

Atlanta Limited vs.national Highways & Infrastructure Development Corporation Limited & Anr.

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SooperKanoon Citation : sooperkanoon.com/1223902

Court : Delhi

Decided On : Jul-09-2019

Appellant : Atlanta Limited

Respondent : National Highways & Infrastructure Development Corporation Limited & Anr.

Advocate for Def. : Mr. Rajiv Bansal, Mr. Amit Kumar Mishra, Mr. Gaurav Mahajan, Mr. Saksham Babbar, Ms. Parul Panthi, Ms. Shraddha

Advocate for Pet/Ap. : Mr. Chirag M. Shroff, Mrs. Mahima C. Shroff, Ms. Sanjana Nangia

Judgement :

\$~6 * + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

9. h July, 2019 ATLANTA LIMITED CS(COMM) 1231/2018 Plaintiff Through: Mr. Chirag M. Shroff, Mrs. Mahima C. Shroff & Ms. Sanjana Nangia, Advocates (M-9811032077) versus NATIONAL HIGHWAYS & INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED & ANR. Defendants Through: Mr. Rajiv Bansal, Senior Advocate, with Mr. Amit Kumar Mishra, Mr. Gaurav Mahajan, Mr. Saksham Babbar & Ms. Parul Panthi, Advocates (M-8557077641) Ms. Shraddha, Advocate for D-2 (M- 9900558600) CORAM: JUSTICE PRATHIBA M.

SINGH Prathiba M. Singh, J.

(Oral) I.A. 7959/2019 (for directions) 1. This is an application under order VIII Rule 1 read with Section 151 of CPC. The relief prayed in the application is that the written statement filed by the Defendant No.1 on 30th March, 2019 ought to be taken off the record and judgment should be pronounced against the Defendant.

2. Perusal of the application shows that it is based on the averment that there was one written statement filed by the Defendant No.1 on 14th March, 2019 which was returned under objections. Thereafter, a fresh written CS(COMM) 1231/2018 Page 1 of 8 statement was filed on 30th March, 2019 which is 186 pages long. The vakalatnama was filed only on 9th May, 2019. Since, the summons in the suit was issued on 16th November, 2018, the last date to file the written statement was 15th, March, 2019. Thus, the written statement filed on 30th March, 2019 was beyond time and is not liable to be taken on record.

3. Further, it is submitted by the Ld. Counsel for the Plaintiff that the second written statement having been filed, the first written statement running into 58 pages stands abandoned. It is further submitted that as per the Delhi High Court (Original Side) Rules, 2018 (hereinafter Original Side Rules), it is incumbent upon the Defendant to file the written statement along with the affidavit of admission/denial. In the present case the affidavit was not filed and hence on this ground also the written statement is not liable to be taken on record. Reliance is placed on the judgment of the Supreme Court in SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd. [Civil appeal No.1638/2019 decided on 12th February 2019]. (hereinafter SCG Contracts) which holds that the timelines prescribed under the Commercial Courts, Commercial Division And Commercial Appellate Division Of High Courts Act, 2015 are mandatory insofar as the filing of written statements are concerned. The Ld. Counsel also submits that the vakalatnama having been filed almost two months after the written statement, the written statement even if filed on 14th March, 2019, was completely irregular and the Ld. counsel who filed the said written statement did not have any authority to file the same on behalf of its client. Accordingly, prayer under Order VIII Rule 10 is made.

4. On behalf of the Defendant it is submitted that the affidavit of admission/denial was filed on 14th March, 2019 along with the first written CS(COMM) 1231/2018 Page 2 of 8 statement. The Defendant was on caveat in the present matter and accordingly, the vakalatnama had been filed along with the caveat itself. Thus, there were no irregularities in the written statement filed on 14th March, 2019 except the fact that the Registry had raised certain objections and the same were removed and the written statement was re-filed. Further, it is submitted by the Id. Senior counsel that in any event even if the written statement dated 14th March, 2019 is taken to have been filed, the Defendant always has the right to seek amendment of the said written statement.

5. The Court has heard the Id. counsels for the parties. The summons in the present suit was issued on 16th November, 2018. The Defendants were on caveat and had in fact accepted summons and notice on the same date. On the said date, an application was also moved by the Plaintiff seeking joint measurements to be conducted at site in respect of the work executed by the Plaintiff who was a contractor. Accordingly, on 13th December, 2018 a Local Commissioner was appointed with the consent of the parties to carry out measurements at site. In the said order, the Court had clearly observed as under I.A. 15499/2018 1. With the consent of the parties, Shri V. Velayutham, Director General (Retired), Ministry of Road Transport and Highways is appointed as a Court Commissioner in order to ascertain the total work executed by the contractor, the cost of materials, as also the cost of any temporary work which may have been executed by the contractor. The technical experts from both sides would be permitted learned Court Commissioner, to execute the commission. The Court Commissioner would visit the site to assist the CS(COMM) 1231/2018 Page 3 of 8 at this out shall carry where the works have been carried out in order to carry out the measurements.

2. The expenses for travel boarding and lodging of the Court Commissioner would be borne by the Plaintiff, at this stage. The fee of the Court Commissioner is fixed at Rs.2.5 lakhs, to be shared equally between the parties, stage. The Court Commissioner the measurement of the works done and the material on site as also the temporary work, if any, done on the project of Four Laning of End of Moran Bypass (km. 561.700) to Bogibeel Junction of NH-37 in the State of Assam

under SARDP-NE Phase-A. The measurement shall be carried out within four weeks and the report shall be submitted by the Court Commissioner, within four weeks thereafter.

