(2014) 01 DEL CK 0105

In the Delhi High Court

Case No : CS (OS) No. 1368 of 2012

R.K. Pabbi APPELLANT

Vs

DDA and Another RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 37 Rule 3, Order 37 Rule 3(4), Order 37 Rule 3(5) 151

Citation : (2014) 01 DEL CK 0105

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Vivekanand, for the Appellant; Pawan Mathur, Along and Mr. Gupta, Ex. Engineer, DDA in Person, for the Respondent

Judgement

Manmohan Singh, J.—The plaintiff filed the present suit for recovery of Rs. 75,06,899/- u/s XXXVII CPC against the defendants. Upon service, certain applications have been filed by the parties, the details of which are given as under:-

(i) I.A. No. 14223/2012 (under Order XXXVII Rule 3 read with Section 151 CPC) filed by defendant No. 1/DDA for its appearance.

(ii) I.A. No. 14224/2012 (under Order XXXVII Rule 3 read with Section 151 CPC) filed by defendant No. 2/Executive Engineer (Electrical), DDA for his appearance.

(iii) I.A. No. 15182/2012 (under Order XXXVII Rule 3(4) CPC) filed by the plaintiff for issuance of summons for judgment.

(iv) I.A. No. 19668/2012 (under Order XXXVII Rule 3(5) CPC) filed by defendant No. 2 for leave to defend. Reply to this application was filed by the plaintiff on 28th January, 2013.

(v) I.A. No. 20884/2012 (under Order XXXVII Rule 3(5) CPC) filed by defendant No. 1 for leave to defend.

2. The case of the plaintiff is that the plaintiff is entitled to the following payment as admitted by the defendants in the final reply dated 19th March, 2012:-

(a) Final bill payment Rs. 33,72,892/-. The defendants/DDA have admitted payment of Rs. 33,72,892/- as passed for net payment before expiry of defect liability period, out of passed final bill of Rs. 37,71,499/-, after withholding payments of TDS etc. and also for the maintenance period liability of one year. Since defect liability period had also expired satisfactorily on 25th June, 2011 without any complaint of any nature. The TDS is to be deducted at the time of payment of the amount and otherwise also no TDS for the amounts proposed to be deducted in final bill has been issued by the defendants on final bill amount. Thus, as on the date of filing of the suit, the plaintiff is entitled to Rs. 37,71,499/-, the gross amount of final bill as prepared by the defendants/DDA.

(b) Release of security deposit amounting to Rs. 17,07,477/-.

(c) (i) Payment for operation and maintenance work w.e.f. 25th June, 2010 to 24th June, 2011 @ Rs. 40,000/- per month for first one year, total Rs. 4,80,000/- under supplementary agreement of the work in question;

(ii) Payment for operation and maintenance work w.e.f. 25th June, 2011 till 25th June, 2012 @ Rs. 1,00,000/- per month, i.e. for the second year, Rs. 12,00,000/-, total (c) (i) & (ii) Rs. 14,80,000/-.

It is relevant to submit that in its reply letter dated 19th March, 2012, the DDA/ defendants have admitted only Rs. 2,40,000/- + Rs. 10,40,000/-, total Rs. 12,80,000/- for the bills passed by them only up to February, 2012, the month prior to the reply letter dated 19th March, 2012. Further amount as claimed has become and is due to the plaintiff beyond February, 2012 to 24th June, 2012 and as such is being claimed herein.

(d) Interest on the amount of (final bill Rs. 37,71,499/- + security deposit Rs. 17,07,500/-) Rs. 58,78,999/- @ 12% p.a. from expiry of defect liability period i.e. 25th June, 2011 till the date of payment, which till the date of filing of the suit calculated till 24th April, 2012 comes to Rs. 5,47,900/-.

Total Rs. 75,06,899/-.

3. It is recorded in the order dated 4th July, 2013 that the principal amount already stood paid by the defendants to the plaintiff. Consequently, there is an admission of its liability by the defendants in respect of the principal amount. Apparently, the admitted amount with regard to the payment mentioned in sub-paras (a), (b) & (c) has been paid by the defendants.

4. Learned counsel for the plaintiff states that in view of the admitted position in the matter, there is no force in the submission of the learned counsel for the defendants to hear the applications for leave to defend. He submits that even if the leave is granted, still the Court can exercise its discretion to pass the decree under the provisions of Order XII Rule 6 CPC on the basis of admissions made by

the defendants without any application.

