

(2021) 05 DEL CK 0156

In the Delhi High Court

Case No : Civil Writ Petition No. 7611 Of 2020, Civil Miscellaneous Application
No. 25237 Of 2020, 13915 Of 2021

M/S Jai Durga Enterprises

APPELLANT

Vs

UOI & Ors

RESPONDENT

Date of Decision : 24-05-2021

Acts Referred:

General Clauses Act, 1897 — Section 9
Representation Of The People Act, 1951 — Section 81(1)
Negotiable Instruments Act, 1881 — Section 138, 142(b)
Arbitration And Conciliation Act, 1996 — Section 34(3)
Limitation Act, 1963 — Section 12(1)

Citation : (2021) 05 DEL CK 0156

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Saurabh Bajaj, Rashmi Malhotra

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J

1. The hearing was conducted through video conferencing.
2. Learned counsel for respondent submits that reply to CM Application No.13915/2021 has been filed vide diary No. E-380690/2021 on 22.05.2021.
However, the same is not on record, but a copy has been furnished on the e-mail of the Court Master. The same is taken on record. The Registry is also directed to place the reply on record.
3. Learned counsel submits that the reply along with its documents be read in addition to the short reply to the writ petition filed by the respondents.
4. Petitioner impugns termination letter dated 18.08.2020, whereby the contract awarded to the petitioner has been rescinded on the ground that he has

failed to submit the requisite performance guarantee even after 60 days from the issue of Letter of Award (LOA) i.e. 03.01.2020 and further, every

member/partner as an individual or as a partnership firm/joint venture has been debarred from participating in the re-tendering process and the earnest money deposit forfeited.

5. Learned counsel for the petitioner submits that the termination is bad in law inasmuch as the performance guarantee was submitted on the 60th day

and not on the 61st day as alleged by the respondents. He submits that since the performance guarantee was submitted within time, the termination on

the ground that it was not submitted even after 60 days is bad in law and the consequential debarment of the petitioner and the proprietor as well as

the forfeiture of the earnest money deposit is liable to be set aside.

6. Learned counsel appearing for the respondent submits that the performance guarantee was submitted on the 61st day from the date of issuance of

the Letter of Award (LOA) and not on the 60th day as alleged by the counsel for the petitioner. She submits that in terms of the Letter of

Acceptance, the performance guarantee was to be submitted within 21 days, which was extendable to 60 days by the competent authority and since

the petitioner had failed to submit the performance guarantee within 60 days, respondents had rightly terminated the contracted, debarred the petitioner

and forfeited the bank guarantee.

7. The facts leading to the present petition are that on 26.07.2019, a notice inviting bids was issued by the respondent for indoor and outdoor RRI

Signalling work at B-Panel and addition and alternation at Anand Vihar station in connection with part commissioning of 3rd and the 4th line between

Sahibabad-Anand Vihar in Delhi Division of Northern Railway.

8. Petitioner submitted his bid and his bid was accepted and a Letter of Acceptance dated 03.01.2020 was sent by e-mail on 03.1.2020 at 15:16:31.

9. The admitted position is that as per the Letter of Acceptance, the performance guarantee was to be submitted as per the General Conditions of

Contract (GCC), tender document.

10. As per the General Conditions of Contract, the successful bidder had to submit a performance guarantee within 21 days from the date of issue of

Letter of Acceptance (LOA). Extension of time for submission of performance guarantee beyond 21 days and upto 60 days from the date of issue of

Letter of Acceptance can be given by the authority, who is competent to sign the contract again. However, a penal interest of 12% per annum is to be

charged for the delay beyond 21 days. It further provides that in case the contractor fails to furnish the requisite performance guarantee even after 60

days from date of issue of LOA, the contract is liable to be terminated and the earnest money deposit forfeited.

11. The admitted position is that the petitioner submitted the performance guarantee on 03.03.2020.

12. The Letter of Award was issued on 03.01.2020 at 3.16 P.M.. Though the contention of learned counsel for the petitioner is that the document was

first viewed only on 04.01.2020 at 10.56 P.M. It will not make a difference as to whether petitioner read the email on 03.01.2020 or 04.01.2020. The

crucial fact would be as to when the e-mail was sent by the Respondent and received by the petitioner. Admittedly, the e-mail was sent and received

on 03.01.2020 at 3.16 P.M. Thus, the date of issuance of Letter of Acceptance would have to be taken as 03.01.2020.

