



2024:DHC:5258



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 24th April, 2024
Pronounced on: 15th July, 2024

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CS(OS) 561/2012, IA. 22031/2014

SHRI VISHAL AND COMPANY
CONSY CONTRACTOR
65, RAM NAGAR MARKET,
QUTAB ROAD, NEW DELHI-05,
THROUGH ITS PROPRIETOR
SH. VIHSAL

.....Plaintiff

Through: Mr. Osama Suhail, Mr. Samama
Suhail and Mr. Mohd. Shahid,
Advocates.

versus

1. **THE DEFENCE SECRETARY**
MINISTRY OF DEFENCE
SOUTH BLOCK, NEW DELHI

...Defendant No. 1

2. **THE STATION COMMANDER**
DELHI AREA,
STATION HEAD QUARTERS,
DELHI CANTT., NEW DELHI

...Defendant No. 2

Through: Mr. Jaswinder Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Suit for *Recovery of Rs.3,73,28,853/-* has been filed by the plaintiff company. Briefly stated, the plaintiff, a proprietorship firm, which provides *Conservancy Services* to the different Departments of the



Government agencies. The plaintiff and the defendant entered into Conservancy Agreements dated 11.04.2008 and 01.05.2008 for the year 2008-2009 w.e.f. 01.05.2008 to 31.05.2009 for 16 units. Subsequently, on 27.03.2009, supplementary Agreements were executed for extending the two Contracts for the period between 01.04.2009 to 30.06.2009, on almost the same terms and conditions.

2. The plaintiff has explained that the agreements had different heads for charges as under:-

- a) *Consy Charges Per man per day.*
- b) *Consy Charges per man per month.*
- c) *Consy Charges Per Month.*
- d) *Carriage charges per vehicle per day.*
- e) *Carriage charges per month.*

3. The plaintiff has also made a Security deposit in advance to the defendant, to the tune of Rs.1,09,500/-. It is submitted that it was agreed between the parties that the payment to the plaintiff, shall be made once in a month i.e. in the following months to which the claim pertains subject to the satisfactory services. The terms read as under:-

“The payment for such services will be made of the conservancy contractor by the Government in arrears once in a month that is in the following month to which the claim pertains subject to the satisfactory services. The payment for such services the conservancy contractor will be made based on the attendance/presence of number of conservancy safaiwalas and rubbish Lorries provided for lifting of garbage in the month for which payment is being made.”



4. The plaintiff has claimed that he has rendered satisfactory services as per the terms and conditions of the Agreements and has fulfilled his obligations under the Agreements. According to the plaintiff, the calculation of the amount is as under:-

Contractual value for Conservancy charges
per month is = Rs.19,63,724/-

The total for 14 months (w.e.f. 01.05.2008
till 30.06.2009) is = Rs.2,74,92,136/-

5. The plaintiff has claimed that the defendants are liable to make the following payments:-

S.No.	Head	Amount per month (Rs)	Total amount for 14 months (from 01.05.08 to 30.06.09) (Rs)
1,	Conservancy charges for manpower	19,63,724/-	2,74,92,136/-
2.	Carriage charges	1,04,000/-	14,56,000/-
	Total charges	Total (A)	2,99,48,136/-
3.	Refund of Security deposit	(B)	1,09,500/-
	Total = A+B		3,00,57,636/-

6. It is thus, claimed that the total amount due and payable by the defendant is Rs.3,00,57,636/- including the Security deposit of Rs. 1,09,500/-.

7. The plaintiff has further submitted that a total sum of Rs.1,01,01,544/- had been received by the plaintiff, before the institution of the Suit.



Subsequent to filing of the Suit, another payment of Rs.1,07,51,525/-, has been received by the plaintiff, in the month of June and July, 2013.

8. It is further submitted that as per the initial calculation, the petitioner was entitled to Rs.2,99,48,136/-, for a total period of 14 months but the defendants have wrongly calculated the amount payable as Rs.2,44,58,635/- thereby there being a difference of Rs.54,89,501/-, in the calculations.

9. Furthermore, according to the plaintiff, the defendant had made a payment of Rs.1,01,01,544/- before the institution of the Suit but it is claiming to have made payment of Rs.1,37,07,110/-, without there being any proof of the payment made as such. The defendants have, therefore, wrongly calculated the excess payment of Rs.36,05,566/-.