5. I have heard the learned counsel for the parties. The only dispute remains in the matter is that the plaintiff has claimed the interest on the amount of final bill Rs. 37,71,499/- plus security amount of Rs. 17,07,477/-@ 12% p.a. from the date of expiry of defect liability period, i.e. 25th June, 2011 till the date of payment. The plaintiff has calculated the said amount from 25th June, 2011 till 24th April, 2012, i.e. till the date of filing of the suit, which comes to Rs. 5,47,900/-.

6. The main contention of the learned counsel for the defendants is that since the plaintiff has also claimed the interest along with the principal amount on filing of the suit, thus, the suit under Order XXXVII CPC is not maintainable, because the said amount of Rs. 75,06,899/- includes the interest claimed by the plaintiff. However, at the same time, the learned counsel for the defendants has not denied the fact that the Court can always award the interest after filing of the suit till the date of payment if the suit is filed under Order XXXVII CPC.

7. Mr. Vivekanand, learned counsel for the plaintiff, on the other hand, states that the submissions of the learned counsel for the defendants have no force, as the interest can be claimed from the date of sending the final bill, in a suit under Order XXXVII CPC against the admitted liability by the defendants. He further states that although the plaintiff has claimed the interest @ 12% per annum from 25th June, 2011 till the date of payment, yet his client is agreeable if the interest @ 8% per annum be awarded along with cost of the suit. In support of his submissions, learned counsel for the plaintiff has referred the decision of this Court in the case of Varinder Jeet Singh Vs. Municipal Corporation of Delhi and Another, . The relevant paras of the said judgment read as under:-

3. It is the case of the plaintiff that after completion of the work, the defendants/ MCD measured the same and it prepared the first running bill for a gross amount of Rs. 14,69,937/-. Out of the aforesaid amount, the balance security amount of Rs. 75,017/- was deducted and upon making other statutory deductions, the defendants/MCD had passed the said bill on 18.10.2006 for an amount of Rs. 13,35,534/-. The plaintiff claims that after completing further work, measurements were recorded by the defendants/MCD and he had raised the second running bill for a gross amount of Rs. 7,04,442/-. After deducting the gross value of the work executed and the balance security amount of Rs. 57,276/- and upon making other statutory deductions, the defendants/MCD passed the aforesaid bill on 26.09.2007 for a sum of Rs. 6,18,271/-.

4. The plaintiff claims that the work was completed by him to the satisfaction of the Engineers of the defendants/MCD and that the defect liability period of six months, as provided for in the Agreement, expired on 26.04.2008 and thereafter, the security amount of Rs. 1,76,793/-, inclusive of the amount of the earnest money was also refundable to him. It is averred in the plaint that despite repeated requests, the defendants/MCD failed to make the aforesaid payments.

The plaintiff then issued a legal notice dated 09.04.2009 dispatched by registered post, addressed to the defendants/MCD, calling upon it to pay the aforesaid amount alongwith interest, which was calculated @ 24% per annum on the aforesaid amount, within a period of two months from the date of receipt of the said notice. It is stated by learned counsel for the plaintiff that despite the fact that the aforesaid legal notice was duly received by the defendants/MCD, it failed to make any payment, thus compelling the plaintiff to institute the present suit against the defendants/MCD for recovery of a sum of Rs. 28,34,441/-, alongwith future and pendente lite interest calculated @ 18% per annum.

5. Summons in the present summary suit were issued to the defendants/MCD in the prescribed format on 22.07.2009. Memo of appearance was entered on behalf of the defendants on 07.08.2009. Thereafter, the plaintiff issued summons of judgment to the defendants/MCD which was served upon them on 22.11.2010 whereafter they filed a leave to defend application under Order XXXVII Rule 3(5) CPC, registered as I.A. No. 16391/2010. In the said application, the defendants/ MCD had admitted having awarded the work order to the plaintiff and further stated that against the first running bill raised by the plaintiff, an amount of Rs. 13,35,534/- was passed and released and against the second running bill, an amount of Rs. 6,18,271/- was passed and released. It was thus averred that having received the payments under the two bills, the plaintiff is not left with any cause of action to pursue the present proceedings.