13. The issue that arises for consideration is as to whether the performance guarantee has been furnished on the 60th day or the 61st day. To

determine the said issue the question that falls for determinations is as to whether 03.01.2020 (date of issuance of Letter of Award) has to be

considered as day 'one' or day 'zero' for the purposes of calculating 60 days.

14. If the date of issuance of Letter of Award (i.e. 03.01.2020) is to be taken as day 'one', then the performance guarantee, which was

submitted on 03.03.2020, would have been submitted on 61st day i.e., beyond the stipulated period provided by the General Conditions of Contract

(GCC) of the contract. In case 03.01.2020 is to be taken as day 'zero', then the performance guarantee was submitted on the 60th day and

consequently, the termination would not be sustainable.

15. Section 9 of the General Clauses Act, 1897 reads as under:-

9. Commencement and termination of time.

(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first

in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or

any other period of time, to use the word "to".

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

16. In terms of Section 9 of the General Clauses Act, if the expression "from" has been used then for the purposes of computing time, the first in series of days has to be excluded.

17. The Supreme Court in Tarun Prasad Chatterjee Vs. Dinanath Sharma, (2000) 8 SCC 649 has held as under:-

10. Section 9 of the General Clauses Act, 1897 gives statutory recognition to the well-established principle applicable to the

construction of statutes that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day.

11. In Halsbury's Laws of England, 37th Edn., Vol. 3, p. 92, it is stated as follows:

"Days included or excluded" When a period of time running from a given day or even to another day or event is prescribed by law or

fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first -mentioned or of the

last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room

for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the

parties, as the case may be. Expressions such as "from such a day" or "until such a day" are equivocal, since they do not make

it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period

in such a manner is to exclude the first day and to include the last day.

12. Section 9 says that in any Central Act or regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient

for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of

including the last in a series of days or any period of time, to use the word "to". The principle is that when a period is delimited by

statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening day is to be

excluded and if the last day is to be included the word "to" is to be used. In order to exclude the first day of the period, the crucial

thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the

difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from 1st

January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get

reasonable time to lay claim, unless 1st January is excluded from the period of computation.

13. It was argued that the language used in Section 81(1) that "within forty-five days from, but not earlier than the date of election of the

returned candidate" expresses a different intention and Section 9 of the General Clauses Act has no application. We do not find any force

in this contention. In order to apply Section 9, the first condition to be fulfilled is whether a prescribed period is fixed "from" a

particular point. When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged in Section 9 of

the General Clauses Act, 1897 require to exclude the first day. The words "from" and "within" used in Section 81(1) of the RP Act,

1951 do not express any contrary intention."

(underlining supplied)

18. The judgment in Tarun Prasad Chatterjee (supra) was relied upon by the Supreme Court in M/s. Econ Antri Ltd. Vs. Rom Industries Ltd. & Anr.,

(2014) 11 SCC 769, wherein the Supreme Court held as under:-

"34. As the Limitation Act is held to be not applicable to the NI Act, drawing parallel from Tarun Prasad Chatterjee [Tarun Prasad

Chatterjee v. Dinanath Sharma, (2000) 8 SCC 649] where the Limitation Act was held not applicable, we are of the opinion that with the aid

of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month

which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action

arose. It is not possible to agree with the counsel for the respondents that the use of the two different words 'from' and 'of' in

Section 138 at different places indicates the intention of the legislature to convey different meanings by the said words.

41. We may, at this stage, note that the learned counsel for the appellant relied on State of H.P. [State of H.P. v. Himachal Techno

Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] where, while considering the question of computation of three months' limitation

period and further 30 days within which the challenge to the award is to be filed, as provided in Section 34(3) and proviso thereto of the

Arbitration Act, this Court held that having regard to Section 12(1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act,

1897, day from which such period is to be reckoned is to be excluded for calculating limitation. *****

***** However, since, in the instant case we have reached a conclusion on the basis of Section 9 of the General Clauses Act, 1897 and

on the basis of a long line of English decisions that where a particular time is given, from a certain date, within which an act is to be done,

the day of the date is to be excluded, it is not necessary to discuss whether State of H.P. [State of H.P. v. Himachal Techno Engineers,

(2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] is applicable to this case or not because Section 12(1) of the Limitation Act is relied upon

therein.

