
(2011) 05 DEL CK 0337
In the Delhi High Court
Case No : CS (OS) No. 396 of 2010

Roshan Lal Vohra and Sons	Vs	APPELLANT
M.C.D. and Another		RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Interest Act, 1978 — Section 3

Citation : (2011) 05 DEL CK 0337

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : J.P. Gupta, for the Appellant; Suparna Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 20,22,600/-. The Plaintiff was awarded work by the Defendants vide letter dated 22.6.2005. The work was completed within the period stipulated in the agreement in this regard. Under the agreement, the Plaintiff was entitled for payment of Running Bill in every month and Final Bill within six months from the date of completion. The eighth Running Bill passed by Defendant No. 2 who is the Executive Engineer of MCD was of Rs. 15,07,607/- and the cheque amount of the aforesaid bill was Rs. 14,29,299/-. However, against the said payment, the Defendants paid only amount of Rs. 1,85,020/- to the Plaintiff. The balance of the Eighth Running Bill was not paid by the Defendant on the ground that the funds were not available under the relevant head. The balance amount of the Running Bill was Rs. 12,44,279/- The final bill, i.e., ninth bill was for Rs. 1,71,773/- and was passed for payment of Rs. 1,64,731/-. The Defendants, however, failed to make payment of the aforesaid amount. Thus, the principal sum payable to the Plaintiff came to Rs. 14,09,010/-. The Plaintiff has claimed the aforesaid amount from the Defendants along with interest at the rate of 18% per annum, amounting to Rs. 6,13,618/-.

2. The principal amount has been paid to the Plaintiff on 18.06.2011, during pendency of the suit and the claim of the Plaintiff survives only with respect to

payment of interest and cost of the suit.

3. A legal notice was sent by the Plaintiff to the Defendants on 14.07.2009. The notice is an admitted document and has been exhibited as Ex.P-5. It was sent vide A.D. cards Ex.P-1 to P-4. Vide this notice, the Plaintiff required the Defendant to release the payment of Rs. 14,09,010/- along with interest thereon at the rate of 18% per annum from due date of payment till the date of actual payment.

Section 3 of The Interest Act, 1978 to the extent it is relevant provides that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, if the proceedings do not relate to a debt payable by virtue of a written instrument at a certain time, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

Since the Plaintiff had served requisite notice, they are entitled to interest u/s 3 of Interest Act, 1978 from the date on which the amount of the Bill ought to have been paid by Defendant - MCD.

The Plaintiffs have claimed interest only at the rate of 18%. Considering the nature of transaction between the parties, I deem it appropriate that the Plaintiff is awarded interest at the rate of 9% per annum which comes to Rs. 3,06,809/-.

4. As regards the cost of the suit, I see no justification why the Plaintiff should not get the amount of Court fee from the Defendant. It is the Defendant who drove the Plaintiff to the Court by not making payment in time. It would be unjust to the Plaintiff to deprive it of the amount of Court fee which it had to pay only on account of failure of the Defendants to make payment within the time stipulated in this regard. As regards counsel's fee, in the facts and circumstances of the case, I deem it appropriate to direct payment of half of the counsel's fee to the Plaintiff.

5. For the reasons given in the preceding paragraphs, a decree for recovery of Rs. 3,06,809/- along with entire Court fee and half of the counsel's fee is passed in favour of the Plaintiff and only against Defendant No. 1. Since Defendant No. 2 is only an employee of Defendant No. 1, the Plaintiff is not entitled to recover any amount from him. The suit against Defendant No. 2 is dismissed without any order as to costs. The Plaintiff shall also get interest at the rate of 9% per annum if the amount due under this decree is not paid within eight weeks.