6. A reply to the aforesaid leave to defend application was filed by the plaintiff on 08.07.2011, wherein it was admitted that payment of a sum of Rs. 12,24,982/- was released by the defendants/MCD on 12.10.2009 and further, a sum of Rs. 7,88,208/- was released on 26.10.2009. As per the plaintiff, after adjustment of the aforesaid amount received from the defendants/MCD, a sum of Rs. 9,06,952/- is due and payable by the defendants/MCD on account of the component of interest, calculated @ 15% per annum on the aforesaid amounts due to late payment and upon the security amount deposited, which was inclusive of the earnest money that had been paid by the plaintiff.

7. On 16.07.2012, as counsel for the defendants/MCD had stated that the principal amount had already been paid to the plaintiff, thus leaving only the security amount of Rs. 1,76,793/-, which was to be paid to the plaintiff, learned counsel was directed to obtain instructions from the Department as to the status of the release of the security amount to the plaintiff and the suit was adjourned to 20.09.2012. On 20.09.2012, counsel for the defendants/MCD had stated on instructions from the Department that the aforesaid security amount would be released to the plaintiff within two weeks. As counsel for the plaintiff had requested on the aforesaid date that a hearing in the case may be deferred till the security amount was actually released in favour of the plaintiff and as he had further stated that the plaintiff was willing to accept a reasonable sum on account of interest payable on the delayed payment as may be fixed by the Court, the matter was adjourned to 22.11.2012.

8. x x x

9. The said affidavit has not been filed by the plaintiff till date. However, counsels for the parties do not dispute the fact that though the first bill of Rs. 13,35,534/- was passed by the defendants/MCD on 18.10.2006, but a sum of Rs. 12,24,982/- payable to the plaintiffs, under the aforesaid bill, was released by the defendants/MCD only on 12.10.2009, i.e., after a period of 3 years. Similarly, the second bill of Rs. 6,18,271/- was passed by the defendants/MCD on 26.09.2007 but payment for a sum of Rs. 7,88,484/- was released by the defendants two years later, on 26.10.2009. As regards the security deposit amount, counsel for the defendants/MCD states that a sum of Rs. 1,23,473/- has been remitted into the account of the plaintiff through electronic transfer only yesterday, i.e., on 30.01.2013.

10. x x x

11. x x x

12. The arguments advanced by the other side is refuted by the counsel for the plaintiff, who submits that the interest that the plaintiff claims from the defendants/MCD is not for the period prior to passing of the bills, but is for the period thereafter till the dates when the payments were actually released. He further states that Clause 9 of the General Rules and Directions stipulates that if the tendered value of the work is upto Rs. 5 lacs, then as far as possible, payment in respect of such work would be cleared within a period of three months and if the tendered value of the work exceeds Rs. 5 lacs, then payment would be made within a period of six months and the present case falls in the latter category. He points out that the first bill was passed by the defendants/ MCD on 18.10.2006 and the second bill was passed on 26.09.2007, but the payments were released as late as in October, 2009, thus entitling the plaintiff to receive interest on the amount paid so belatedly. In support of the aforesaid submission, learned counsel seeks to rely upon the following decisions:-

(i) CS(OS) 1797/2007 entitled Jagbir Singh Sharma vs. MCD and Ors., decided on 15.07.2008.

(ii) CS(OS) 2218/2007 entitled M/s. Roshan Lal Vohra & Sons vs. MCD & Ors., decided on 26.08.2008.

(iii) CS(OS) 943/2008 entitled M/s. Jagbir Singh Sharma vs. MCD & Ors., decided on 20.11.2008.

(iv) CS(OS) 1503/2008 entitled Dev Dutt Sharma vs. MCD & Ors., decided on 25.01.2011.

13. x x x

14. As noted above, the only dispute pending in the present case relates to the interest, if any, payable to the plaintiff for the duration of the delay in the release of the amounts payable by the defendants/MCD and also on the security deposit

amount, which has been released after a substantial delay upon deducting a penalty of 3% on account of extension of time in execution of the contract.

8. Having considered the submissions of the learned counsel for the parties as well as the decision passed by this Court, I am of the considered view that the plaintiff is entitled to the interest @ 8% per annum from the date of expiry of the defect liability period, i.e. 25th June, 2011 till the date of actual payment. The suit of the plaintiff is accordingly decreed with cost. Since the principal amount has already been paid by the defendants, the interest component @ 8% per annum be paid by the defendants from the date of expiry of the defect liability period, i.e. 25th June, 2011 till the date of payment. Decree be drawn accordingly. However, it is clarified that the abovementioned order has been passed in view of the peculiar facts and circumstances of the present case and the same may not be treated as precedent in other matters.