



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 27th February, 2024***

Pronounced on: 9th May, 2024

+ **CS(COMM) 199/2017**

SCG CONTRACTS INDIA PVT. LTD.

240, Top Floor, Satya Niketan,

Ring Road, New Delhi 110021

..... Plaintiff

Through: Mr. Rajesh Mahajan, Mr. Ranjeeb
Kamal Bora and Ms. Jyoti Babbar,
Advocates.

versus

1. **K S CHAMANKAR INFRASTRUCTURE PVT. LTD.**

Address 1: A-702/703, 7th Floor, Krishna Galaxy,

Khandwala Compound, Datta Mandir Road,

Near Vakola Bridge, Santa Cruz East, Mumbai-400055

Address 2: 101, 10th Floor, Aditi CHSL

Opp. Versova Tel. Exchange,

Plot No-2, SVP Nagar, MHADA,

Versova, Andheri-West, Mumbai-400053

2. **M/s KS Chamankar Enterprises, Partnership Concern**

Address 1: B-15, Pether Nagar, Kedarmal Road,

Malad (East), Mumbai 400 097 (Maharashtra)

Address 2: A-702/703, 7th Floor, Krishna Galaxy, Khandwala

Compound, Datta Mandir Road, Near Vakola Bridge

Santa Cruz East, Mumbai-400055

Through following Partners:

(a) Krishna Shantaram Chamankar (PAN
No.AABPC8588L)

1001, 10th Floor, ADITI CHSL, Plot No.-2, SVP Nagar,
MHADA, Versova, Andheri (W), Mumbai-400053

(b) Praveena Chamankar

902, Versova, ADITI CHSL, Plot No-2, SVP Nagar,
MHADA,

Versova, Andheri (W), Mumbai-400053



(c) Pranita Prashant Chamankar (PAN
No.ACPPC6753M)
A-901, ADITI, Plot No-2, SVP Nagar, 4 Bunglow,
Andheri (W), Mumbai-400053

Through: Mr. Jayant Kr. Mehta, Senior
Advocate along with Ms. Neha
Sharma and Mr. Ish Jain, Advocates
for D1 & D2.

3. Government of Maharashtra
Through Resident commissioner, Maharashtra Sadan
Sirmur Plot, Kasturba Gandhi Marg, New Delhi-110001.

Through: Mr. Raghav Sharma and Mr. Jaskirat
Pal Singh, Advocate for D3.

.....Defendants

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A.4990/2019 (under Order VIII Rule 10 CPC has been filed on behalf of the plaintiff for pronouncement of Judgment against the defendants and drawing up a decree and under Order XIII-A Code of Civil Procedure for passing of summary Judgment read with Section 151 CPC)

1. The application under Order VIII Rule 10 read with Order XIII-A of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed by the plaintiff for passing of a Summary Judgment against the defendants in a Suit for Recovery of Rs.6,94,63,114/- along with interest filed by the plaintiff against the defendants.

2. The brief background of the case is that the defendants were served with the summons of the suit on different dates in July, 2017. However, all the defendant Nos. 1 to 3, have failed to file their Written Statement within 120 days of service of summons. The defendant No. 1 filed an application



bearing *I.A. No. 14346/2017 under Order VII Rule 10 and 11 CPC* seeking rejection of the plaint but *it was dismissed vide Order dated 05.12.2017*. However, *vide* the same Order, the defendant No. 1 was granted time till 15.12.2017, for filing the Written Statement, subject to payment of cost.

3. The defendant No. 1 along with the defendant No. 2, who had not been given any time to file the Written Statement, filed a joint Written Statement on 15.12.2017. However, since the Written Statement was filed beyond the period of 120 days, as stipulated under Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10 CPC, the plaintiff preferred an application *bearing I.A. No. 10569/2018 under Order VIII Rule 10 CPC read with Section 16 of the Commercial Courts Act, 2015*, for directions to take off the record the Written Statement filed on behalf of the defendant Nos. 1 and 2 and for pronouncement of the Judgment forthwith. This Court dismissed the application of the plaintiff *vide* Order dated 24.09.2018 and directed the Written Statement of the defendant No. 1, to be taken on record. The plaintiff preferred Special Leave Petition bearing SLP(C) 103/2019, which was allowed *vide* Judgment dated 12.02.2019 and *the Written Statement of defendant No. 1, was directed to be taken off the record*.

