Parvindar Singh Vs. M/S Senbo Engineering Ltd

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SooperKanoon Citation : sooperkanoon.com/1036

Court : Delhi

Decided On : Nov-17-2014

Judge : Manmohan Singh

Appellant : Parvindar Singh

Respondent : M/S Senbo Engineering Ltd

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Order delivered on:

17. h November, 2014 % + CS(OS) No.1693/2012 & I.A. No.8692/2013 PARVINDAR SINGH ..... Plaintiff Through Mr. Ashish Pratap Singh, Adv. versus M/S SENBO ENGINEERING LTD ....Defendant Through Mr. Aloke Kr. Bhattacharya, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The plaintiff has filed a suit for recovery of Rs.35,58,257/- along with pendent lite and future interest against the defendant.

2. It is stated that the plaintiff is engaged in the business of civil construction doing construction in the name of S.P.Construction and Shekhawat Construction as proprietorship concerns. The defendant is engaged in the business of civil construction, doing construction works for Delhi Metro Rail Corporation (DMRC).

3. Defendant was served with summons on 18th August, 2012. However, the defendant did not file the written statement and consequently, the right to file the written statement was closed vide order dated 21st November, 2012. No further remedy is availed by the defendant to bring the written statement on record.

4. The plaintiff as PW-1 has filed his affidavit in evidence dated 9th March, 2014 and has proved the case of the plaintiff that on 15th March, 2011, the defendant company informed the plaintiff that while submitting the bill to the DMRC on 4th December, 2010, some of the work executed by the plaintiff was not included due to non submission of final measurement from the plaintiffs side and thus defendant company directed the plaintiff to submit the measurement of such work to enable them to include the same for the purpose of raising final bill to the DMRC, copy of the letter dated 15th March, 2011 has been exhibited as Ex.PW-1/1.

5. The plaintiff immediately intimated the defendant company that the plaintiff has already submitted the final measurement on 10th November, 2010 and the quantity claimed for the work done by the plaintiff is already there in the final bill of the defendant company submitted to the DMRC.

6. It is a matter of record that the defendant company vide its letter dated 23rd March, 2011, addressed to The Chief Project Manager/East, 'DMRC, copy marked to plaintiffs firm, has admitted the outstanding payment of Retention Deposit as Rs.9,79,856 to be paid to the plaintiff. However, DVAT amount of Rs.17,17,667 reimbursement as stated in para 2 of the above said letter was cleared by the defendant company as reflected in letter dated 7th June, 2011 of the plaintiff. The amount of Rs.7,61,963 as stated in para 3 of the letter was also paid by the defendant company to the plaintiff as stated in last paragraph of letter dated 9th April, 2011 (Rs.5,00,000/- vide draft dated 9th April, 2011 and Rs.2,50,000/- was paid on 7th June, 2011 as reflected in the letter dated 7th June, 2011 as given by the plaintiff. However, the plaintiff settled this amount as the balance amount of Rs.11,963/- was not claimed except the TDS certificate or failure of the same the amount of TDS was to be paid by the defendant company as stated in letter dated 7th June, 2011). Further, in para 5, the defendant company has admitted that the payment of the final bill will be made to me on receipt of the payment from the

DMRC, copy of the letter dated 23rd March, 2011 marked as Mark E.

7. The plaintiff vide its letter dated 28th March, 2011 requested the defendant company for the release of the outstanding payment of Rs.38,51,465/- which was outstanding, reply dated 28th March, 2011 to the letter dated 23rd March, 2011 has been exhibited as Ex.PW-1/2 and letter dated 28th March, 2011 has been exhibited as Ex.PW-1/2 A. In response to this letter, the defendant company vide its letter dated 9th April, 2011 again asked the plaintiff to submit the measurement of such work to enable them to include the same in the measurement for the work done by the plaintiff in the final bill to be submitted to the DMRC. It was also stated by the defendant company that the settlement of the final bill payment is still pending with DMRC. It was informed by them to the plaintiff that the said amount and also the amount of DVAT component shall be reimbursed after the receipt of the same from the DMRC. This was also further stated that the release of payment would depend on the final acceptance by DMRC. However, a sum of Rs.5.00 lacs by demand draft dated 9th April, 2011 was paid to the plaintiff, copy of the letter dated 9th April, 2011 has been exhibited as Ex.PW-1/3.

8. The plaintiff gave a letter dated 14th April, 2011 to the defendant company in which the final bill measurement along with all the documents and papers of DVAT were again attached and also requested to release the retention money for which the plaintiff was ready to furnish the bank guarantee, if required. This was also told to them that the defendant company has already claimed the amount from the DMRC for the work done by the plaintiff, reply dated 14th April, 2011 to the letter dated 9th April, 2011 has been exhibited as Ex.PW-1/4.