(underlining supplied)

19. A learned single judge of this court in Frank Anthony Public School Versus Amar Kaur (1984) 6 DRJ 47 while examining the question of filing of

leave to defend within 15 days from service of summons held as under:

26. The expression 'day' has been understood in different ways by different nations in different times. Lord Coke said:

'The Jewes, the Chaldeans, and Babylonians, begin the day at the rising of the sun; the Athenians at the all; the Umbri in Italy beginne

at midday: the Egyptians and Romanes from midnight; and so doth the law of England in many cases'. The English day begins as soon as

the clock begins to strike twelve p.m. of the preceding day. Williams v. Nash, 28

L J. Ch. 886â??.

In Halsbury's Laws of England, third edition, Vol. 37, P 84 it is said:

â??The term â??dayâ? is, like the terms â??yearâ? and â??monthâ?, used in more senses than one. A day is strictly the period of time

which begins with one midnight and ends with the next. It may also denote any period of twenty-four hours, and again it may denote the

period of time between sunrise and sunset.â??

27. Counsel for the landlady argues that time ought to be counted from 12-5-1982 and the period of fifteen days expired on 26-5-1982. In

any event he says the leave application made on 27-5-1982 was barred by time. I have no hesitation in rejecting this argument. The question

is what is meant by the phrase â??within fifteen days from the service hereofâ?. In my opinion, on a proper reading of the third schedule,

the word â??dayâ? should be read as meaning a â??calendar dayâ?. I propose to found my decision *R. v. Turner*, (1910) 1 K.B. 346

(CCA) and *Chambers v. Smith*, (1843) 152 E.R. 1085 and to decide that the phrase means fifteen clear days exclusive of the day of service.

The words â??within fifteen days of the service hereofâ?? in the form of summons prescribed in third schedule must be construed as meaning

fifteen consecutive periods of twenty-four hours after the service of the summons.

28. It is well known maxim that the law disregards fractions. By the Calendar the day commenced at midnight, and most nations reckon in

the same manner. The English do it in this manner. We too have adopted the same. In the space of a day all the twenty-four hours are

usually reckoned, the law generally rejecting all fractions of a day, in order to avoid disputes. If anything is to be done within a certain

time of, from, or after the doing or occurrence of something else, the day on which the first act or occurrence takes place is to be excluded

from the computation. *Williams v. Burgess*, (1840) 113 E.R. 955) unless the contrary appears from the context. (*Hare v. Gocher*. (1962) 2

Q.B. 641). The ordinary rule is that where a certain number of days are specified they are to be reckoned exclusive of one of the days and

inclusive of the other. (*R. v. Turner*, supra p. 359).

29. Fraction of a day has not to be counted. So I would disregard 12-5-1982, the

day on which the ordinary summons were delivered to the Principal. Fifteen days will commence from 13-5-1982. Counting in this way the application was made on the last day, i.e. 27-5-1982. The application for leave to appear and contest is within time. I therefore hold that the tenant was entitled to count fifteen days from the receipt of the second summons on 12-5-1982.â??

(underlining supplied)

20. The legal position that emerges is that law disregards fractions. While calculating number of days, fraction of a day has not to be counted. If

anything is to be done within a certain time of, from, or after the doing or occurrence of something else, the day on which the first act or occurrence takes place is to be excluded from the computation.

21. As per Section 9 of the General Clauses Act, day from which such period is to be reckoned is to be excluded for calculating limitation. Where a

particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded,

22. When a period is delimited by statute or rule, which has both a beginning and an end and the word â??fromâ? is used indicating the beginning, the

opening day is to be excluded and if the last day is to be included the word â??toâ? is to be used. Therefore when the period is marked by terminus a

quo and terminus ad quem, the canon of interpretation, envisaged in Section 9 of the General Clauses Act, 1897, require exclusion of the first day.

23. Applying the above legal position, it is clear that the date on which the Letter of Acceptance has been issued has to be excluded while calculating

60 days. Accordingly, the date of issuance of Letter of Acceptance has to be taken as day â??zeroâ? and not day â??oneâ?. The starting point of

limitation for furnishing performance guarantee would thus be 04.01.2020. Calculated from 04.01.2020, the performance guarantee furnished on

03.03.2020, has to be taken as having been furnished on the 60th day and not the 61st day.

24. In view of the above legal position, the impugned letter dated 18.08.2020, terminating the contract on the ground that the performance guarantee

was not furnished even after 60 days from the issue of Letter of Award is erroneous and not sustainable.

25. Thus, the Termination letter dated 18.08.2020 is set aside. Consequently,

further directions issued in the said letter debarring the petitioner as well as its members/partners from participating in re-tendering process and forfeiting the earnest money deposit is not sustainable and is also set aside.

26. The Writ Petition is allowed in the above terms.

27. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.