4. The plaintiff has submitted that since there is no Written Statement on behalf the defendants and there is no defence, the averments made by the plaintiff, are deemed to be admitted by the defendants. Thus, in terms of Order VIII Rule 10 CPC, the plaintiff is entitled to Judgment. The claims of the plaintiff, are based on documents on the basis of which the Suit of the plaintiff may be decreed.

5. **The application is contested by the defendants**, who in the Reply have submitted that the Supreme Court has refused to interfere with the



rejection of relief (b) by this Hon'ble Court vide the said judgment dated 24.09.2018. It is therefore submitted that the issue of passing of decree under Order VIII Rule 10, CPC, upon striking off of Written Statement is *res judicata* between the parties and cannot be agitated again by way of the present application. Reference has been made to the case of Om Prakash Verma and Others vs. State of Andhra Pradesh and Others (2010) 13 SCC 158, Satyadhyan Ghosal and Others vs. Deorajin Debi (Smt) and Another, 1960 SCC OnLine SC 15 and K.K. Modi vs. K.N. Modi and Others, (1998) 3 SCC 573, in this regard.

6. It is further submitted that this Court *lacks territorial jurisdiction* to entertain the Suit, as is evident from the documents relied upon by the plaintiff, that the exclusive jurisdiction has been conferred on *the Courts in Mumbai*. It is, therefore, submitted that the application is without merits and is liable to be rejected.

7. It is further asserted that even though, the defence of the defendants, is struck off, the plaintiff is still required to prove its case by leading evidence and the defendants are entitled to cross-examine the plaintiff's witnesses to the limited extent. Reliance has been placed on M/s. Paradise Industrial Corpn. vs. M/s. Kiln Plastics Products (1978) 1 SCC 91 and Modula India vs. Kamakshya Singh Deo (1988) 4 SCC 619.

8. Reliance has been placed on the case of Asma Lateef and Another vs. Shabbir Ahmad and Others, 2024 SCC OnLine SC 42, which explains the scope of Order VIII Rule 10, CPC, to assert that the Court has an option to pass a decree but before the option is exercised, it must be seen whether a judgment can be passed in favour of the plaintiff without requiring him to



prove facts set out in the plaint. In case the plaintiff fails to do so, an Order as the Court deems fit may be made.

9. Thus, the application is liable to be rejected.

10. **Defendant No.3/ Government of Maharashtra in its Written Submissions** has asserted that there is no privity of Contract with the defendant and hence, it cannot be subjected to the burden of a contract to which it is not a party. Reference has been made to the case of M.C. Chacko vs. State Bank of Travancore, Trivandrum, (1969) 2 SCC 343 and K.P.M. Builders Private Limited vs. National Highways Authority of India and Another, (2015) 15 SCC 394 in this regard.

11. Reference has been made to the case of Balraj Taneja & Anr v Sunil Madan & Anr 1999 8 SCC 396 and C.N. Ramappa Gowda v. C.C. Chandregowda (2012) 5 SCC 265 wherein it was held that if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgement without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression '*the court may, in its discretion, require any such fact to be proved*' used in sub-rule (2) of Rule 5 of Order 8, or the expression '*may make such order in relation to the suit as it thinks fit*' used in Order 8 Rule 10 CPC.

12. It is further asserted that in C.N. Ramappa Gowda (supra) and Maya Devi v. Lalta Prasad, (2015) 5 SCC 588, it was established that the non-filing of Written Statement is not penal in nature wherein the defendant has to be penalized by decreeing the suit in a mechanical manner by passing a decree.



13. As held in the case of Shantilal Gulabchand Mutha v. Tata Engg. & Locomotive Co. Ltd., (2013) 4 SCC 396, there must be an application of judicial mind when the defendant fails to file a Written Statement. Reliance has also been placed on the case of Meenakshisundaram Textiles v. Valliammal Textiles Ltd., 2011 SCC OnLine Mad 356 to assert that the Court is not bound to pass a decree in case the defendant is absent.

