
(2009) 08 DEL CK 0383

In the Delhi High Court

Case No : IA No"s. 6254 and 6255 of 2007 in CS (OS) No. 2537 of 2000

Vijay Kumar Goel

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8, Order 7 Rule 14, 151

Citation : (2009) 173 DLT 372 : (2010) 7 RCR(Civil) 2121

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

Advocate : Rajinder Aggarwal, for the Appellant; Gaurav Sarin, for the Respondent

Final Decision : Allowed

Judgement

Aruna Suresh, J.

IA No. 6254/2007 (Order 7 Rule 14 CPC) in CS (OS) No. 2537/2000

1. plaintiff has filed this application under Order 7 Rule 14 CPC seeking permission to file additional documents as detailed in para 4 of the application. plaintiff has filed the present suit for recovery of Rs. 98,65,000/- against the defendants which is pending adjudication and is at the stage of recording of plaintiffs evidence.

2. It is contended by the plaintiff that he filed the documents which were in his power and possession and relevant for deciding the matter in issue. However, some of the documents which were in power and possession of the defendants were not filed by the defendants despite receipt of notice under Order 12 Rule 8 CPC dated 6.5.2006 served upon the defendants. plaintiff filed an application under the Right to Information Act and was successful in obtaining various documents and letters exchanged between the parties. According to the plaintiff these documents are relevant for the purpose of fair and just disposal of the suit and they could not be filed earlier because they were not in his power and

possession.

3. Defendants have opposed this application on the grounds that these documents are not relevant and they have been filed belatedly despite the fact that plaintiff was given sufficient opportunity to file his documents. Even cost was imposed upon the plaintiff when he failed to file the documents within the time frame fixed by the Court. According to the defendants, the application is without merits and should be dismissed.

4. plaintiff's claim is based on execution of work carried out by him for the development of land in Sector 23, 24 and 25 of Rohini, Phase-III, S.H.: construction of outfall drain from Sector 20 to 24 at Rohini Line No. E to 71 by the defendants vide agreement No. 5/RPD-11/96-97. plaintiff has sought permission to file the following documents on the record:

1. Attested copies of noting sheet of tender 1 to 5 in the Office of Executive Engineer (P) 1 SE (P) R DDA.

2. Attested copy of justification statement along with analysis sheets 6 to 25.

3. Original copy of letter No. 92/PIO/RZ/RTI Act-05/525 dated 01.03.2007 sent by DDA to plaintiff.

4. Attested copy of letter No. CE(R) 4(2)98/AE(QC)DDA/1823 dated 04.08.1997 sent to various officers of DDA.

5. Attested copy of A.E. III/RPD- 11 letter No. F6(22) 96-97/AE III/RPDXI/13 dated 01.05.1997 sent to Ex. Engineer RPD-11 along with annexure page No. 2 to 13.

6. Attested copy of A.E. III/RPD- 11 letter No. F6(22) 96-97/AE III/RPDXI/11 dated 27.03.1997 sent to the Ex. Engineer RPD-11 along with annexure Page No. 15 to 17.

7. Attested copy of completion certificate.

8. Attested copy of Ex. Engineer RPD-11 letter No. F50(439)A/RPD- 8/DDA/440 dated 30.04.1998 sent to Superintending Engineer, Civil Circle 14, DDA along with page Nos. 20 to 25.

5. Documents at serial No. 1 are not relevant as it is not disputed that plaintiff was awarded work and also that final payment was released to the plaintiff. These noting sheets relate to the period before the tender of the plaintiff was finalised and contract was executed between him and the defendants for development of land in Sector 23, 24 and 25 at Rohini, Phase-III. These noting sheets have no bearing on the claim of the plaintiff.

6. Document No. 2 is a justification statement which is relevant for adjudication of the claim of the plaintiff.

7. Document No. 3 is the reply of the DDA to the application of the plaintiff filed

under the Right to Information of Act, 2005. This document is formal in nature and enclosed with this are the other documents which the plaintiff has sought to be placed on record.

8. Document No. 4 is not relevant as it contains guidelines to be observed by various officers of the department for testing of the joint of RCC pipes. It has no bearing on the facts and circumstances of this case.

