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IN THE HIGH COURT OF DELHI AT NEW DELHI**BEFORE****HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

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RFA 482/2015 and CM APPL. 30004/2015

Between: -

CENTRAL WAREHOUSING CORPORATION
THROUGH ITS MANAGING DIRECTOR
4/1, SIRI FORT INSTITUTIONAL AREA
AUGUST KRANTI MARG, NEW DELHI

...APPELLANT

(Through: Mr. K. K. Tyagi and Mr. Iftekhhar Ahmed, Advocates.)

AND

BRIG. R.P.S. SHERGIL (RETD.), SHAURYA CHAKRA
S/O LATE WING CDR. BASANT SINGH
R/O B-3/8, VASANT VIHAR
NEW DELHI

.....RESPONDENT

*(Through: Mr. G. S. Chaturvedi and Mr. Ashok Kumar Choudhary,
Advocates.)*

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Reserved on: 21.11.2024

Pronounced on: 24.12.2024

J U D G M E N T

The instant appeal under Section 96 of the Code of Civil Procedure, 1908 ("CPC") seeks to assail the judgment and decree dated 18.04.2015



passed by the Additional District Judge, Saket Court, New Delhi, whereby, the suit for recovery of the amount has been decreed against the appellant-defendant.

2. The brief factual matrix of the case would indicate that the appellant-defendant is a statutory corporation established under the Warehousing Corporations Act, 1962 having its registered office at New Delhi. The appellant-defendant has been operating in the field of general warehousing as well as the custom-bonded business besides operating inland depots and container freight stations.

3. The appellant-defendant approached the Directorate General of Resettlement (“DGR”) *vide* letter dated 29.07.2006 requesting to sponsor names of the security agencies registered with them to be deployed at CFS-D’Node. The DGR *vide* letter dated 24.08.2006 agreed to sponsor three agencies and the respondent-plaintiff was one of them. Thereafter, *vide* letter dated 26.09.2006 respondent-plaintiff expressed its interest in providing security arrangement.

4. Subsequently, on 31.10.2006, the respondent-plaintiff was awarded the contract to provide security services at CFS, Dronagiri, Navi Mumbai. Consequently, on 21.12.2006, an agreement was entered between the appellant-defendant and respondent-plaintiff, whereby, the appellant-defendant was awarded a contract to provide security services at CFS, Dronagiri, Navi Mumbai on an *ad-hoc* basis for an initial period of three months w.e.f. 01.11.2006 to 31.01.2007.



5. Thereafter, the appellant-defendant while processing the bills of the respondent-plaintiff started deducting a certain amount on the grounds of violation of terms and conditions of deployment of ex-servicemen. Subsequently, on 14.08.2008, the respondent-plaintiff sent a notice indicating their intention to terminate the contract. However, *vide* letter dated 10.09.2008, the respondent-plaintiff was requested to continue the contract for another year. During the said extension period as well, the appellant-defendant deducted the amounts from the bill. *Vide* letter dated 23.06.2009, the contract was terminated. In the interregnum, the respondent-plaintiff wrote several letters to the appellant-defendant for a refund of the deducted amount.

6. Consequently, on 03.05.2011, the respondent-plaintiff sent a legal notice to the appellant-defendant to release the payment of the withheld amount alongwith interest @ 15% per annum. The appellant-defendant in its reply dated 19.07.2011 stated that the matter of release of payment was under consideration. Thereafter, on 12.09.2011, the appellant-defendant released the payment of Rs 22,78,481/- to the respondent-plaintiff.

7. Thereafter, on 07.12.2011, the respondent-plaintiff sent another legal notice to the appellant-defendant with regards to the interest of the withheld amount and since no reply was given, therefore, on 24.03.2012 the respondent-plaintiff filed a suit for recovery of Rs 17,92,110/- alongwith 12% interest per annum.

8. *Vide* judgment and decree dated 18.04.2015, the suit of the respondent-plaintiff was decreed. Aggrieved by the same, the appellant-defendant has preferred the instant appeal.