9. The defendant company vide its letter dated 23rd May, 2011 stated that they can honour the claim of DVAT only when it was received from the DMRC. However, DVAT reimbursement of Rs.17,17,667/- and balance payment of running bill No.11 dated 21st July, 2010 amounting to Rs.2,50,000/- which was outstanding for which a sum of Rs.16,00,000/-, leaving the amount payable of Rs.3,67,667/- was acknowledged by the plaintiff vide its letter dated 7th June, 2011. However, this payment is the final payment of the bill amount outstanding against the defendant company.

10. Since the work done by the plaintiff was approved by DMRC for which defendant company have already received the payment from them, the plaintiff vide its letter dated 15th November, 2011 submitted the abstract of final bill (Balance payment) for a sum of Rs.35,08,885/- (Rupees Thirty five lakhs eight thousand eight hundred eighty five only) which include the amount of Retention amount/security deposit, D-vat for the year 2010-2011, including the payment due in the account of Sekhawat Construction which is also a proprietorship concern of the plaintiff and its payment of D-vat. Along with the bill, abstract of the statement of account as approved by DMRC was also sent to the defendant company for record and payment. Further, a sum of Rs.49372/-was already due for the TDS as on 7th June, 2011 for which no benefit has been availed by the plaintiff due to non-availability of the TDS certificate and as such the defendant company is also liable to pay this amount, copy of letter dated 15th November, 2011 along with detail abstract marked as Mark F (colly).

11. The plaintiff vide its letter dated 16th November, 2011 wrote to the DMRC that the final bill towards the work done by the plaintiff at Yamuna depot has been approved by DMRC and as such the plaintiff have to take the payment of Rs.35,08,885/- from the defendant company, copy of letter dated 16th November, 2011 sent to DMRC along with detail abstract has been exhibited as Ex.PW-1/5 (colly). The plaintiff is maintaining the accounts for the work done by the defendant company, the Audit Report of M/s S.P.Construction for the year 2012-2013 has been exhibited as Ex.PW-1/6.

12. In order to deny the genuine payment for the work done by the plaintiff, the defendant company sent to the plaintiff a false letter dated 20th February, 2012, pointing out certain false and fabricated irregularities/ discrepancies in the work which was duly replied by the plaintiff vide its letter dated 25th February, 2012. It is evident that the defendant company has already received the payment from the DMRC for the work done by the plaintiff and DMRC has not stated any discrepancies, irregularities and defect in the work executed by the plaintiff. Hence, the discrepancies and irregularities as stated by the defendant company are not only contrary to the agreement but are false and frivolous in order to deny the genuine payment for the work done by the plaintiff. Therefore, once the

payment has been made to the defendant company from the DMRC for the work done by the plaintiff, the defendant company is liable to make the payment to the plaintiff. However, all the queries raised by the defendant company have been duly replied by the plaintiff supported with the documentary evidences. It is pertinent to mention herein that it is a matter of record that the work done by the plaintiff is already included by the defendant company in their bill submitted to the DMRC and the payment for the same has been received by them. Therefore, they have no legal right to deny the payment to the plaintiff, copy of the letter dated 20th February, 2012 has been exhibited as Ex.PW-1/7, Reply dated 25th February, 2012 has been exhibited as Ex.PW-1/8 and postal receipts has been exhibited as Ex.PW-1/9.

13. PW-1 has also stated that in one of the correspondence through mail sent by one Sh. Rakesh Soni, Civil Engineer of the defendant company, it is evident that the defendant company has admitted a sum of Rs.13,58,480.60P which is also signed by one P.K. Basu Vice President of the defendant company in which he has clearly stated that "the item is discussed and found visibly. OK". It has also been further stated by the above named Vice President of the defendant company wherein he has admitted to look after the item for remaining epoxy, painting and POP, the E-mail sent by Rakesh Soni dated 14th March, 2012 attached certified bill has been exhibited as Ex.PW-1/10.

14. It is further stated that besides the aforesaid payment due to be paid by the defendant company to the plaintiff as stated above, undeniably and admittedly a sum of Rs.9,80,000/- is lying pending as security deposit/retention deposit of the plaintiff with the defendant company and also a sum of Rs.2,25,000/- as security deposit of the plaintiff (on account of work done in the name of Shekhawat Construction) with the defendant company. As the defendant company has already cleared a bill of Rs.7,67,968/- as stated above but on this amount they are liable to pay statutory amount of Rs.71,434/- on account of DVAT. Undeniably, the defendant company is also liable to pay Rs.50,000/- on account of DVAT (in the account of M/s. Shekhawat Construction) to the plaintiff for the work done in the year 2008-2009. Accordingly, in addition to the amount as stated above the defendant company is liable to pay a total sum of Rs.13,26,434/-, copy of the

Ledger account of security deposit w.e.f. 1st April, 2011 to 31st March, 2012 of M/s S.P. Construction has been exhibited as Ex.PW-1/11, and Ledger account of security deposit w.e.f. 1st April, 2010 to 31st March, 2011 of M/s Shekhawat Construction has been exhibited as Ex.PW-1/12. Therefore, the total amount comes to Rs.26,84,914.60 which the defendant company admittedly and undeniably is liable to pay to the plaintiff.