3. The process of taking measurement may be videographed by the parties and the CD shall be placed on record. The parties to supply to the Court Commissioner a copy of the agreement dated 19th February, 2016 as also the designs as approved. The Court Commissioner shall coordinate with the one representative of the Plaintiff, one from Defendant No.1 and 2 each for carrying out the commission. From the Plaintiffs side Mr. U.M. Bhole, Vice President (Contracts) (M:9323733717), from the Defendant No.1 side Mr. Ajit Pal Singh Brab, General Manager (Projects), (M:9803011111) and from Defendant No.2 Mr. Esas Prasad, Resident Engineer (M:9127754789) will coordinate with the Court Commissioner.

4. The measurements would commence after giving at least five working days CS(COMM) 1231/2018 Page 4 of 8 advance notice by the Court Commissioner to the Plaintiff, Defendant No.1 and 2, through the above representatives nominated by the parties.

5. I.A. is disposed of.

6. Mr. Bansal submits that the report of the Court Commissioner would be necessary in order for the Defendants to file its written statement. Upon receipt of the copy of the L.C. report, the written statement shall be filed within 30 days. The written statement is to be accompanied with an affidavit of admission/denial in accordance with the Delhi High Court (Original Side) Rules, 2018.

7. List before Court on 25th March, 2019. 6. Thus, this was an unusual case where, owing to the facts and circumstances, the Defendant was permitted to file the written statement after the receipt of the Local Commissioners report i.e. within 30 days. Thereafter, another application was moved being I.A. 1685/2019 in which the Local Commissioner had to be replaced in view of the inability expressed by the earlier Local Commissioner. Thus, the Local Commissioner who was again appointed only conducted the Local Commission between 6th - 9th March, 2019 and has since submitted his report. The date of the Local Commissioners Report

is 10th April, 2019. The Defendants clearly had 30 days from the receipt of the Local Commissioners Report to file the written statement. However, they have in fact filed a written statement on 14th March, 2019 initially and thereafter on 30th March, 2019. CS(COMM) 1231/2018 Page 5 of 8 7. Even if a strict construction is adopted and the date of the summons is considered to be 16th November, 2018, the first written statement filed on 14th March, 2019 is within time. The Court has verified from the records that the admission/denial affidavit was also filed on 14th March, 2019 and the vakalatnama was accompanying the caveat. On verification of the record, it becomes clear that on 14th March 2019, there were two indices filed. One index was for the written statement running into 1-58 pages. The second index was `Admission/Denial of the Plaintiffs documents by way of affidavit, on behalf of Defendant no.1. On the first index, which bears a stamp of the Registry dated 14th March 2019, the Registry raises the following objections on 15th March 2019. Obj: -Affidavit not attested -Affidavit of adm/denial not filed - Proof of service required Sd/ 15/3/2019 On the second index running into 3 pages, which bears a stamp of the Registry dated 14th March 2019, the following objections are raised by the Registry on 15th March 2019. Obj: - Proof of service required - Affidavit not attested Sd/15/3/2019 The Plaintiff has based its application under the assumption that there was only one index consisting of the written statement running into 58 pages. However, from the record it is borne out that the affidavit of admission/denial was filed - though with some technical deficiencies. CS(COMM) 1231/2018 Page 6 of 8 8. Even going by the Original Side Rules, the time for removing of objections under Chapter IV Rule 3 is 30 days in aggregate which would run in the present case from 14th March, 2019. The said rule is set out below the pleading/document the Deputy Registrar If on 3. Defective pleading/document-(a) found scrutiny, is / Assistant defective, Registrar, Incharge of the Filing Counter, shall specify the objections, a copy of which will be kept for the Court Record, and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate. (b) If the pleading/document is not taken back for amendment within the time allowed under sub- rule (a), it shall be registered and listed before the Court for its dismissal for non-prosecution. (c) If the pleading/document is filed beyond the time the pleading/document must be accompanied with an application for condonation of delay in re-filing of the said

pleading/document. (d) Any party aggrieved by any order made by the Registrar under this Rule may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers. sub-rule allowed under (a) 9. In the above background, the written statement viewed from any angle has been filed in time. The objection that it was not accompanied by the affidavit of admission/denial is not correct. The vakalatnama was also on record. There is no doubt that as per the judgment of the Supreme Court in SCG Contracts (supra), the time for filing the written statement is mandatory. However, in the present case, which involved a construction contract, the Plaintiff itself wanted measurements to be carried out and the CS(COMM) 1231/2018 Page 7 of 8 Defendant, in order to deal with the averments made in the Plaint, wanted to peruse the actual measurements and the Local commissioners report. Accordingly, the Court had considered it appropriate to grant the Defendant time to file its written statement within 30 days after the receipt of the Local Commissioners Report. Thus, the time for filing the written statement commences as per the order of the Court - only from the date when the Local Commissioners Report was served on the Defendants.

10. The Supreme Court, in Robin Thapa vs. Rohit Dora [Civil Appeal No.4507/2019 decided on 8th July, 2019]. has clearly observed that the intention in any Court adjudication has to be that the adjudication should be done on merits and not on defaults of parties. The observation of the Supreme Court is set out below: - litigation Ordinarily, a 8. is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits. In the above background, the application under Order VIII Rule 10 is rejected with costs of Rs. 50,000/- to be paid to the DHCBA Library Fund within a period of two weeks. CS(COMM) 1231/2018 & I.A. 4080/2019 11. List on 19th August, 2019. PRATHIBA M. SINGH JUDGE JULY09 2019/Rahul/dj CS(COMM) 1231/2018 Page 8 of 8