10. The plaintiff has thus claimed that a sum of Rs.3,22,28,252/- including interest @24% p.a. on the due amount in addition to Rs.50,00,000/- towards damages on account of mental pain, agony and loss of new contract work due to paucity of funds on account of non-payment of dues by the defendants on time. The final amounts claimed by the plaintiff, are as under:-

Sr.No.	Particulars	Amount
1.	Towards difference between total liability claimed & acknowledged (Rs.3,00,57,636 – 2,44,58,635)	55,99,001.00
2.	Towards difference between actual payment received as mentioned in para 11 of the plaint i.e. Rs.1,01,01,544/- and the actual payment claimed to have been made by the Defendants @Rs.1,37,07,110/-.	36,05,566.00
3.	Towards interest @24% peer annum on the outstanding amount of Rs.1,99,56,082/-	1,23,72,771.00



	from 01.07.2009 to 31.01.2012.	
4.	Towards interest on the outstanding amount of Rs.1,99,56,082/- @24% per annum from 01.02.2012 to 28.06.2013.	67,85,067.00
5.	Towards interest @24% per annum for the balance amount of Rs.92,04,457/- after adjusting receipt of payment of Rs.1,07,51,525/- (Rs.1,99,56,082/- - 1,07,51,525/-) from 01.07.2013 to 31.03.2015)	38,65,848.00
	Total	3,22,28,252.00
6.	Towards claim of damages	50,00,000.00
	Total	3,72,28,252.00

11. The plaintiff has thus claimed a sum of Rs.3,72,28,252/- along with *pendent lite* and future interest @24% p.a.

12. The *defendants in its Written Statement*, have admitted entering into the two Contracts initially for the period from 01.05.2008 to 31.03.2009 for 16 Units, at the rate as specified by the plaintiff. It is, however, explained by the defendants that recruitment of *Conservancy safaiwala* posts, was completely banned in Army since 2004 by the Government of India, Ministry of Defence, which led to a gradual decrease in the number of conservancy safaiwalas available to Station Headquarter Delhi Cantt., for rendering the services to the units/sub units inside the Cantonment. However, as per the procedure that was in vogue for outside army areas not covered by Cantt Board and where local bodies i.e. MCD and NDMC were not willing to provide Conservancy services in army areas/Units, the Station HQ Delhi Cantt, enters into annual Conservancy Contract Agreement with



private party, as was done in the present case for providing Conservancy services.

13. The defendants have admitted entering into the two Conservancy Agreements for 16 Units w.e.f. 01.05.2008 to 31.03.2009 @Rs.19,65,444/- towards the Conservancy charges and Rs.1,27,400/-, towards the carriage charges adding up to contractual value of Rs.20,92,844/- per month or Rs.2,30,21,284/- for 11 months from 01.05.2008 to 31.03.2009. Supplementary Agreements had been entered for three months from 01.04.2009 to 30.06.2009, which came to Rs.62,78,532/- (Rs.20,92,844/- X 03). The total contractual value for 14 months thus came to Rs.2,92,99,816/-.

14. The defendants have further explained that the Conservancy Agreements for the period from May 2008 to March 2009, was forwarded to Local Audit Authority for audit clearance/vetting in April 2008. After settling the audit observations, the Local Audit Authority, LAO (B) Delhi Cantt, forwarded these contracts to PCDA (WC) Chandigarh *vide* their Letter No. LAB/153/CA/Stn HQrs dated 12.08.2008, for their necessary action/concurrence. However, there were observations were made by the PCDA (WC), Chandigarh *vide* its Letter dated 22.09.2008 that the Contracts had been finalized without following provisions of prior concurrence of Integrated Finance Advisor before commencement of Conservancy Agreements.

15. Accordingly, a statement of case was prepared by Station HQ Delhi Cantt and forwarded to PCDA (WC), Chandigarh, through staff channel *vide* Letter dated 17.10.2008 for audit report. The Station Commander, Station HQ Delhi Cantt, also requested the PCDA (WC), Chandigarh *vide* its Letter



dated 31.10.2008 that the Conservancy services were being provided by the plaintiff since 01.05.2008 and no payments have been released to the Contractor/plaintiff since then, which may result in termination of the Contract by the Contractor which would be detrimental to the upkeep of the maintenance of hygiene and sanitation specially in the areas located outside Cantonment not covered by Cantonment Board & Station HQ Conservancy Staff.

