



2024 : DHC : 3376



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

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Date of decision: 22nd April, 2024

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CS(COMM) 850/2023**SANJEEV KUMAR GOEL**

.....Plaintiff

Through: Mr. Avinash Trivedi, Ms. Ritika Trivedi, Mr. Jatin Arora and Mr. Rhythem Nagpal, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI

...Defendant

Through: Mr. Prabhat Kumar and Mr. Sahin Awana, Advocates.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****I.A. 8706/2024 (under XIII-A read with Order XII Rule 6 CPC)**

1. The present application under Order XIII-A read with Order XII Rule 6 Code of Civil Procedure, 1908, has been filed on behalf of the plaintiff for Summary Judgment as the entire claim of the plaintiff has been admitted by the defendant in the Status Report.

Submissions heard and the record perused.

2. Suit for Recovery of Rs.3,09,59,069/- along with the interest @12% has been filed on behalf of the plaintiff.

3. The plaintiff is sole proprietor of M/s Sanjeev Associates and is duly



enrolled as Municipal Contractor with defendant/MCD. The plaintiff was awarded the work of “*Improvement and strengthening of 13.50 m wide road in Sector-22 Rohini in Narela Zone*” vide work order No.EE-Project Narela/SYS/2018-19/5 dated 13.04.2018. Pursuant thereto, an Agreement was executed between the parties. The date of start of work was 13.04.2018 and the date of completion was 12.10.2018, in terms of the Agreement. The plaintiff successfully completed the work within time and the bills were submitted to the defendant for payment. The Defect Liability Period/Maintenance Period was five years, which also stands completed on 12.10.2023. The payment against the 2nd RA bill, 3rd RA bill, 4th and Final Bill and 10CA Bill, have been retained by the defendant. It is further submitted that the Liability Period has expired on 12.10.2023 and therefore, the plaintiff is also entitled to the Security amount of Rs.42,12,311/-, which has also been retained in the 4th and final bill.

4. The plaintiff sent a Legal Notice dated 22.12.2021 under Sections 477 and 478 of Delhi Municipal Corporation Act, 1957 (DMC Act) for release of the amount along with the interest. However, the Executive Engineer of the defendant/MCD gave a reply bearing ref. no. D-383/EE(Pr.)N/2021/22 dated 24.01.2022, wherein it was assured that the balance amount would be paid subject to the availability of funds.

5. The plaintiff has thus by way of the present Suit claimed the recovery of Rs.3,09,59,069/- along with interest @12% p.a., from the date of institution till the date of Judgment.

6. The **defendant** has submitted a status report wherein it has been asserted that the balance amount against a 2nd RA Bill is not Rs.81,47,033/-, as has been claimed by the plaintiff but the amount is Rs.78,77,387/- . It is



further submitted that the defendant would make the total payment to the plaintiff as and when the funds are available with the defendant.

7. Submissions heard.

8. Admittedly, after taking the due amount under 2nd bill as Rs.78,77,387/- instead of claimed amount of Rs.81,47,033/-, the amounts due against the 2nd RA, 3rd RA, 4th RA and 10CA Bill, is Rs.1,75,24,594/- to which the plaintiff is held entitled.

9. The defendant had retained the security in the sum of Rs.42,12,311/-. The Defect Liability Period/Maintenance Period of 5 years has expired on 12.10.2023 with no complaints. Therefore, the plaintiff is also entitled to security amount of Rs.42,12,311/-.

10. The plaintiff has also claimed interest @12% from 28.03.2019 till 16.10.2023 amounting to Rs.2,17,36,905/-.

11. The issue of interest was considered in detail in the Case of North Delhi Municipal Corporation & Ors. vs. Shish Pal, MANU/DE/1200/2018, wherein, Clauses 7, 9 and 9A of General Conditions of Contract (GCC), which deal with grant of interest, were considered in detail. The Clause 7 pertains to payment of Interim Bills, while Clause 9 dealt with payment of Final Bills. On reading, the Clauses 7, 9 and 9A, the Co-ordinate Bench of this Court observed that though these Clauses contemplate that the payment against the bills shall be made within six to nine months and that no interest shall be payable to the Contractor in case there is delay of payment on account of non-availability of funds in the particular head of the account of MCD. It does not imply that no interest whatsoever is payable in case the MCD defaults in payment of the due amounts on the pretext of non-availability of funds. All it implies is that the payments against the bills shall



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be made within six to nine months as the case may be and the interest is not leviable for this period in case the non-payment is on account of paucity of funds. The Clauses 7, 9 and 9A of the GCC nowhere provide that no interest whatsoever shall be payable in case of paucity of funds with the defendants. It was thus concluded that if the payments are made whether on a queue basis or otherwise beyond a period of six months and nine months respectively, interest shall be payable on the due amount.

12. Since, admittedly, the bills have not been paid, the plaintiff is also entitled to interest on this amount. The plaintiff is held entitled to the interest @ 8% p.a. on the 2nd RA, 3rd RA, 4th RA and 10CA Bill in the sum of Rs.1,75,24,594/- from the expiry of nine months from the date of passing of the bills till the date of payment. The security amount of Rs. Rs.42,12,311/- shall carry the interest of 6% from the date of institution till the date of payment.

13. The Suit is accordingly decreed. Parties to bear their own costs. Decree Sheet be prepared.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 22, 2024/RS