9. Mr. K.K. Tyagi, learned counsel appearing for the appellant-defendant *firstly* argues that the respondent-plaintiff's suit was barred by the limitation as it claimed interest from September 2007, however, the suit was filed on 30.03.2012. *Secondly*, according to him, the terms and conditions mentioned in the award are part and parcel of the contract and the respondent-plaintiff is bound to adhere to the terms and conditions stipulated therein. He further submits that as per the terms and conditions of the contract, the respondent-plaintiff ought to employ only 100% servicemen in the agency and since the respondent-plaintiff admittedly was not able to fulfil the terms and conditions of the award, therefore, the suit ought to have been dismissed. The third prong of the appellant-defendant's submission rests on the premise that since the appellant-defendant had already released the withheld amount, therefore, the interest on the interest amount is not permissible as per Section 3 of the Interest Act, 1978.

10. He further submitted that the appellant-defendant had not deducted the amount rather had only withheld the amount with the hope that the respondent-plaintiff would fulfil the obligations in due course. He argued that the entire withheld amount was released in favour of the respondent-plaintiff, therefore, it is not entitled to any interest.

11. *Per contra*, Mr. G. S. Chaturvedi, learned counsel appearing for the respondent-plaintiff vehemently opposes the aforesaid submissions. He submits that the impugned order does not suffer from any infirmities. He further argues that the respondent-plaintiff has complied with all the terms and conditions of the contract. He submits that it is the appellant-defendant which has violated the terms of the contract because as per the terms of the



contract, it cannot withhold or deduct the amount. On the basis of the said submission, he argues that if the appellant-defendant was not satisfied with the services rendered by the respondent-plaintiff, they could have terminated the contract but the appellant-defendant chose not to do so rather extended the same. On the force of the aforementioned submissions, he argues that the impugned judgment and decree does not suffer from any infirmities and appeal deserves to be rejected.

12. I have heard the learned counsel appearing for the parties and perused the record.

13. Before embarking on the merits of the case, it is apropos to lend credence to the observations of this Court in the case of **Seema Bansal v. Durga Dass Bansal**¹, which has considered the scope of the regular first appeal and held that under the first appeal, the Appellate Court may reexamine the witness and can also call for records of the case. The relevant paragraphs of the said decision read as under:-

“33. Before advertng to the merits of the case at hand, the Court deems it significant to refer to the case of Malluru Mallappa v. Kuruvathappa to get a flavour of law relating to the scope of a first appeal under Section 96 of the CPC. In the said case, the Supreme Court noted that the expression “appeal” has not been defined in CPC. Black’s Law Dictionary (7th Edn.) defines an appeal as “a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority”. Perhaps, it is a judicial examination of the decision by a higher court of the decision of a subordinate court to rectify any possible error in the order under appeal.

¹2024 SCC OnLine Del 5440.



34. Further, reliance is placed on the decision in the case of Hari Shankar v. Rao Girdhari Lal Chowdhury, wherein, it was observed that a first appeal carries with itself a right of rehearing on law as well as on facts. Thus, it is a settled position of law that an appeal is a continuation of the proceedings of the original court and thus, the first appellate court is required to address itself on all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all the issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions. [See: Santosh Hazari v. Purushottam Tiwari, Madhukar v. Sangram, B.M. Narayana Gowda v. Shanthamma, H.K.N. Swami v. Irshad Basith and Sri. Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar]

35. Accordingly, most of the things which may be undertaken by the Trial Court may also be undertaken in the Regular First Appeal, including but not limited to determining a case, remanding a case, framing issues and referring them to trial, to take on record or to direct to take on record additional evidence. In light of the scope of a first appeal, as delineated in Section 96 and Section 107 of the CPC, this Court deems it fit to determine the case.”

14. Therefore, it is a settled exposition of law that an appeal is deemed to be a continuation of the original proceeding and in the first appeal, all possible avenues of re-examination of the case are available to the Appellate Court including, but not limited to, determining a case, remanding a case, framing issues and referring them to trial, to take on record or to direct to take on record additional evidence. The scope of a first appeal under Section 96 CPC is in stark contrast with the scope of a second appeal envisaged under Section 100 CPC. Whereas, the former permits a comprehensive re-examination of the issues arising in the case, both factual and legal; the latter is restricted to the examination of substantial questions of law only.



15. After taking a brief detour of the Appellate Court's scope in relation to the challenge presented against the impugned order, this Court will now undertake a thorough review of the impugned judgment.

