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

% ***Date of Decision: 7th April, 2025***

+ **CM(M) 403/2025 & CM APPL. 12188/2025**

MRKR CONSTRUCTIONS AND INDUSTRIES PVT LTD

.....Petitioner

Through: **Mr. Gaurav Singh, Advocate.**

versus

COMPLETE DEWATERING SYSTEMS PVT LTD

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner is defending a commercial suit which seeks recovery of Rs. 23,50,874/- with interest.
2. The plaintiff-M/s Complete Dewatering Systems Pvt. Ltd. is engaged in business of dewatering services and provides services by giving their dewatering equipments.
3. The defendant Company (petitioner herein) approached the plaintiff for carrying out certain dewatering work at their project situated in Telangana and after discussing the modalities of such dewatering work, an offer letter was given which contained terms and conditions with respect to such work.
4. The plaintiff, even, dispatched its equipments to the project-site and the dewatering work started w.e.f. 15.09.2021 and continued upto 05.02.2022.



5. The issue in the abovesaid suit is with respect to the non-payment of the bills/invoices which have been raised by the plaintiff, from time to time, in accordance with the agreed terms.

6. The suit was resisted by the defendant and it, *inter alia*, mentioned as under in para 6 of its preliminary submissions:-

“6. It is submitted that the Defendant and the said Sarala Projects Pvt. Ltd. Were working upon one common project i.e. deployment of equipment and technical personnel for Direct Pumping/Dewatering in Adit-2, Package 9, Kaleshwaram Project, Sircilla, Telangana. It is submitted that although the final Work Order dated 11.09.2021 was issued upon the letterhead of the Defendant herein, the Defendant has completed its part of the payment and the payment that allegedly remains has to be due from Sarala Projects and not from the Defendant herein.”

7. While controverting the abovesaid fact, a replication was filed by plaintiff and para 6, 7 and 8 of the above said replication read as under:-

“6. However, since the Defendant has raised the issue of a certain payable by M/s Sarala Projects Private Limited, it becomes imperative upon the Plaintiff to apprise this Hon'ble Court of the correct facts of the matter.

*7. The Plaintiff submits that the Plaintiff had carried out the dewatering services at the project at Adit-2, Pkg 9, Kaleshwaram Project, Sircilla, Telangana for the Defendant under Work Order dated 11.09.2021 for the period from 15.09.2021 upto 05.02.2022 for which the principal amount of Rs. 23,50,874/- is presently outstanding. Further, the Plaintiff also separately carried out the dewatering services at the project for M/s Sarala Project Works Private Limited for the subsequent period from 13.02.2022 to 07.04.2022 accepting separate offer of the Plaintiff dated 24.01.2022 vide their email dated 08.02.2022. Copy of the offer dated 24.01.2022 alongwith the acceptance email dated 08.02.2022 are annexed herewith as **Annexure 1 (Colly)**.*

8. Therefore, the two parties i.e. the Defendant and M/s Sarala Project Works Private Limited are separate and distinct insofar as the services carried out by the Plaintiff for them are concerned



and separate outstanding were there against both the parties. The Defendant has itself attached with the Written Statement an email written by the Plaintiff to Executive Engineer, Irrigation Department (attaching the account statement of both the parties separately) to seek help for getting the outstanding payments released from the Defendant as well as M/s Sarala Project Works Private Limited. Even in the said email, the Plaintiff has distinctly referred to the outstanding against both the parties wherein it was specified that an amount of Rs. 23,50,874/- was outstanding against the Defendant while an amount of Rs. 11,14,179/- was outstanding against M/s Sarala Project Works Private Limited. Subsequent to the said email, the outstanding against M/s Sarala Project Works Private Limited was received by the Plaintiff while the outstanding against the Defendant remained pending. The Defendant is trying to wrongly claim benefit of existence of another Company upon the project to evade its contractual liability and that is the reason why the Defendant has with mala fide avoided to attach in its Written Statement the account statements supplied by the Plaintiff along with the very same email which has been annexed by the Defendant and referred hereinabove. The account statements make the outstandings against both the parties crystal clear and the same are being attached by the Plaintiff herein for full disclosure and convenience of this Hon'ble Court. Copy of the email dated 11.03.2023 along with the Account Statements of both the parties are annexed herewith as Annexure 2 (Colly)."

