

Witness again duly sworn on 02.12.2023.

Further cross-examination by: Sri TVP Advocate.

4. Q. When did the defendant refused to make payment in respect of the bills submitted by the plaintiff?

Ans: The defendant never refused to make payment of the bills but kept on saying that he is having fund scarcity.

Q. None of the bills submitted by the plaintiff were refused by the defendant, is it correct?

Ans: Yes.

Q. The details of amount received from defendant which is at Ex.P. 8 were made on day to day basis. Is it correct?

Ans: They were paid on different dates as mentioned in Ex.P. 8.

Q. The total amount as per Ex.P. 8 is Rs. 21,55,643/- as on 27.10.2016. Is it correct?

Ans: As per the statement it is correct.

Q. Is it correct that out of the payment made under Ex.P.8, part of the payment is made to the material suppliers, part of the payment is made to the labour contractors and the remaining amount to the plaintiff by the defendant?

Ans: Yes.

Q. In your legal notice marked at Ex.P. 9 you have claimed Rs. 39,97,716/- but in the suit you have claimed Rs. 37,33,676/-. Why there is discrepancy?

Ans: There may be calculation error in the legal notice.

Q. As per your claim you have constructed the entire factory building and claim that you have completed portion of go-down building. What is the portion of the go-down building constructed by the plaintiff?

Ans: That is to be worked out based on the agreement and actual work carried out.

Q. Till now you have not quantified the actual portion of work claimed to have been executed by the plaintiff in respect of go-down. Is it correct?

Ans: It is as per the final bill claimed against the same.

Q. Can you show the said final bill wherein the quantity of work done in respect of go-down?

Ans: It is as per Ex.P. 6 invoice.

Q. Whether there is any independent survey to show that 60% of the work of go-down is executed by plaintiff?

Ans: The 60% mentioned in the invoice is for calculating the VAT tax to be paid by the defendant to the plaintiff.

Q. Where have you mentioned the measurement of the work done in respect of go-down claimed to have been constructed by the plaintiff?

Ans: It is in Ex.P. 6 at annexure 5(i) thereof.

Q. Your invoice issued on 10.04.2017 for the construction of go-down amounts to Rs. 40,78,418/- and invoice dated 10.04.2017 for the construction of factory building amounts to Rs. 3,79,476/- and you have claimed from the defendant an amount of Rs. 37,33,676/-. Why is the discrepancy?

Ans: Under invoice pertaining to construction of go-down building the amount of Rs. 40,78,418/- is including VAT and service tax. In respect of factory building the total amount is Rs. 22,62,865/- including VAT and service tax.

Q. The amount claimed by you in the suit is also including VAT and service tax. What do you say?

Ans: No, it is excluding VAT and service tax.

Q. In relief No.1 sought in the plaint you have sought payment of Rs. 37,33,676/- along with VAT and service tax. What do you say?

Ans: Rs. 37,33,676/- is excluding VAT and service tax.

Q. On what basis the claim of Rs. 37,33,676/- is made?

Ans: It is based on the invoices raised as per Ex.P.6 and P.7.

Q. Did the agreement between the plaintiff and defendant allow you to take machineries on hire?

Ans: There is no mention of hiring of machineries in the agreement but the defendant requested for the machineries and the same were provided to defendant on nominal hire charges.

Q. Is it true that the entire project was to be completed by the plaintiff company within the amount of Rs. 1,30,00,000/- (One crore thirty lakh)?

Ans: No.

Q. What was the agreed amount?

Ans: Agreed amount is as per the agreement.

Q. What is the agreed amount as per the agreement at Ex.P.1?

Ans: Rs. 1,30,00,000/- (One crore thirty lakh).

Q. Whether anywhere in the agreement at Ex.P.1 does the defendant permit you to take the machineries on hire?

Ans: No. The machineries were not hired by the plaintiff but the plaintiff's machineries were hired by the defendant.

Q. Whether those machineries which were hired by the plaintiff were owned by any third party?

Ans: No.

Q. On what date the plaintiff gave the machineries on hire basis to the defendant?

Ans: It was during the course of the execution of the buildings and exact date cannot be mentioned.

Q. During that hire period the plaintiff was the builder cum contractor in respect of the factory and go-down in question?

Ans: Yes.

Q. What was the date of document which is at Ex.P.7?

Ans: 10.04.2017.

Q. Is it true that the defendant have not acknowledged and signed Ex.P.7?

Ans: Yes.

Q. Can you tell me among the documents produced before the Hon'ble Court how many have been acknowledged by the defendant?

Ans: As earlier answered all the documents were personally handed over to the defendant.

5. It is false to suggest that the claim made in the plaint is false. It is false to suggest that the defendant has made payment in respect of all the invoices submitted by the plaintiff. It is false to suggest that the plaintiff has not produced the invoices relating to the suit claim. It is false to suggest that the plaintiff has not completed the execution of work within the time as agreed in Ex.D.1. It is false to suggest that I have sworn to a false affidavit for examination-in-chief. It is not true to suggest that I am deposing falsely.

Re-examination: - Nil -

(Typed to my dictation in the open court)

R.O.I. & A.C.

District & Sessions Judge,
Uttara Kannada, Karwar.