14. Therefore, it is asserted that the suit of the plaintiff cannot be decreed without recording of evidence and the application of the plaintiff is liable to be dismissed.

Submissions heard and the record perused.

15. At the outset it is pertinent to decide whether the prayer sought by the plaintiff is liable to be dismissed as it is barred by the principle of res judicata.

16. A perusal of the record shows that the plaintiff in I.A. 10569/2018 sought the prayers as under:

"a) Direct the written statement filed by defendants 1 and 2 to be taken off the record;

b) Pronounce the judgment against the defendants and order a decree to be drawn up against the defendants;

c) Pass any other and further order that this Hon'ble Court may deem fit and proper in favour of the plaintiff."

17. The Supreme Court while allowing prayer (a) of the plaintiff, has refused to interfere with the rejection of relief (b) by this Hon'ble Court *vide* the said judgment dated 24.09.2018. Subsequently, *vide* Order dated 28.11.2022, this Court, disposed of I.A. 10569/2018 (Application on behalf



of the plaintiff under Order VIII Rule 10 of the CPC) filed by the plaintiff and observed as under:

“4. As far as prayer (b) of the application is concerned, I find that after the judgment of the Supreme Court, the plaintiff has filed another application [LA. No. 4990/2019] for the same relief.

5. Mr. Rajesh Mahajan, learned counsel for the plaintiff, states that he does not wish to press prayer (b) at this stage, with liberty to pursue I.A. No. 4990/2019.”

18. Thus, the prayer (b) was not decided by the Supreme Court and is not barred.

19. Having decided that the relief is not barred, it is pertinent to decide whether the plaintiff is entitled to a judgement at this stage.

20. Order VIII Rule 10, CPC provides for the procedure to be followed when a party fails to file a Written Statement and reads as follows:

“Rule 10. Procedure when party fails to present written statement called for by Court.— Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”

21. In the case of Asma Lateef and Another (Supra) it was observed by the Apex Court that, the verb ‘shall’ in Rule 10 does not make the provision mandatory in nature, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the case, the second alternative to which ‘shall’ equally applies would be rendered otiose. The Court has an option not to pronounce judgment and to make such order in relation to the



suit it considers fit. It was further observed that if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts.

22. **With this position of law, the averments made by the plaintiff in his Suit may be considered.** The plaintiff has claimed Recovery of Rs.6,94,63,114/- along with *pendente lite* and future interest from the defendants. The basic facts are that the plaintiff submitted its Tender for *interior and finishing work of Public Area at New Maharashtra Sadan* situated at Sirmur Plot, Kasturba Gandhi Marg, New Delhi, as was invited by defendant No. 2. The plaintiff was issued Letter of intent dated 08.06.2010, for the works in Public Area. Work Order No. KSCI/DDR/2010 dated 10.09.2010, was awarded for the said work, to be completed within three months from 08.06.2010, when the work was to commence.

23. Likewise, the plaintiff was also awarded the work pertaining to *interior and finishing work for the Rooms and Suites Area at Maharashtra Sadan, Kasturba Gandhi Road, New Delhi vide* Letter dated 08.09.2010, which was also to be completed within three months from 13.09.2010.

24. The plaintiff has submitted that there were several breaches committed by the defendants. They were under an obligation to make the sites, drawings available and also to hand-over the possession of the site to the plaintiff, in which there was inordinate delay leading to the work not being completed within the stipulated time. The plaintiff had already mobilized his resources, which remained idle at site because of the non-availability of the site, drawings decision, supply of material hardware etc. The plaintiff has claimed that there were various *hindrances* caused which



prevented him from completing his work in time and it got completed after 36 months.

