(2013) 04 DEL CK 0383

In the Delhi High Court

Case No : CS (OS) 2260 of 2010

Amit Kumar Tanwar APPELLANT

Vs

MCD and Another RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:
Delhi Municipal Corporation Act, 1957 — Section 447, 478

Citation : (2013) 04 DEL CK 0383

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajesh Kumar Chaurasia, proxy, for the Appellant; Sanjeev Sabharwal for MCD with Mr. S.K. Sinha, UDC in EEM II, Karol Bagh Zone, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff instituted this suit for recovery of Rs. 24,37,349/- together with pendente lite and future interest @ 12% per annum from the MCD pleading -

a. that the plaintiff is the sole proprietor of M/s. Amit Construction duly registered/enrolled as a Municipal Contractor;

b. that the defendant MCD awarded five different work orders to the plaintiff for execution from time to time;

c. that the position with respect to the said five work orders is as under:

SL

Date of the work order

Status

1.

16.06.2005

The plaintiff completed the entire works within stipulated period and the defendants also inspected the work from time to time and entered the progress in the measurement book on 19th April, 2007 and 13th August, 2007 but deducted Rs. 17,958/- from the final bill towards security charges, income tax, surcharge on income tax and vat charges etc.

2.

07.06.2005

The plaintiff completed the entire works within stipulated period and the defendants inspected the work from time to time and entered the progress in the measurement book on 13th August, 2007 but deducted Rs. 43,065 towards security charges, income tax, surcharge on income tax and vat charges.

3.

22.03.2006

The plaintiff completed the entire works within stipulated period and the defendants inspected the work from time to time and entered the progress in the measurement book on 11th June, 2007 and 13th August, 2007 but deducted Rs. 50889/- from the final bill towards security charges, income tax, surcharge on income tax and vat charges etc.

4.

22.03.2006 (Work Order No.: EEXXIX/TC/KBZ/499

The plaintiff completed the entire works within stipulated period and the defendants also inspected the work from time to time and entered the progress in the measurement book on 30th May, 2007 and 13th August, 2007 but deducted Rs. 28099/- from the final bill towards security charges, income tax surcharge on income tax and vat charges etc.

5.

22.03.2006 (Work Order No: EEXXIX/TC/KBZ/500

The plaintiff completed the entire works within stipulated period and the defendants also inspected the work from time to time and entered the progress in the measurement book on 22nd January, 2008 and 13th August, 2007 but deducted Rs. 58206/- from the final bill towards security charges, income tax, surcharge on income tax and vat charges etc.

d. that the defendant was to pay Rs. 16,21,970/- to the plaintiff as per passed bills and Rs. 1,57,117/- towards security amount deposited by the plaintiff but though the bills for all the five contracts were passed on 18th September, 2007 but payment was not made; hence the suit.

The defendant MCD contested the suit pleading that the suit was not maintainable for want of statutory notice u/s 447/478 of the DMC Act, 1957; that a single suit for recovery of amounts claimed under different contracts cannot be filed; that the suit claim is barred by time; that the plaintiff did not complete the works under any of the five orders within the prescribed time and there were delays of six months and six days, one year eight months and 15 days, approximately three years, 11 months and of 18 months and 11 days respectively in completion of the works; that the works awarded to the plaintiff under each of the contracts were under non-plan head of accounts and thus payment thereof was to be released depending upon availability of the funds as per the general terms and conditions of the contract; that the defendant MCD is liable only to pay the amount of the passed bill and is not liable for any interest.

2. No replication was filed by the plaintiff.

3. On the pleadings of the parties, the following issues were framed on 6th September, 2011

1. Whether the works awarded to the plaintiff were completed by him within the time stipulated in the contract? OPP.

2. Whether the suit is barred by limitation, as alleged in the written statement? OPD.

3. To what amount, if any, the plaintiff is entitled as principal sum?

4. Whether the plaintiff is entitled to interest and if so, at what rate and for what amount?

5. Relief.

4. The plaintiff examined himself and closed his evidence.

5. The defendant MCD examined its concerned Executive Engineer but the plaintiff did not cross examine him stating that since the institution of the suit, the defendant MCD has cleared the amount of the passed bill as well as the security deposit, and the dispute remained only qua the interest for the delay in payment.

6. Mr. Rajesh Kumar Chaurasia, Advocate appearing on behalf of Mr. Ranjeet Kumar, Advocate has today also stated that the claim in the suit survives only qua interest as the principal amount has already been paid. He however informs that he has stated so on the instructions of the plaintiff who is present in person and is otherwise unable to argue being unaware of the facts.

7. Per contra, the counsel for the MCD states that there was no clause in the agreement providing for payment of interest for delay in payment and has reiterated that the works awarded being under the non-plan head, the release of funds whereof is dependent upon availability, the plaintiff is not entitled to any interest.

8. It is not deemed appropriate to await Mr. Ranjeet Kumar, Advocate for the

plaintiff who has chosen not to appear and who has chosen not to hand over the file to Mr. Chaurasia who is appearing.

9. The record has been examined qua the aspect of interest.

10. The plaintiff in his affidavit by way of examination in chief has reiterated the contents of the plaint. Nothing qua interest is elicited in his cross examination.

11. The sole witness of the defendant in his examination in chief qua interest has reiterated the same stand as in the written statement, of there being no agreement for payment of interest and of the payment being dependent upon availability of funds, the works being under a non plan head of accounts.

12. The work orders proved by the plaintiff are not found to contain any clause, of the payment for the works thereunder being dependent upon availability of funds or no interest being payable for the delay in payment.

13. Though the defendants have taken various defences and on which issues have been framed but the defendants having otherwise admitted liability and having in fact paid the principal amount claimed in the suit during the pendency of the suit, the said issues framed fade into oblivion and need not be gone into.

14. The defendant/MCD in its evidence also has not shown any agreement or a general condition of the contract whereunder the contractor may have disclaimed interest for delayed payment.

15. Without any bar to the claim for interest being shown, it is the settled principle in law that delay in payment has to be compensated by interest. The pleas of the defendant, of the delay by the plaintiff in execution of the work, also pale into insignificance once the defendants have not claimed any damages from the plaintiff on this account and have in fact admitted liability to the plaintiff and discharged the said liability during the pendency of the suit. This Court in judgment dated 31st January, 2013 in CS(OS) No. 1309/2009 titled Varinder Jeet Singh Vs. MCD, also held MCD liable for interest, in that case @ 10% p.a.

16. Considering the facts and circumstances, it is felt that interest at the rate of 10% per annum from 60 days after the expiry of the date on which the bills were passed and till the date of payment would sub-serve justice. Accordingly, recovery of the principal amount is decreed as satisfied and interest for delay in payment is decreed in favour of the plaintiff and against the defendant for interest at the rate of 10% per annum for the period from 60 days after the date when the bills were passed and till the date when the amount under the bills/ security deposit was paid/refunded.

17. The plaintiff shall also be entitled to costs of the suit as per schedule. Decree sheet be drawn up.

