants Private Limited for providing all the drawings. In terms of the said purchase order, it was agreed that the consultant would be paid 50% on release of all civil drawings and the balance 50% on release of all other drawings.

47. As observed earlier, the onus to prove that the work contemplated under the first PO and the plaintiff's consultancy proposal, was on the plaintiff. Admittedly, the plaintiff was required to furnish GFC



drawings and the final drawings, *inter alia*, incorporating the plumbing, electrical and HVAC designs/layout. Thus, the least that the plaintiff could do was to produce the said drawings and establish that the same were a complete set as required to be provided to the defendant. However, as noted above, the plaintiff did not produce any drawing.

48. In the given facts, we find no infirmity with the decision of the learned Commercial Court in concluding that the plaintiff had failed to establish that he had provided all the drawings as required within the scope of his work as stipulated in the first PO.

49. There is no cavil that the payments were required to be made to the plaintiff as per the payment schedule. Admittedly 40% of the total payment as stipulated in the first PO was made. The plaintiff has been unable to prove that he was entitled to the payments that were to be released at Stage-III and Stage-IV as well.

50. In view of the above, we concur with the decision of the learned Commercial Court that the plaintiff had failed to establish its claims as set out in the suit.

51. The appeal is unmerited and accordingly, dismissed.

52. The parties are left to bear their own costs.

VIBHU BAKHRU, J

SACHIN DATTA, J

OCTOBER 29, 2024

‘gsr/RK’