16. The facts of the case as expounded above clearly indicate that the appellant-defendant started deducting certain amounts from the bills raised by the respondent—plaintiff. The purported reason for the deduction or withholding of the said amount was premised on the ground that since the respondent—plaintiff has not fulfilled the terms or conditions of the contract, therefore, the appellant-defendant is entitled to the said amount. One of the terms and conditions of the contract which allegedly got breached as per the appellant-defendant was the mandatory deployment of 90% ex-servicemen.

17. It is also not disputed that the respondent-plaintiff itself requested for the termination of the contract as the appellant-defendant started arbitrarily deducting the amount from the bills raised by the respondent-plaintiff. Furthermore, it is also not disputed that the respondent-plaintiff wrote several letters to the appellant-defendant requesting a refund of the deducted amount.

18. Thereafter, on 03.05.2011, the respondent-plaintiff sent the legal notice to release the payment of the withheld amount along with interest @ 15% per annum. The appellant-defendant replied to the said legal notice *vide* letter dated 19.07.2011 stating that the matter of the release of payment was under consideration. However, after the delay of four years from the deduction of the aforesaid amount and two years from the termination of the



contract, the appellant-defendant ultimately released the withheld amount i.e., Rs. 22,78,418 i.e. the principal amount. Since the appellant-defendant failed to release the interest amount accrued on the withheld amount, the respondent-plaintiff filed the present suit for recovery of the said amount.

19. On 19.01.2013 the Trial Court framed the following issues for consideration:-

- "i. Whether the suit is barred by prescribed period of limitation? OPD*
- ii. Whether the suit is without cause of action exclusively for claim of interest, after release of withheld amount to the plaintiff and for want of following the guidelines of DGR, terms and conditions of contract/letter dated 31.10.2006? OPD*
- iii. Whether the suit is liable to be dismissed for want of fulfillment of contractual obligation of providing security personnel 90% from Ex-Servicemen category and sufficient deployment of total staff? OPD*
- iv. Whether the plaintiff is entitled for decree of Rs. 17,92,110/- against the defendant? OPP*
- V. Whether the plaintiff is entitled for pendente lite and future Interest @ 12% per annum on the amount mentioned in issue No. 4? OPP*
- vi. Relief"*

20. The appellant-defendant in the Trial Court as well, raised a similar argument on the question of the limitation which sought to be canvassed herein and while dealing with the issue of limitation, the Trial Court rightly came to the conclusion that the suit is not barred by the limitation as the cause of action arises when the defendant released the withheld amount but failed to release the interest accrued on the withheld amount i.e., on 12.09.2011. Thus, by applying Article 25 of the Limitation Act, 1963, the Trial Court rightly came to the conclusion that the period of three years shall be calculated from the date of payment of the principal amount i.e. on 12.09.2011.



21. It is pertinent to note that the case of the appellant-defendant before the Trial Court as well, was that the rationale for withholding the amount was non-fulfilment of the mandatory pre-condition of the deployment of the 90% ex-service men. The appellant-defendant examined Manager (General) Sh. Rishi Pal as DW1 who stated that as per the contract, any shortfall in the deployment of ex-servicemen shall attract a penalty as deemed fit by the Regional Manager, CWC, RQ, Navi Mumbai. It is further deposed by DW-1 that part-payment of the total amount as payable by the appellant-defendant to the respondent-plaintiff was withheld due to deficiency of providing the ex-servicemen. The payment was not denied but was only withheld due to failure in the performance of the respondent-plaintiff and was released at a later stage, with the hope that the respondent-plaintiff would improve its performance.

22. The Trial Court while dealing with the said contention in paragraph nos. 18 to 21 came to the following conclusion:-

“18. In his cross examination DW-1 has admitted that there was no term and condition in agreement Ex.PW1/C for deduction of any kind. It is further admitted that there is no mentioning of penalty in the term and conditions, however, the same was in the guidelines of DGR booklet which was earlier exhibited as Ex.PWI/B. The witness has sought permission to go through the file and after going through the file with the help of his counsel the witness stated nothing about the said term and condition existing in DGR booklet Ex.PWI/B. It was further admitted in cross examination that the defendant has allowed the non ex-servicemen to be provided as security guard by the plaintiff agency due to security reasons. It is further admitted in cross examination that the plaintiff had given notice for discontinuing the services with them but despite the said notice they did not relieve the plaintiff for security reasons and because of non availability of security guard in DGR they continued with the plaintiff. It is further admitted that they had not taken a consent of the plaintiff for deduction done by them. It is further admitted that DGR has itself written to the defendant to release the payment of the plaintiff in the



year 2009 itself. DW-1 has neither admitted nor denied the suggestion that the defendant at their site was not providing any residential or other services to the security personnels deputed, so the. ex-servicemen were not interested to work as security guard at their site.

