

Presented on : 01.09.2012
Registered on : 16.10.2012
Decided on : 12.09.2018
Duration : Year Month Day.
 06 00 11

IN THE COURT OF 4th JT. CIVIL JUDGE, SENIOR DIVISION PUNE.
 (Presided over by V. R. Jagdale)

SPECIAL CIVIL SUIT No. 1309/2012

Exh. No.

Mr. Mussadiq Kadarali Sayyed
 Age : 27 Years, Occu.: contractor,
 R/at : Bungalow No.16, Kotala Road,
 Ahmednagar, Pune-414001

..... PLAINTIFF

V/s.

- 1] The State of Maharashtra
- 2] The Secretary,
Public Works Department,
Government of Maharashtra
Mantralaya, Mumbai-32
- 3] The Chief Engineer,
Public Works Region,
Pune Central Building, Pune
- 4] Superintending Engineer,
Public Works Circle,
Pune
- 5] The Executive Engineer,
Public Works Division, (East),
Central Building, Pune

.... DEFENDANTS

CLAIM :- Suit for declaration and recovery of due amount.

COUNSEL:-

Shri. F.S.Sayyad : Ld. Adv. For Plaintiff.

Shri. Jagtap : Ld. A.P.P. for the Defendants No.1 to 5

J U D G M E N T

(Delivered on 12th day of September,2018)

1] The plaintiff has sought declaration that action of the defendants imposing fine is illegal, declaration to the effect that withdrawing work under clause-15(2) by the defendants is illegal and recovery of amount to the tune of Rs.19,58,400/- along with interest @ 18% p.a.

2] It is the case of the plaintiff that defendants had issued tender for work order and plaintiffs' tender was accepted. Accordingly he had received work order on 07/12/2005 and time limit was 12 months for completion. After receiving work order the plaintiff immediately has commenced the work as he had to complete the work within stipulated period of 12 months. But out of 12 months he could not carry on the work for four months on account of monsoon. As the work site was within the bed of Ujjani Dam the plaintiff was not in a position to carry out work on account of high water table. Accordingly he intimated the aforesaid fact to defendant No.5 who agreed to pay extra item bill. But on account of shortage of funds on the part of defendants, plaintiff could not satisfactorily carry out work and it was suspended in the month of December,2005. The plaintiff requested the defendant to withdraw the work by issuance of letter dtd. 12/03/2008. But defendants did not take cognizance of his letter and illegally imposed fine of Rs.100/- per day. The

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plaintiff was not at all responsible for delay and was unable to complete the work on account of breach of terms and conditions by the defendants. Accordingly he has prayed for compensation under various heads and prayed that suit be decreed.

3] The defendants have filed written statement vide Exh.18 and denied all the adverse allegations made against them. It is contended by the defendants that prior to signing declaration plaintiff has visited and studied the detail condition of the site and thereafter submitted his bid. Therefore, he cannot raise any grievance in respect of the fact that site falls within the bed of Ujjaini Dam and he was unable to satisfactorily carry out work on account of high water table.

4] It is further contended by the defendants that plaintiff had failed to maintain progress as per clause-II of the contract and failed to complete the work within stipulated period. It was necessary on the part of the plaintiff to submit monthly bill for the work done which he has not done. Due to which compensation was levied on him which was accrued by superintending engineer. The penalty imposed is legal, proper and valid and defendants are not responsible for any delay and breach. Hence, plaintiff is not entitled for the relief sought and suit be dismissed with costs.

5] My Ld. Predecessor has framed issues at Exh.19 and I have produced them alongwith my findings and reasons recorded herein as under:-

Sr. No.	Points	Findings
1	Does plaintiff prove that he can claim revised rate for work done beyond tender period ?	In the Negative
2	Does plaintiff prove that construction of bridge got delayed due to negligence of defendants?	In the Negative
3	Does he prove that the alleged delay in payment of bills by defendants ?	In the Negative
4	Do defendants prove that security deposit, penalty charges have been deducted as per the terms of contract ?	In the Negative
5	Does plaintiff prove that defendants have imposed illegal fine and recovered it unauthorizedly ?	In the Negative
6	Whether plaintiff is entitled for the recovery of bills along with interest? If yes, what is the recovery and rate of interest ?	In the Negative
7	What order and decree?	Suit is dismissed.

REASONS

AS TO ISSUES NO. 1 TO 5 :-

6] As the aforesaid issues are interlinked they are discussed together for the sake of brevity and to avoid repetition.

7] The plaintiff has examined himself and one witness. The defendants have not adduced any rebuttal evidence. Heard Ld. Counsel for the plaintiff and defendants. The plaintiff has relied on following citations:-

a] MHLJ 1994 P 1595 in case of Prakash Tolaram Lalwani V/s. Union of India;

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- b] Clause of Conditions of B-1 & B-2 of Contract;*
- c] AIR 1985 Kerala 49 in case of State of Kerala V/s. K. Bhaskaran;*
- d] AIR 1987 (SC) 1359 in case of State of Karnataka V/s. Shree Rameshwara Rice Mills;*
- e] AIR 1984 (SC) 1703 in case of M/s. A.T.Brij Paul Singh and Bros. V/s. State of Gujrat;*
- f] AIR 1979 (SC) 720 in case of M/s. Hind Construction Contractors V/s. State of Maharashtra;*
- g] AIR 1985 (SC) 607(1) in case of Hyderabad Municipal Corporation V/s. M. Krushnaswami Mudaliar & another;*
- h] 2012(5) ALL MR 462 (SC) in case of Union of India V/s. Ibrahim Uddin and Another.*

8] The plaintiff has deposed vide Exh.25 and it is his contention that he had received work order on 07/12/2005 and he was to complete work within a period of 12 months. But on account of monsoon and high water table he was unable to complete the work within stipulated time. So also there was delay on the part of defendants in payment of money on account of shortage of funds. Accordingly, on 12/03/2008 he had issued letter and requested the defendants to withdraw the work. But instead of doing so a fine to the tune of Rs.100/- per day was illegally levied upon him and therefore he is entitled for amount

of Rs. 19,58,400/- under various heads i.e. unpaid balance, refund of security deposit, price escalation, royalty charges, overhead charges, refund of illegal recovery of fine and interest.