16. The PCDA (WC) Chandigarh, sought clarification *vide* its Letter dated 18.11.2008, to which the Reply was given and further exchange of Letters took place. Eventually, as a separate case, partial provisional payment of Rs.1,04,15,718/- w.e.f. 01.05.2008 till 31.12.2008, was proposed to be made to the plaintiff. Finally, an approval was accorded for a sum of Rs.98,14,005/-, which was released to the Contractor in February/March, 2009.

17. Again, a request was made to PCDA (WC) Chandigarh, for further release of provisional part-payment for the period 01.01.2009 to 31.03.2009, for which a partial payment of Rs.38,93,105/- was made to the plaintiff.

18. The defendants have thus, explained that against the Contract value was Rs.2,92,99,816/-, for the period of 01.05.2008 to 31.06.2009, actual payments that were required to be made were Rs.2,44,58,635/-, out of which a sum of Rs.1,37,07,110/- has been made leaving a balance of Rs.1,07,51,525, which is payable on behalf of the defendants.

19. The defendants have asserted that it had been following up the matter with the higher officials, to get the payments of the plaintiff cleared. The Legal Notice dated 18.04.2011, was admittedly received by the defendants pursuant to which further efforts were made to get the payments released to



the plaintiff. *On merits*, the defendants have reiterated that a balance of Rs.1,07,51,525/- remains to be paid to the plaintiff.

20. The plaintiff in its Replication, reaffirmed that the amount of Rs.3,72,28,252/- that has explained in the plaint is due and payable by the defendants.

21. The issues were framed on 16.09.2016, which are as under:-

1. *Whether the plaintiff is entitled to decree for the amount of Rs.3,72,28,252/- along with interest at what rate and for what period? OPP*
2. *Whether the plaintiff is entitled to damages on account of mental pain and agony and loss of new contract due to paucity of funds or not? OPP*
3. *Relief.*

22. *PW-1, Mr. Vishal Mohd.*, the plaintiff has tendered the affidavit of evidence, which is exhibited as Ex.PW-1/A and deposed on similar lines as the Plaint.

23. The defendant examined *DW-1, Col. Sanjeev Singh*, who tendered his evidence by way of affidavit, which is exhibited as Ex.DW-1/A. The witness was duly cross-examined by the plaintiff.

24. Written submissions have been filed on behalf of the plaintiff, as well as, the defendants.

25. *The plaintiff in the Written Submissions*, has submitted that the defendants have not been able to explain how a payment of Rs.38,93,105/- was paid by the defendants and it has wrongly taken the credit for the said amount. It is further submitted that as per the plaintiff, he was entitled to Rs.2,99,48,136/- but the defendants have calculated the amount as



Rs.2,44,58,635/- leaving a difference of Rs.54,89,501/-. The total amount thus payable by the defendants, is the differential amount, which adds up to Rs.90,95,067/- on which interest @24% p.a., is payable since the date the amount became due. The plaintiff has thus sought recovery of Rs.37,22,825/.

26. *The defendants on the other hand, have re-asserted in their submissions that the only balance amount was Rs.1,07,51,525/-, as has been explained in the Written Statement.*

27. Submissions heard and the record along with the pleadings and the evidence have been perused. The issue-wise observations are as under:-

ISSUE NO. 1: *Whether the plaintiff is entitled to decree for the amount of Rs.3,72,28,252/- along with interest at what rate and for what period? OPP*

Admittedly, the parties entered into two Conservancy Services Agreements dated 11.04.2008 and 01.05.2008 for a period w.e.f. 01.05.2008 to 31.03.2009. The parties also entered into a Supplementary Agreement dated 27.03.2009 for three months w.e.f. 01.04.2009 to 30.06.2009, essentially on the same terms. It is not in dispute that as per the Agreement, the amount payable per month was Rs.19,63,724/- p.m., aside from carriage charges which have been claimed by the plaintiff as Rs.1,04,000/-, while the defendants have calculated the carriage charges as Rs.1,27,400/-. Since the plaintiff is claiming the lesser amount, the amount claimed by the plaintiff, is taken as to be the amount for calculation of the outstanding amount.

