

Delhi Development Authority Vs. M/S. N.R.B.Associates and Ors.

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Court : Delhi

Decided On : Dec-17-2014

Judge : S. P. Garg

Appellant : Delhi Development Authority

Respondent : M/S. N.R.B.Associates and Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

24. h NOVEMBER, 2014 DECIDED ON :

17. h DECEMBER, 2014 + CS (OS) 1672/2007 DELHI DEVELOPMENT AUTHORITY Through : Plaintiff Mr.Aakash Yadav, Advocate for Ms.Beenashaw N.Soni, Advocate. VERSUS M/S. N.R.B.ASSOCIATES AND ORS. Through : Defendants None. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The plaintiff - Delhi Development Authority has instituted the instant suit for recovery of ` 32,62,401.90/- along with interest @ 18% per annum from the date of institution of the suit.

2. As per the averments in the plaint, tenders were invited for development of 1769.88 hectares of land and construction of peripheral storm water drain in Sector 1 & 2, Pappankalan (Dwarka). The aforesaid work was awarded to the

defendants vide letter dated 28.09.1996 at an estimated cost of ` 1,45,28,550/- and tendered amount of ` 1,46,60,760/-. The date of commencement of work was stipulated as 08.10.1996 and that of completion as 07.10.1997. An agreement was executed between the plaintiff and defendant No.1 on 15.10.1996. Letters dated 28.09.1996 and 16.09.1996 were to form part of the said agreement. It is alleged that there was inordinate delay in the performance of the work awarded to the defendants. Vide a note dated 13.06.1997, the concerned Executive Engineer submitted a proposal for termination of the contract and to award the remaining work to some other contractor at the risk and cost of the defendants. Decision was taken on 27.06.1997 to rescind the contract. However, the defendants requested by their letter dated 03.07.1997 to proceed with the work with utmost diligence. They promised to finish the undone job at the earliest to the satisfaction of the plaintiff. However, nothing material happened and by July, 1998, the defendants could complete only 44% of the work. Again, the plaintiff was constrained to issue letter dated 05.08.1998 whereby the contract was rescinded. On getting representations from the defendants and their promise to complete the entire work in time, the matter was reconsidered and it was decided to revoke the rescission and to allow the defendants to carry on with the work including construction of RCC Box Drain portion at the old agreement rates. The date of start and stipulated date of completion were fixed as 07.06.2001 and 06.06.2002 respectively. By December, 2002, the defendants could complete only 73% of the work. On 12.07.2002, the defendants expressed their inability to execute the RCC Box Drainwork at old rates in violation of the terms and conditions of the agreement. Finally, in a meeting held on 26.12.2002 it was decided to rescind the contract and get the work done at their risk and cost. The plaintiffs demanded compensation to the tune of ` 14,52,856/- in terms of clause 2 of the agreement from the defendants which they failed to pay.

3. Further case of the plaintiff is that fresh tenders were called to complete the remaining work. With the approval of the Work Advisory Board, the award was given to M/s. Sushil Kumar and Company vide letter dated 08.10.2003 and an agreement was entered with him. It is further stated that having finalized the 23rd and final bill for the aforesaid work which was got executed from the new agency, the defendants were called upon to deposit outstanding amount of ` 28,02,942.90/-

being provisional amount within ten days. The final payment which the defendants were liable to pay was to the tune of ` 32,62,401.90/- which was defendants failed to pay despite reminders. Hence, the present suit.

4. The defendants could not be served despite issuance of various process. Finally, they were served by way of publication. By an order dated 05.08.2013, the defendants were proceeded ex-parte. It appears that subsequently appearance was put on behalf of the defendant No.2 as reflected in the order-sheet dated 21.10.2013. None appeared thereafter. The plaintiff examined PW-1 (Laxmi Narain) in its ex-parte evidence.

5. I have heard the learned counsel for the plaintiff and have examined the file. PW-1 (Laxmi Narain) has filed affidavit of evidence in examination-in-chief (Ex.PW-1/A) and has proved the averments of the plaint without any deviation. The plaintiff has also relied upon the documents (Ex.PW-1/1 to Ex.PW-1/35). Ex.PW-1/1 is the tender invitation dated 27.06.1996; Ex.PW-1/3 is the award letter dated 28.09.1996. Agreement executed between the parties dated 15.10.1996 is Ex.PW-1/4. Letters (Ex.PW-1/6 and Ex.PW-1/7) dated 28.09.1996 and 16.09.1996 were to form part of the agreement. PW-1 (Laxmi Narain) stated on oath that despite persuasions, repeated requests and issuance of notice by DDA, the progress of work was very slow and far behind the time schedule chalked out in the agreement. He further deposed that decision was taken to rescind the contract on 27.06.1997. The defendants, however, requested the plaintiff vide letters dated 03.07.1997 to proceed with the work with utmost diligence. PW-1 (Laxmi Narain) further proved on record various correspondences exchanged between the parties detailed in para (7) of the affidavit collectively exhibited as Ex.PW-1/8. The reaward letter dated 07.06.2001 is Ex.PW-1/13. When the defendants failed to complete the work in time, they were asked to pay a compensation of ` 14,52,856/- . The various correspondences are Ex.PW-1/15 to Ex.PW1/19. PW-1 (Laxmi Narain) further deposed that the plaintiff had no option but to call for the tender for the balance work. An agreement was executed with M/s. Sushil Kumar and Company at a cost of ` 96,09,719/-. The various bills raised by them are Ex.PW-1/20 to Ex.PW-1/23. The letter dated 12.03.2013 (Ex.PW-1/24) was issued for levy of compensation. He further deposed that after finalizing the 23rd and final bill, the

defendants were called upon to deposit the outstanding amount ` 28,02,942.90/-. The final liability of the defendants is ` 32,62,401.90/which amount was paid by the defendants to M/s. Sushil Kumar and Company for the said work got executed from him at the risk and cost of the defendants.

6. Statement of PW-1 (Laxmi Narain) has remained unchallenged and unrebutted. Adverse inference is to be drawn against the defendants for not appearing and contesting the suit.

7. From the uncontroverted testimony of PW-1 (Laxmi Narain), it stands established that despite various opportunities given to the defendants, they did not perform the terms and conditions of the contract. The work awarded to the defendants was to be completed within a period of twelve months. However, for no fault attributed to the plaintiff, the defendants could not complete the project in time. Finally, the defendants left the job and the work awarded to him remained unfinished. The plaintiff company had to engage another agency M/s.Sushil Kumar and Company to execute the remaining work and had to incur expenses to the tune of ` 32,62,401.90/-. The defendants have not given any plausible explanation for inordinate delay in the completion of the project. The damages claimed by the plaintiff are actual expenses incurred in getting the unfinished work done from another agency. The defendants are liable for that on Cost of Cure basis. These expenses were well in the contemplation of the parties and cannot be termed remote damages. Apparently, the defendants are liable to pay the amount incurred by the plaintiff in getting the work completed from other agency.

8. In the light of above discussion, the suit filed by the plaintiff is decreed in the sum of ` 32,62,401.90/- with costs. The plaintiff shall also be entitled to interest @ 10% per annum from the date of filing of the suit till the recovery of the decretal amount.

9. Decree-sheet be prepared accordingly.

10. The suit stands disposed of in the above terms.

11. Pending IA (if any) also stands disposed of. (S.P.GARG) JUDGE
DECEMBER17 2014 / tr

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