9] But during cross-examination the plaintiff has admitted in special civil suit No.1308/2012 that prior to filing tender he has visited the suit site and taken inspection. Therefore, it is clear that prior to filing of tender the plaintiff was aware about the condition of the suit site and thereafter only he had accepted the tender. If as per his contention the site was within location of high water table then he would have definitely intimated the aforesaid fact to the defendants and also apprise them that a site is within location of high water table he will not be in a position to complete the work within a period of 12 months. But it appears that as the plaintiff was unable to complete the work within a period of 12 months as agreed he has come out with the false plea that he was unable to complete the work as the site falls within location of high water table which is not at all justifiable.

10] He has further admitted that he had to maintain site register in which details in respect of number of vehicles, name of labourers and site engineer is to be mentioned to show the nature of work and the stage of work. Even though the plaintiff has admitted that he has produced on record site register at Exh.56-C but Exh.56-C is not a site register. It is notice reply dtd. 03/11/2009 issued by the advocate of the defendant to the notice issued by the plaintiff in which he has raised various

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grievances and claimed amount under various heads.

11] It is clear that it was incumbent on the part of the plaintiff to maintain site register to show the progress of work carried out by him. Therefore, it appears that the plaintiff has deliberately not produced the site register which will reveal the exact progress of work and it will also reveal as to whether work was carried out as per terms and conditions of the tender.

12] The plaintiff has further admitted that it was his responsibility to submit bill on monthly basis and he had submitted bill for a particular month after completion of work. But he has further admitted that as there was delay in payment of bill he had immediately lodged complaint which is at Exh.36 in Special civil suit No.1308/2012. But Exh.36 is a letter dtd. 01/10/2009 issued by the plaintiffs' advocate to Executive Engineer. But it is not a letter in respect of intimation to the defendants that there was delay in payment of bill. It is a letter in respect of grievance pertaining to the fact exparte order asked against him and royalty is illegally deducted and fine is imposed on him. Therefore, it appears that responsibility was cast upon the plaintiff to submit bill on monthly basis which he has failed to do so. He had not raised any grievance in regard to delay in payment of bill and it appears that as he failed to collect amount of bill, cheque in regard to payment of work done by him was sent to him by posts and he had admitted that cheque which is mentioned in Exh.36 was received by him by post. Therefore, it

cannot be said that there was delay in payment of bill amount on the part of defendant.

13] Even though plaintiff has denied that work order as withdrawn as per clause-3 of tender and he has not filed appeal before Superintendent Engineer. But subsequently he has admitted that in view of withdrawal of work and imposition of fine he had filed appeal before superintendent engineer. Even though he has denied that appeal was dismissed. But subsequently he has not denied that he has not filed appeal with the State Government against order of Superintendent Engineer. Therefore, it appears that after Superintendent Engineer had given an opportunity of hearing and dismissed appeal the plaintiff had a knowledge that he had right to file appeal before Government. But plaintiff has deliberately not availed of the aforesaid opportunity and has filed the suit.

14] It appears that as the plaintiff was not able to complete the work within stipulated period time and again extension was granted. But thereafter also he was unable to complete the work. Therefore, his work was withdrawn as per clause-3-c of the tender agreement. Therefore, it cannot be said that construction of bridge was delayed on account of negligence of defendant and there was a delay in payment of bill by the defendants.

15] On the contrary, plaintiff was unable to complete the work within a stipulated period of 12 months from the date of issuance of tender and inspite of extension granted time and

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again he was unable to complete the work on account of paucity of funds and defendant cannot be held responsible for that. Accordingly the defendant has deducted the security deposit and imposed penalty charges as per the terms and conditions of contract and therefore it cannot be said that act of the defendant is illegal and unauthorized and plaintiff can claim revised rate for the work done beyond tender period. As the plaintiff has failed to prove issue No.1 to 5 therefore the ratio laid down in the various citations relied by him will not be applicable to the present case. Hence, I answer issue No.1 to 5 in the negative.

AS TO ISSUE NO.6 :-

16] As the plaintiff has failed to prove that defendants were negligent, there was delay on the part of defendants in respect of payment of bill and act of deduction of security deposit and penalty is not illegal and unauthorized. Therefore, plaintiff is not entitled for relief of recovery of bill along with interest. Hence, I answer issue No.6 in the negative and in answer to issue No.7 I pass the following order :-

ORDER

- 1] Suit is dismissed with costs.
- 2] Decree be drawn up accordingly.

Date:- 12th day of September, 2018

(V. R. Jagdale)
4th Jt. Civil Judge Senior Division,
Civil Court, Pune

CERTIFICATE

“I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.”

Name of Steno : Sau. S.S.Gadkari
Court Name : Shri. V.R.Jagdale,
4th Jt. C. J. S.D, Pune.
Date : 12/09/2018
Judgment signed by
presiding officer on : 12/09/2018
Judgment uploaded on : 19/09/2018