8. The controversy in hand relates to dismissal of application moved by defendant under Order XI read with Section 151 CPC whereby the defendant is seeking recovery and production of certain log-books in possession of plaintiff which pertains to the record of diesel used during the period in question at the project site of the defendant. Para 4 of said application reads as under:-

"4. It is submitted that the Plaintiff has suppressed the said relevant records and has approached the Hon'ble Court with unclean hands. It is submitted that these records, which are essentially Log Books, are extremely crucial for the fair and



just adjudication of the claim of the Plaintiff to show that the other Company, i.e. M/s Sarala Projects was liable to pay the remaining amount since the said Sarala Projects Ltd. was working on the same project and using the equipment of the Plaintiff during the same time period. That, the Plaintiff has by way of clever drafting sought to implicate the Defendant for dues which were not even liable to be paid by the Defendant, but rather by another entity which was using the same at the same project site.”

9. Learned District Commercial Court *vide* order dated 30.01.2025 has disallowed the abovesaid request and such order is under challenge.

10. As is obvious, the petitioner is seeking recovery of its dues and the recovery is based on a specific work-contract and, therefore, it is, in first place, imperative for any such plaintiff to prove its case. Moreover, the log-books which the defendant wants to be placed on record does not, strictly speaking, relate to the controversy in question and, even if, such equipments were used by some other entity i.e. M/s Sarala Projects Pvt. Ltd. which, too, was, allegedly, working on a common project, it would not, *ipso facto*, mean that the plaintiff should be directed to place on record such log-books.

11. Though, according to defendant, these log books are very essential to resolve the controversy and to reach a fair and just adjudication of the claim of the plaintiff, quite clearly, the endeavour of the defendant is to somehow deviate from the actual controversy and it wants to drag in the work which had been assigned by the plaintiff to the other entity i.e. M/s Sarala Projects. By asking the plaintiff to produce these log-books, the controversy, instead of getting resolved, is rather going to become unnecessary complex. As noticed, according to stand taken in written statement, the defendant has done its job and the payment is now due from M/s Sarala Projects, not from him. The onus



to substantiate the same is on defendant which cannot be shifted directly or indirectly.

12. Moreover, the interference of a supervisory Court in such type of petition filed under Article 227 of Constitution of India is very limited, particularly, when it comes to a suit, which is commercial in nature.

13. Since case in hand is commercial in nature it would be useful to refer to *Black Diamond Trackparts Pvt. Ltd. v. Black Diamond Motors Pvt. Ltd.*, 2021 SCC OnLine Del 3946 which delineates the scope of appreciation of such matters in a petition under Article 227 of Constitution of India by observing that *such jurisdiction has to be exercised very sparingly and that such exercise of jurisdiction must not negate the legislative intent and purpose behind the Commercial Courts Act and thus does not come in the way of expeditious disposal of commercial suits.*

14. This Court is also conscious of the limited scope of appreciation while considering any petition filed under Article 227 of the Constitution of India. As per *Puri Investments Versus Young Friends and Co. and Others*: 2022 SCC OnLine SC 283, the duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Nothing of such kind is found to be here.

15. This Court, thus, does not find any merit in the present petition and the same is dismissed.

16. However, the observation made hereinabove are limited with respect to the sole aspect of said application moved under Order XI by the defendant and same shall not be construed as expression on the merits of the main case.



2025:DHC:2443



17. The present petition, along with pending applications, stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

APRIL 7, 2025/sw/SS