9. Document No. 5 is a letter in respect of revised estimate of the work entrusted to the plaintiff. The increase in amount is stated to be due to the increase in length of the reach and due to provisions of drawings of chamber and increase of water level. This is relevant in respect of claim No. 8 (claim for extra lift for filling excavated earth in trenches beyond initial lift of 1.5 m-item No. 2) claim No. 9 (claim for extra payment due to executing the work of certain items in or under water or liquid mud-item No. 30 and claim No. 10 (claim for providing centering and shuttering at height of more than 3.5m).

10. Document No. 6 is with reference to the extra item statements enclosed therewith. It is relevant in respect of claim No. 3 (claim for extra payment due to execution of the items of centering, shuttering) and claim No. 4 (claim for providing and laying cement concrete 1:2:4 for covering the joints of precast RCC pipes including centering and shuttering, in or under water or liquid mud) of the plaintiff.

11. Document No. 7 is the completion certificate. This document is relevant to know if the work has been completed to the satisfaction of the concerned authority on the stipulated date of completion and that no defects were apparent.

12. Document No. 8 is relevant for adjudication of the claims of the plaintiff as it has been written by defendant No. 2 wherein he has recommended payment for almost all the claims. It clearly reveals that both parties were ad idem on almost all the issues and hence, it would help in the early disposal of the suit.

13. Admittedly, the documents sought to be placed on record were not filed by the plaintiff or relied upon by him at the relevant stage. If the documents were not in his power and possession, he was required to file a list of reliance of documents, which he did not comply with. Issues in this case were framed on 6.10.2005. plaintiff had filed affidavit in evidence on 3.7.2006. plaintiff sought information under the RTI Act from defendants vide his letter dated 6.3.2007 when the case was at the stage of recording of plaintiffs evidence and his affidavit had already been filed. The plaintiff alleges that he had served a notice under Order 12 Rule 8 CPC on the defendants through their counsel calling upon them to file certain documents like original cement register, agreement dated 25.1.1997 and original of running accounts bill, production of all books, papers, letters, copies of letters and other documents which were in custody and possession of the defendants and contained any entry, or memorandum of minute relating to the matter in question in the suit.

14. According to the plaintiff, this notice was never replied nor were documents placed on record. This notice is purported to have been sent on 6.5.2006. Defendants deny having received any such notice. It is pertinent that plaintiff has not placed on record the copy of notice sent by him under Order 12 Rule 8 CPC calling upon the defendants to file the documents as described in the alleged notice. In the absence of copy of the notice, it cannot be accepted that plaintiff had taken steps under Order 12 Rule 8 CPC calling upon the defendants to file the documents detailed therein.

15. plaintiff could have applied for information under the RTI Act immediately thereafter instead of filing the application on 6.3.2007. plaintiff throughout has been represented by a counsel and therefore it cannot be believed that plaintiff came to know of his rights under the RTI Act much later on and immediately on coming to know of his rights he filed the application before the defendant department for getting the necessary information.

16. The plaintiff, therefore, has not been able to successfully explain as to why he did not take necessary steps at the earliest possible opportunity to collect the copies of the documents from the defendants which are the subject matter of this application. Be that as it may, since some of the documents sought to be placed on record are relevant for the proper and final adjudication of the case on merits, it is in the interest of justice that the application is allowed specially when plaintiff has not yet concluded his evidence and no prejudice is likely to be caused to the defendants. Harassment caused to the defendants by way of this application can be duly compensated in terms of cost.

17. Hence, application is partly allowed. plaintiff is permitted to place on record the documents except at serial No. 1 and 4, subject to cost of Rs. 10,000/- to be deposited with Delhi High Court Mediation and Conciliation Centre within one week.

IA No. 6255/2007 (Section 151 CPC) in CS (OS) No. 2537/2000

In view of my orders on application under Order 7 Rule 14 CPC, this application is allowed. plaintiff is permitted to file additional affidavit of the witness whose affidavit has already been placed on record as plaintiff himself has undertaken not to produce any other witness except the one whose affidavit has already been placed on record. plaintiff shall file the additional affidavit within four weeks with an advance copy to the counsel for the defendants.

Application stands disposed of.

CS (OS) No. 2537/2000

List before the regular Bench on 3rd September, 2009 for further directions.