

MHRG170005452022



Received on : 21.03.2022.  
Registered on : 21.03.2022.  
Decided on : 19.06.2023.  
Duration on : Y. M. Days  
01 02 28

I N T H E D I S T R I C T C O U R T  
A T - P A N V E L  
D I S T R I C T - R A I G A D.

[ Presided over by K.G. Paldewar, District Judge-2, Panvel]

COMMERCIAL SUIT NO.02/2022 EXHIBIT NO. 159.

M/s. Lark Constructions Pvt.Ltd.  
Through its Managing Director,  
Shri.Arun Diwakar Patrikar,  
Age – 54 years,  
Occupation – Business,  
having registered office at Ground Floor,  
Runanubandh Apts., Road No.1,  
Sector 19, New Panvel, Dist.Raigad. ... PLAINTIFF

VERSUS

1. Maharashtra Jeevan Pradhikaran,  
Through Member Secretary,  
IVth Floor, Express Towers,  
Nariman Point, Mumbai.
2. The Executive Engineer,  
Maharashtra Jeevan Pradhikaran  
Works Division,

Takka Stores Yard,  
Bombay-Puna Express Highway,  
Opp. Bombay Mercantile Bank,  
Panvel – 410206.

3. (i) The State of Maharashtra,  
through its Chief Secretary,  
Mantralaya, Mumbai 32.

And

- (ii) Collector Raigad, Alibag

And

- (iii) Principal Secretary,  
Water Supply and Sanitation,  
530, Vth Floor, Mantralaya,  
Mumbai.

... **DEFENDANTS.**

**CLAIM : SUIT FOR RECOVERY OF RS.98,42,283/- AND  
FOR OTHER CONSEQUENTIAL RELIEFS.**

**APPEARANCES:**

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Advocate Shri.Kishor Vig for the plaintiff.

Advocate Shri.A.E.Chavan, for defendants No.1 to 3.

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**SUMMARY JUDGMENT**

[Delivered on 19<sup>th</sup> Day of June, 2023]

The Commercial Suit is filed to recover an amount

of Rs.98,42,283/- with further interest at the rate 24% p.a. from the date of the suit till realization of the entire amount.

**POINTS FOR THE DETERMINATION :**

2. In the light of application and on perusal of the record, following points arise for the determination to which I recorded my findings for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether application is maintainable?	No.
II.	Whether the plaintiff is entitled to recover Rs.98,42,283/- with interest from defendants by virtue of summary judgment?	No.
III.	Whether the plaintiff is entitled to alternative prayer to pass a conditional order directing the defendants to deposit claim amount in the suit as a condition precedent to defend the suit in terms of Order XIII-A Rule 7 of the Code of Civil Procedure?	No.

IV.	What order?	The application is Dismissed.
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### **REASONS**

#### **AS TO POINT NO. I TO IV :**

#### **BRIEF FACTS OF THE SUIT :**

3. The work of Dehrang dam was assigned to the plaintiff by defendants i.e. the work of argumentation to Panvel Water Supply Scheme stage IIIA. There were two sub works -i) to strengthen the dam by constructing additional thickness of section for embankment and ii) to strengthen the existing waste erecting of Godbole Gates. The scope of work also included the designing of Godbole Gates for which the plaintiff has assigned works to Godbole Gates Private Limited and for other sub-works defendants were to design gates and get the same approved from C.D.O, Nashik.

4. Further the plaintiff was assigned the work of strengthening of Dehrang dam to provide and erect the Godbole Gates vide work order Dated 03.12.1999. The work was to be completed within a period of 18 months including monsoon and was to expired on 02.06.2000. The total contract under the tender document was assigned to the plaintiff for an amount of

Rs.2,77,64,027/-. The terms of tender became a basic contract between the parties. Defendants failed to perform their part of contract therefore the plaintiff is seeking relief by way of recovery of the amount as claimed above.

**BRIEF CASE OF DEFENDANTS :**

5. Defendants resisted the claim as per written statement. Defendants have questioned the work order assigned to the plaintiff in terms of its clauses. Further it is denied the claim amount. According to the defendants, the tender and the work order are in question and those vital documents are not placed on record. The plaintiff was not diligent in preparing designs of Godbole Gates immediately after entrustment of work to it. The plaintiff has taken passive approach during the course of approval of the said design. The defendant has questioned the tenability of this application for summary judgment. The issues are framed and the plaintiff led evidence by affidavit. The documents which are placed on record in pursuance of oral evidence by affidavit are to be exhibited. On all these grounds, the defendants questioned this application.

**MAINTAINABILITY OF APPLICATION :**

6. At the outset, the plaintiff has filed present suit as a

commercial suit in terms of clauses in tender and work order for recovery of the amount claimed in the suit. Order XIII A of the Code of Civil Procedure envisages summary judgment. This Order sets out the procedure by which court may decide a claim pertaining to any commercial dispute without recording evidence.

7. Order XIII A (2) of the Code envisages '*an applicant may apply for summary judgment at any time after summons has been served on the defendant.*' However the Proviso appended to the provision envisages that '*no application for summary judgment may be made by such applicant after the court has framed the issues in respect of the suit.*'

8. Herein this suit, initially it was filed before Civil Judge Senior Division, Panvel. The defendants appeared and filed their written statement. The issues are framed. The hearing of the suit is commenced. The plaintiff has led his evidence by way of affidavit. The examination-in-chief of oral evidence of plaintiff by way of affidavit is placed on record. The document of tender was not placed on record and as per the order of court, the copy of work order which was with the defendant directed to place it on record. The said document of copy of work order is placed on record on behalf of defendants. The plaintiff moved application to lead secondary evidence on

the said copy. However at the request of plaintiff by virtue of Section 15(2) of the Commercial Court Act, 2015, this matter is transferred to this court since the transaction is covered as commercial dispute.