15. The defendant company has already admitted the submission of the final bill by the plaintiff vide their letter dated 23rd March, 2011. It is also admitted by the defendant company that they are submitting their bill based on the bill of the plaintiff to the DMRC after 31st March, 2011 and has undertaken that the payment of the said amount will be made to the plaintiff on receipt of the payment from DMRC. The plaintiff have submitted a bill of Rs.35,08,885/- along with the detail abstract to the defendant company which includes the above mentioned amount. In addition to this amount the defendant company is liable to pay a sum of Rs. 49,372/- on account of the TDS or in the alternate they are liable to furnish TDS certificate to the plaintiff.

16. It is stated by PW-1 that it is evident from the correspondence and document that the disputed amount comes to Rs.8,23,971/-. In this connection, it is stated that the defendant company although has taken the payment from DMRC for the aforesaid amount with regard to the work done by the plaintiff for which bill was already submitted but the same has not been paid to the plaintiff. This amount includes 1. Distempering with oil bond washable Rs.1,50,870.79P, 2. Providing and supplying POP Rs.88,925.32P, 3. Proding and Fixing Karb stone Rs.67,784.70P, 4. Providing and simphoney motor in shutter Rs.96,000/-, 5. Painting with epoxy Rs.51076/-, 6. Proving and fixing door lock Rs.50,000/-, 7. Ceramic floor tiles Rs.29,759.74P, 8. Difference of Rs.94258.50P for proving and fixing RCC pipe and 9. Rs.1,95,296/- on account of DVAT (This vat include on the amount of Rs.13,58,480-60P). The total comes to Rs.8,23,971/-.

17. It is stated that the Vice President of the defendant company has already admitted to look after the item of the remaining amount of epoxy, painting and PQP. There is no denial on record that the aforesaid payment has been received

by the defendant company from DMRC. There is no denial that the aforesaid work has not been done by the plaintiff. There is no complaint with regard to the quality and quantity of the work done by the plaintiff. The site (Yamuna Bank depot after completing the entire work has been handed over to the DMRC. Therefore, there is no justifiable cause or reason for the defendant company for not making the payment to the plaintiff. As such there can be no reason, cause and legal or justifiable reason for the defendant company to withhold the payment of the plaintiff for which the defendant company has already received the payment from the DMRC as per the terms of back to back payment which makes it very clear that as and when the defendant company received the payment from the DMRC for the work done by the plaintiff, they will have to make the payment to the plaintiff.

18. PW-1 has stated that as would be seen from above and also from the statement of account, the defendant company is liable to make the payment of Rs.35,08,885/- and also the payment of Rs.49372/- on account of the TDS as on 7th June, 2011 to the plaintiff. This amount also includes the amount which the defendant company is liable to pay in the account of Sekhawat Construction to the plaintiff.

19. Since, the defendant company was not paying the outstanding amount to the plaintiff in-spite of the several requests and correspondence in writing, the plaintiff got sent the legal notice dated 2nd April, 2012 through his advocate Sh. B.R. Sharma, Chamber No.2280, Civil Wing, Tis Hazari Courts, Delhi through registered post as well as through courier to the defendant company with a copy to DMRC, called upon the defendant company to make the payment of Rs.35,08,885/- plus Rs.49,372/- within fifteen days from the receipt of the notice. The defendant company in-spite of the receipt of the legal notice failed to make the payment and sent a false and frivolous reply, copy of the legal notice dated 2nd April, 2012 has been exhibited as Ex.PW-1/13, postal receipt has been exhibited as Ex.PW-1/14, 2 courier receipts has been exhibited as Ex.PW-1/15 and Ex.PW-1/16 and P.O.D. has been exhibited as Ex.PW-1/17.

20. However no cross examination upon this witness was conducted by the defendant despite of appearance and the said witness was accordingly discharged. Thereafter the plaintiffs evidence was closed on 11th July, 2014.

21. Under these facts and circumstances, the plaintiff is entitled for a decree for recovery of a sum of Rs.35,58,257/- against the defendant. The plaintiff is also entitled to interest at the rate of 15% from the date of filing of suit till the date of payment. The decree be drawn accordingly. (MANMOHAN SINGH) JUDGE NOVEMBER17 2014