19. The plaintiff on the other hand in his affidavit Ex.PW1/1 has deposed that prior to any notice to plaintiff, the defendant has started deducting the arbitrary amount from the genuine bills of the plaintiff whereas the plaintiff has already made the payments to his security personnels for the service rendered to the defendant. He further deposed that the guidelines of DGR did not permit any deduction from the bills of the security agency as has been done by the defendant illegally: the deduction so made was arbitrary and illegal. It is further deposed that In case the defendant was not satisfied with the service they could terminate the services of plaintiff but despite notice of termination given by the plaintiff to the defendant they have not relieved the plaintiff from the services of defendant and also continued illegal deduction from the monthly bills of the salary of the security personnels deployed by the plaintiff at the site of defendant. It is further deposed that the DGR has written various letters to the defendant to release the withheld amount to the defendant. The said letters are dated 18.02.2009 Ex.PW1/I-1, dated 10.12.2009 Ex.PW1/I-2. dated 12.05.2009 Ex.PW1/I-3 and dated 26.05.2009 Ex.PW1/I-4.

20. PW-1 has further relied upon the letter Ex.PWi/K which is written by Regional Manager of the defendant to the Director (Personnel) directing them to release the withheld payment of plaintiff. It is written in the said letter that the Joint Director DGR, New Delhi vide letter dated 18.02.2009 and 12.05.2009 has advised this office (D), to release the withheld amount of security agency under the intimation of DGR.

21. In view of the above discussion of the evidence of the defendant as well as plaintiff, it has become apparent that the plaintiff has led sufficient evidence to establish that he has cause of action to institute the present suit to claim interest on the delayed release of the withheld amount to the plaintiff. The defendant has failed to lead sufficient evidence in order to discharge the onus of issue no.2 and 3. Defendant has failed to prove that there was any mandatory contractual obligation of providing security personnel constituting 90% from Ex- Servicemen category and further the staff deployed was not sufficient. Hence, issue no.2 and 3 are decided in favour of plaintiff and against the defendant."

23. A bare perusal of the Trial Court's rationale would indicate that the Trial Court correctly relied on the extant DGR guidelines that it never



permitted the deduction of any amount from the bills and the same was done in an arbitrary manner. Furthermore, the facts would also indicate that the DGR itself wrote a letter to the appellant-defendant to release the said amount in 2009. However, the appellant-defendant released the principal amount in 2011.

24. Furthermore, the rationale of the Trial Court also merits consideration because the sole reason as provided by the appellant-defendant for deducting the principal amount from the bills was the non-deployment of the 90% ex-servicemen by the respondent-plaintiff. On that fundamental count, the appellant-defendant claims its right to terminate the contract however, the appellant-defendant chose not to do so and kept availing the services of the respondent-plaintiff. Furthermore, it is also not the case of the appellant-defendant that the respondent-plaintiff raised any false bills or hiked bills for the deployment of the services. Moreover, the respondent-plaintiff also prescribed the reason for the non-deployment of the ex-servicemen like poor service conditions, non-availability of accommodation, shortage of water, poor connectivity and better opportunities available to the ex-servicemen in the MNC, banks and other organisations. Thus, the Trial Court while deciding the issue nos. 2 and 3 i.e., the question of interest correctly came to the conclusion that as per the extant regulations, the appellant-defendant is not permitted to withhold the amount.

25. Furthermore, the argument of the appellant-defendant that since the principal amount is released, therefore, the respondent-plaintiff cannot file a suit for interest and thereafter cannot claim interest on interest also falls flat due to the foregoing reasons. First of all, as on the date of filing of the suit,



the amount due was not the principal amount rather it was the interest amount which the appellant/defendant ought to have released in favour of the respondent-plaintiff as per the terms of the contract itself. As per Section 2(c) of the Interest Act, 1978 the “debt” means by liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt. Thus, by virtue of the same, it’s the interest amount which the appellant-defendant ought to have released in favor of the respondent-plaintiff, therefore, it becomes the due amount as on the date of filing of the suit and thus, it’s not the claim on interest on interest rather it is the due amount.