28. The plaintiff has made the claim for the charges, as follows:-



S.No.	Head	Amount per month (Rs)	Total amount for 14 months (from 01.05.08 to 30.06.09) (Rs)
1,	Conservancy charges for manpower	19,63,724/-	2,74,92,136/-
2.	Carriage charges	1,04,000/-	14,56,000/-
	Total charges	Total (A)	2,99,48,136/-
3.	Refund of security deposit	(B)	1,09,500/-
	Total = A+B		3,00,57,636/-

29. Thus, the total amount payable for the entire contract period of 14 months, has been calculated as Rs.2,99,48,136/-, by the plaintiff, to which it has added refund of security charges, about which defendant has not stated anything.

30. The defendants, however, have claimed that the amount due for the 14 months, was Rs.2,92,99,816/- by taking less carriage charges about which but there is neither any evidence nor any explanation. The amounts claimed by the plaintiff, are thus taken to be true and correct. It is thus held that the entire contract amount comes to Rs.2,99,48,136/- for the period of 14 months w.e.f. 01.05.2008 till 31.06.2009.

31. The plaintiff has further deposed that it had paid a security of Rs.1,09,500/-, which also is payable by the defendants. The total amount to be paid by the defendants, thus comes to Rs.3,00,57,636/-.

32. Admittedly, the defendants from February, 2009 till March, 2009, made a total payment of Rs. 1,01,01,544/-, leaving a balance of Rs.1,99,56,082/-. Subsequent to the filing of the Suit, admittedly the



defendants have made further payment of Rs.1,07,51,525/-, from the period of June, 2013 to July, 2013. Thus, against the total liability of Rs.3,00,57,636/-, the defendants have paid a sum of Rs.2,08,53,069 **leaving a balance of Rs.92,04,567/-**, [Rs.3,00,57,636/- - (Rs. 1,01,01,544/- + Rs.1,07,51,525/-)], **to which there is no challenge.**

33. There is no discrepancy in the calculation of the amount due and payable by the defendants. *Firstly*, the defendants in their Written Statement, themselves had explained that the contractual value for 14 months was Rs.2,92,99,816/-, but when calculating the outstanding amounts, it has been taken as Rs.2,44,58,635/-, for which there is no explanation. Thus, there is a difference of Rs.54,89,501/-, in the calculation of the defendants.

34. Further, the defendants have claimed that it had made a payment of Rs.38,93,105/- for the period w.e.f. 01.01.2009 till 31.03.2009. However, this payment has not been proved by the defendants and it has been denied by the plaintiff.

35. Therefore, the plaintiff has been able to prove that these two amount of Rs.54,89,501/- + Rs.36,05,566/- (total amount Rs.90,95,067/-) were not paid to the plaintiff.

36. The plaintiff has thus, been able to prove that there is a short payment of Rs.90,95,067/- while on the other hand, the defendants have not been able to prove that it had made the entire payments.

37. *The plaintiff is held entitled to Rs.90,95,067/- as outstanding payment due to it from the defendants.*



38. **ISSUE NO. 2** *Whether the plaintiff is entitled to damages on account of mental pain and agony and loss of new contract due to paucity of funds or not? OPP*

The plaintiff has also claimed a sum of Rs.50,00,000/- towards mental pain and agony, loss of new contract work because of paucity of funds and due to non-payment of dues by the defendants. However, the plaintiff has not been able to lead any evidence whatsoever to entitle him to the damages on account of pain and agony. It cannot be overlooked that this is a commercial transaction and the delay in making the payments, is compensated by grant of interest. Insofar as losses of business is concerned, not an iota of evidence has been led by the plaintiff. *He has not been able to prove its claim for damages in the sum of Rs.50,00,000/-.*

Issue no 2 is decided against the plaintiff.

39. **RELIEF:**

In view of the findings on the aforesaid issues, is held that plaintiff is entitled to Rs. 90,95,067/- along with interest @7% p.a. w.e.f. 01.07.2009 till the date of payment.

40. The parties to bear their own cost. The Suit is hereby decreed. The pending Application(s) if any, are accordingly disposed of.

41. Decree sheet may be drawn accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 15, 2024/RS