9. When this matter is assigned to this court, that time this court heard both parties on re-caste of issues earlier framed. The matter was reserved for order on 23.03.2023 and meanwhile, the plaintiff moved application for taken on board and filed present application for summary judgment.

10. At the outset, in view of Proviso appended to Order XIII A(2) of the Code apparently, this application ought to be presented before framing of issues. Herein this case, the issues are already framed and the evidence of the plaintiff led by affidavit is placed on record. The stage is for order on re-caste issue. Then in that eventuality, present application for summary judgment is apparently barred by virtue of Proviso appended. On that count, the present application is not maintainable. I answer Point No.I in the negative.

**ENTITLEMENT TO THE RELIEF OF RECOVERY OF AMOUNT IN TERMS OF PRAYER :**

11. In the light of above reasoning, the application for

summary judgment is not tenable. Then apparently it is not required to touch to the merits of the grounds mentioned in the application. Since this court has extensively heard this matter on this issue of summary judgment as such, points above are framed, then it ought to have been answered. On that count, the findings to the above points needs to be recorded.

12. According to the plaintiff, the defendant has no real prospect of successfully defending the claim. The defendant has raised false, frivolous and mischievous defences under the guise of written statement. The denial on the part of defendant is evasive and said denial shall be in the manner provided in sub-rules (2)(3)(4) and (5) of Order VIII Rule 3A of the Code. The written statement shall be with affirmation of affidavit of admissions and denials as prescribed under Order VI Rule 15A and Order XI Rule 13 of the Code.

13. Further according to the plaintiff, the defendant has no real prospect of defending the claim. The plaintiff is not required to lead oral evidence. The entire written statement is only evasive denials.

14. According to the defendant, the plaintiff was not diligent in preparing designs of Godbole Gates immediately after entrustment of work to him. The design submitted by the

plaintiff were not prepared by taking into account various details in relation to situations existing at the site. The plaintiff failed to explain the design as and when required. It neglected to provide various details for enabling the department to come to a final conclusion. The plaintiff has taken passive approach during the course of the approval of the said design.

15. Further according to the defendants, as per the clauses of the tender contract, it was the responsibility of the plaintiff to procure the said design from M/s.Godbole Gates Private Limited, Nagpur and to get them approved by C.D.O, Nashik at its earliest. As civil contractor, the plaintiff was and is fully aware that for getting the appropriate results of the work, the cement concreting work should be done only after the proper gates were made ready for installation. Instead of this, the plaintiff was resorting to the correspondences only for the purpose of making false ground to claim compensation. The plaintiff with dishonest intention did not supply to the defendants important material required for erection of Godbole Gates and Service bridge for which defendants had already made payment to the plaintiff.

16. Thus in the light of these rival contentions, learned advocate of plaintiff to buttress his submission relied on the observation of Hon'ble Bombay High Court in the case of

**Maharashtra State Electricity Distribution V/s. DLS Enterprises  
Private Limited 2009 SCC OnLine Bom. 413.**

17. On the backdrop of this rival submission, it is apparent that it is an extensive pleadings on behalf of both the parties. There is no admitted position between them so as to decide the quantum of recovery of amount. According to the plaintiff, in pursuance of work order he has made expenditures as pleaded to which it is a complete denial on the part of defendant on the ground of negligence of plaintiff, then in that eventuality, there is absolutely no ground to touch the provisions of summary judgment.

18. In the light of foregoing, after framing of issues and plaintiff led oral evidence by affidavit as such, the stage of the suit is for cross-examination on behalf of defendants only before commencement of cross-examination hearing on re-caste issues was conducted by this court as such, looking to the stage of hearing the application for summary judgment is not tenable. Even otherwise, in the light of rival pleadings and the complexity of issues between them, then in that eventuality, grounds are not justified for summary judgment.

19. Thus the plaintiff is not entitled to recover this amount by virtue of this summary judgment. At the same time,

the alternative relief to direct the defendants to deposit the same amount as a condition precedent to defend the suit cannot be ordered. The application is not well founded. The observations cited by learned advocate of plaintiff have no application to present set of facts. I answer Point No.II and III in the negative. With this, I pass following order ;

**ORDER**

1.	The application for summary judgment vide Order XIII A of the Code of Civil Procedure (Exh.159) is dismissed.
2.	The plaintiff is a senior citizen and the initial suit before Civil Judge Senior Division was of the year 2003 then in that eventuality, the hearing of this matter is expedited and it be kept on Special Board of old civil matters.
	Dictated and pronounced in open Court

Panvel  
Date : 19.06.2023.

( K.G. Paldewar )  
District Judge-2, Panvel-Raigad

Arguments heard on	03 <sup>rd</sup> Day of May, 2023.
Judgment delivered on	19 <sup>th</sup> Day of June, 2023.
Dictated on	19 <sup>th</sup> Day of June, 2023.
Transcribed on	19 <sup>th</sup> Day of June, 2023.
Checked and signed on	19 <sup>th</sup> Day of June, 2023.

### **CERTIFICATE**

I affirm that the contents of this PDF file Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer : P.S.Mhatre,  
Name of the Court : District Court-2, Panvel  
Date of Judgment/Order : 19.06.2023.  
Judgment/Order signed on : 19.06.2023.  
Presiding Officer : K.G. Paldewar  
Judgment/Order uploaded on : 19.06.2023.