26. Thus, the Trial Court correctly relied on the decision of ***State of Rajasthan v. Raghubir Singh***², to come to the conclusion that since the amount becomes ‘sum certain’ which is due, thus, it becomes payable. At this juncture, it is appropriate to lend credence to the observations of the Madras High Court judgment cited as ***Lakshmi Automatic Loom Works Limited v. Vibromech Engineers***³, wherein, the categorical question of whether the suit for interest is maintainable if the debtor paid the principal amount was canvassed. The Court while rejecting the similar argument that has been raised in the present case held as under:-

“16. Nowhere in the Sale of Goods Act or in the Indian Contracts Act it has been stated that in the absence of a contract for payment of interest the supplier of goods is not entitled to claim interest for delayed payment by virtue of a trade custom or that he cannot maintain a claim by filing a suit for recovery of interest alone, if the principal amount has been paid. Strictly speaking, when the debtor makes payment to the creditor entitled to claim interest, such creditor shall have the option of applying it

² (1979) 3 SCC 102.

³ 2014 SCC OnLine Mad 12327.



towards interest at the first instance and then the balance towards the principal. However, when the debtor makes the payment with a specific instruction that it should be appropriated towards the principal, it shall be open to the creditor either to appropriate it towards the principal or to refuse to accept such payment. In case he accepts to receive it for appropriation towards principal, the same cannot be considered to be a waiver of his claim towards interest. At the best, subsequent to the discharge of the liability towards the principal, the debtor shall not be liable to pay interest. However, his liability towards the interest accrued till the payment of the principal debt shall continue even after the payment of the principal amount of debt. Any other interpretation will give an upper hand and premium to unscrupulous debtors to make payment of amount equal to principal amount alone with a request to appropriate it towards the principal and thereafter disown the liability to pay even the accrued interest. The equity and fair play of justice also will not support the theory which is sought to be propounded on the side of the respondent herein/defendant.

17. For the above said reasons, this court comes to the conclusion that the contention of the learned counsel for the respondent/defendant, that the payment of the principal amount without making payment of interest would totally absolve the debtor from his liability to pay interest and that a suit filed for recovery of interest alone is not maintainable, has got to be discountenanced as untenable.

On the other hand, the contention of the appellant/plaintiff that the liability of the defendant/debtor to pay interest upto the date of payment of the principal amount shall continue even thereafter and that a suit filed for recovery of such interest shall be very much maintainable has got to be countenanced.”

27. Moreover, it is also crystal clear from the preceding paragraphs that the appellant-defendant arbitrarily deducted the amount and withheld the same without any sanction in the agreement therein. Thus, since the appellant-defendant arbitrarily withheld the amount and released the same after the delay of four years, therefore, the appellant-defendant is entitled to the interest amount. Since, prior to the date of filing the suit, the appellant-defendant had not paid any amount towards the interest due on the withheld amount, thus as on the date of filing of the suit, it's the interest amount that



becomes due and therefore, the respondent-plaintiff are not claiming the interest on interest rather claiming the due amount by virtue of contract.

28. At this juncture, it is appropriate to lend credence to the observations of the Supreme Court in the case of ***Girja Nandini Devi v. Bijendra Narain Choudhury***⁴, wherein, it was held that it is not the duty of the Appellate Court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.

29. It is also pertinent to refer to the decision of the Supreme Court in the case of ***Malluru Mallappa v. Kuruvathappa***⁵, wherein, as well, the Court *inter alia* reiterates the aforementioned principle of law while dealing with the scope of Section 96 CPC.

30. Therefore, considering the entire factual matrix canvassed before this Court, whereby, when the appellant-defendant as per the terms of the contract on the first count is not entitled for the deduction of the amount from the validly raised bills then it cannot be countenanced that the respondent-plaintiff is not entitled to the interest on the arbitrarily kept withheld amount which eventually got released by the appellant-defendant after a considerable delay of four years from the date of deductions.

31. Thus, on the fulcrum of the enunciation of law and discussion exposited above, this Court does not find any merits in the contentions

⁴ AIR (1967) SC 1124.

⁵ (2020) 4 SCC 313.



2024:DHC:10060



raised by the appellant-defendant, consequently, the appeal fails and stands dismissed.

32. All pending applications are disposed of. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 24, 2024
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