25. The reasons for the delay have been categorised in the following:-

- i. *Hindrances caused due to non-availability of site.*
- ii. *The work front not cleared.*
- iii. *Issues relating to electrical wiring.*
- iv. *Painting front not available.*
- v. *Rough ground work not done and similar factors...*

26. The plaintiff has further asserted that even though the work got completed finally after 36 months on 30.11.2013, but it was completed to the satisfaction of the defendants as has been certified at the time of passing of Running Account Bills, which were accepted by the plaintiff without prejudice and under financial duress as number of Claims were raised from time to time. Despite there being no defects pointed out in the work done by the plaintiff during the defect liability period of one year as well, various Claims of the plaintiff, have remained unanswered.

27. The plaintiff has asserted that the quoted contract rates were applicable only for the stipulated time. There was continuous rise of prices with the passage of time because of which the plaintiff has suffered heavy losses, security in the sum of Rs.57,17,952/-, which was 10% of the contract cost, was received by the plaintiff.

28. The plaintiff had received a sum of Rs.57,17,952/- as mobilization advance on 18.06.2010, against which he had issued three post-dated cheques dated 08.09.2010, equivalent to the mobilization advance to the defendants. These cheques were to be returned to the plaintiff, after recovery of the mobilization advance but have never been returned to the plaintiff.



29. Furthermore, the bills submitted by the plaintiff, were to be released after verification within 20 to 25 days, from the date of submission of bills. However, payments made were invariably delayed and were never made within the stipulated time. Furthermore, the defendants had sought to change the procedure for submission of RA bills *vide* an undated letter, to which an objection had been taken by the plaintiff *vide* letter dated 08.11.2011 and the change in procedure was not acceptable to the plaintiff, who wanted his payments to be released in time.

30. The plaintiff had been maintaining the *Running Accounts for the two Work Orders* awarded to the plaintiff. The last payments were made by the defendants on the Running Account on 03.02.2014 for a sum of Rs.39,20,000/- thereby acknowledging the payments due and payable to the plaintiff, for the above said two Works. An amount of Rs.4,52,775/- has been credited to the account of Rooms and Suites Work and an amount of Rs.19,18,079/- has been credited to the account of Public Area Work and Rs.15,49,146/- has been adjusted towards the retention money. The plaintiff has asserted that the defendants have made an express provision of Rs.79,44,713/- towards the TDS, to which also the plaintiff is entitled. The plaintiff has thus made following claims:-

Claim No.1:

Claim for Rs.56,79,323/- for work done but not paid.

Claim No.2:

Claim for Rs.1,12,46,246/- for escalation of labour and material during the execution of the work after the stipulated date of completion till the actual date of completion.

Claim No.3:



Claim for Rs.56,79,897/- for the Overhead Expenses.

Claim No.4:

Claim for Rs.25,96,280/- towards interest on delayed release of retention money.

Claim No.5:

Claim for Rs.4,42,61,368/- for the Loss of Profit

31. The total claim has been made by the plaintiff for Rs. 6,94,63,114/- along with *pendente lite* and future interest @18% p.a. The plaintiff has filed various documents in support of his claim.

32. In the present case, even though the defendants have not come forth with a Written Statement to disclose their defence but the plaintiff has made a claim for the amount on the account of losses suffered by him, on various accounts including delay, short payments against the Running Bills, excessive deductions and such other claims.

33. The plaintiff is required to prove these claims and also the documents in support thereof. In the absence of cogent evidence, it cannot be said that the plaintiff's claim are *per se* admissible, without there being any evidence to prove the same.

34. Furthermore, the defendants are correct in their assertions that even though they have not filed their Written Statement and set up their own defence but they have *a limited right of cross-examination of the plaintiff and its witnesses* to demolish the claims as made by the plaintiff.

35. Complex issues raised by the plaintiff, on various grounds as mentioned above, cannot be granted to the plaintiff, without there being any evidence led on its behalf. Looking at the nature of the claims raised by the plaintiff, it cannot be held that merely because there is no defence by the



defendant, the plaintiff is entitled to a Summary Judgment under Order VIII Rule 10 read with Order XIII-A of CPC.

36. The application is therefore dismissed.

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37. The matter be listed before the learned Joint Registrar for recording of evidence of the plaintiff on 08.07.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 09, 2024/RS