

**R.K. Builders Vs. Delhi Development Authority and anr.**

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**Court :** Delhi

**Decided On :** May-28-2003

**Reported in :** 2003IVAD(Delhi)557; III(2003)BC231; 105(2003)DLT199; 2003(69)DRJ694

**Judge :** J.D. Kapoor, J.

**Acts :** Indian Partnership Act - Sections 69; Delhi Development Act - Sections 53B

**Appeal No. :** Suit No. 588/1994

**Appellant :** R.K. Builders

**Respondent :** Delhi Development Authority and anr.

**Advocate for Def. :** Anusuya Salwan, Adv.

**Advocate for Pet/Ap. :** J.P. Gupta and; Sohan Lal, Adv

**Judgement :**

**J.D. Kapoor, J.**

1. This is a suit for recovery of Rs. 5,05,000/- exclusive of interest on account of withholding of the amount by the defendant-DDA against item No. 6 of the agreement by which plaintiff was awarded the work of development of land for Co-operative Group Housing Society, Saraswati Vihar. Item no. 6 was towards cost of

centring and shuttering @ Rs. 22.65 plus 78% above per sq. meter. Item 5 of the agreement specifically provided that cost of centring and shuttering and finishing would be exclusive of P/F at or near ground level cast cement concrete kerbs, edgings, etc setting in position with cement mortar 1:2 (one cement : 2 C.sand).

2. The grievance of the plaintiff is that in spite of having cleared the cost that worked out to Rs. 2,17,803.71, the DDA specifically withheld the said amount arbitrarily. On the other hand, defendant-DDA took the stand that as per Clause 15 of the Agreement all works under or in course of execution or executed in pursuance of the contract shall at all times be open to the inspection and supervision of Engineer-in-Charge and his authorised subordinates and the C.V.C or by the Chief Engineer (Quality Control). The work was inspected by the Quality control as well as the Superintending Engineer and it was decided to recover the amount for the item of centring and shuttering as it was found utterly wanting in quality.

3. Amongst other objections that the suit has not been properly valued and not having been filed by a duly authorised person etc, the defendant-DDA also took the objection that suit is liable to be dismissed for want of notice under Section 53B of the Delhi Development Act.

4. Vide order dated 14.3.1996, following issues were framed:-

1. Whether the plaintiff is a partnership firm duly registered under the provisions of the Indian Partnership Act? If not, what the effect?

2. Whether the plaintiff proves that the plaintiff is entitled to all/any of the amount out of the amount of cost of centring & shuttering, earth work i.e. substituted item, details of the amount for part payment made, additional market rate for the work executed over and above tendered quantity & for increase in cost of material wages of labour, etc. as averred in para 30 of the plaint.

3. Whether the suit suffers for want of statutory notice under Section 53-B of the Delhi Development Act?

4. Whether the property valued for the purpose of court fees and jurisdiction?

5. Whether the plaintiff proves that the defendant is liable to pay Rs. 500/- per day on account of non-release of bank guarantee, as alleged?

6. Whether the plaintiff is entitled to interest. If yes, on what amount from which date and what rate?

7. What relief, if any, the plaintiff is entitled to?

8. In what order?

5. Plaintiff examined two witnesses in support of its claim including the Executive Engineer of defendant-DDA and as such DDA did not deem it necessary to produce any witness.

6. After hearing learned counsel for the parties and also scanning the evidence produced by the plaintiff, following conclusions emerge:-

Issue No. 1

7. Plaintiff has successfully proved that the person who has signed and duly verified the plaint is one of the partners of plaintiff firm. Exhibits P.W.2/A and 2/B are the original certificate of registration as well as as Form A by virtue of which name of the plaintiff firm was registered as partnership firm and therefore Section 69 of the Indian Partnership Act providing that on behalf of the partnership firm, only a partner can institute the suit cannot come to the rescue of the defendant and, thus, issue is decided in favor of the plaintiff.

Issue No. 3

8. P.W.1 Shri H.S. Dharam Sattu, Executive Engineer of defendant-DDA has admitted service of notice under Section 53B of the Delhi Development Act. Over and above, the plaintiff has also proved service by way of documents i.e. original UPC and Regd. A.D. covers. The issue is, therefore, decided in favor of the plaintiff.

Issue No. 4

9. This issue is not pressed by the defendant and is decided in favor of the plaintiff.

Issue Nos. 2 and 5

10. Both these issues are interlinked and are taken up together.

11. The entire case revolves around the testimony of P.W.1 Sh. H.S. Dharam Sattu, Executive Engineer, DDA. He produced the original final bill Exhibit PW 1/1. His testimony in brief is that the amount of Rs. 2,17,803/- forming part of final bill Exhibit PW 1/1 relates to item no. 6 and the bill suggests in actuality a sum of Rs. 1,22,361.19 plus 78% which is towards contractor's enhancement as per the agreement. He admitted that the payment regarding this item was included and passed through in 3rd running bill of the plaintiff but in the fourth bill a sum of Rs. 2,08,000/- was recovered from the plaintiff on account of quality control observations. He also admitted that no notice was given to plaintiff to show cause before deduction of the aforesaid amount.

12. In terms of clause 15, the payments made in the running bills were provisional and not final and final payment was made after the completion of the work, determination of the rates and quality control inspection. Unfortunately the witness could not produce the report as to the defects in the work as he had joined after the completion of the work. However the said witness deposed that deductions were as per CPWD specifications and CPWD form 1 and form 2 specifications can overrule the agreement. Though the plaintiff had claimed refund of deductions in Voids but during the arguments learned counsel for the plaintiff did not insist and gave up this claim and confined its claim with regard to centering and shuttering.

13. Merely because the witness who was summoned could not produce the record as to the inspection report does not mean that this amount was withheld unauthorisedly and for no reasons. The very fact that the said payment was made up to 3rd running bill of the plaintiff and it was withheld by way of recovery from the 4th bill on account of quality control observations itself shows that the work was not up to the standard or quality. Clause 15 of the agreement authorised the DDA to withhold or recover the payment. Clause 15 needs to be reproduced in this

regard and is as under:-

'all works under or in course of execution or executed in pursuance of the contract shall at all times be open to the inspection and supervision of Engineer-in-Charge and his authorised subordinates and the C.V.C or by the Chief Engineer (Quality Control). The work was inspected by the Quality control as well as the Superintending Engineer and it was decided to recover the amount for the item of centring and shuttering.'

13. However, for the negligence or remissness on the part of defendant-DDA by not producing the report as the same was not available in the record though it was specifically brought to the notice of the plaintiff that this payment has been withheld or is likely to be recovered on account of quality control because he had joined the department after completion of work does not mean that the retention of amount was unauthorised. Plaintiff is only entitled to an amount of Rs. 2,17,803.71 on account of cost of centring and shuttering without any interest as it is not a case where the plaintiff did not know the reasons for withholding of the said amount. Non availability of the record with the DDA cannot be used as a premium for the plaintiff particularly in view of factual stand that in the 3rd running bill the amount was cleared but in the 4th bill when the inspection was done by the Superintending Engineer and quality was found not up to the standard, immediate step of withholding the amount and recovering the same from the plaintiff was taken and intimated to the plaintiff. Such an action by no stretch of imagination can be termed as second thought or arbitrary.

14. In the result, suit is decreed for Rs. 2,17,803.71 only with 10% interest from the date of decree till realisation if the payment is not made within eight weeks. Decree sheet be drawn up accordingly.

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