

# North Delhi Municipal Corporation & Anr vs Shishpal on 2 February, 2021

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ RFA 40/2021, CM Nos. 2297/2021, 2298/2021 & 2299/2021

NORTH DELHI MUNICIPAL CORPORATION & ANR.

..... Appellants

Through: Mr. Dinesh Kumar Sharma, Adv.

versus

SHISHPAL

..... Respondent

Through: Ms. Asha Gupta, Adv.

CORAM:  
HON'BLE MR. JUSTICE V. KAMESWAR RAO  
ORDER

% 02.02.2021 The matter is being heard through Video-Conferencing.

1. This appeal has been filed by North Delhi Municipal Corporation challenging the judgment / decree dated January 06, 2020 whereby the suit has been decreed by the learned Additional District Judge-10 (Central), Tis Hazari Courts, Delhi in favour of the respondent herein by directing the appellants herein to pay interest @ 6% p.a on the principal amount of Rs.3,06,070/- from October 30, 2015 till the date of payment of the principal amount.

2. The relevant facts of the case are that the respondent had filed a suit for recovery of Rs.3,96,025/-. It was the case of the respondent herein that he was the sole Proprietor of a firm and was duly enrolled as Municipal Contractor and the appellants herein have not made the payment for the work done. The work pertains to order No. 16 dated May 28, 2014. It was the case of the respondent that the said work was completed on time to the satisfaction of the Engineer In-charge i.e. appellant No. 2 herein. Even the period of the defect liability also passed without any negative remark. The final measurement of the aforesaid work order for a sum of Rs.3,06,770/- is passed on June 30, 2015. The respondent deposited an amount of Rs.47,524/- as security. Despite the fact that the above bill was passed, payment has not been made by the appellants herein and the respondent was entitled to a sum of Rs. 3,96,025/- the break up being Rs.3,53,594/- along with security of

Rs.47,524/- and Rs.42,431/- as interest.

3. In the written statement filed by the appellants therein, they have denied the liability for payment of the bills in question on the ground that the respondent herein is bound by the terms and conditions of the NIT as well as documents wherein a specific condition is made that the payment of the bills depends upon the availability of the funds in particular head of account from time to time in North DMC. The payment of bills shall be made by the appellants on first cum first basis. It was the case of the appellants that the earnest money / security amount can only be paid after payment of final bill.

4. Two issues were framed in the suit being; "(i) Whether the plaintiff is entitled to recover a sum of Rs. 42,431/-? OPP; (ii) Whether the plaintiff is entitled to pendente lite and future interest @ 12%? OPP;" (iii) Relief.

5. The respondent herein examined himself as PW 1. The plaintiff's evidence was closed on July 22, 2019 and defendant i.e. appellants herein in support of their case examined one Chaman Lal as DW 1. The defendant's evidence was closed on November 21, 2019.

6. The finding of the learned Trial Court on issue No.1 was primarily on the deposition of the respondent herein wherein he has admitted that he has received the principal amount of Rs.3,06,070/-. He also, in his deposition admitted that he has also received the security amount. Accordingly, the Trial Court was of the view that only the interest was liable to be paid by the appellants herein. The Trial Court relied upon the principles laid down by this Court in the case of EDMC vs. Raj Kumar Jain 2018 (249) DLT 57 wherein, according to the Trial Court, principles have been enunciated where the work order is for less than Rs.5 lakh, the outer limit for making the payment was six months from the date when the final bill was passed. Accordingly, the Trial Court granted 6% interest to the respondent herein.

7. The submission made by learned counsel for the appellants herein is that such a stipulation cannot be read in the contract. That apart, the payment could not be made for want of funds with the appellants. She also states, there is no provision in the contract for interest. The submissions made by learned counsel for the appellants are not appealing. It is on record that the bills for Rs.3,06,070/- were passed on June 30, 2015.

8. On a specific query to the learned counsel for the appellants as to when exactly the amounts against the bills and the security amount was released to the respondent, the answer was, in August, 2017. This answer of the learned counsel for the appellants that the said amounts were released after a period of two years, suffice would it be to state that the Trial Court was justified in awarding the interest @ 6% p.a. to the respondent for the delay that has taken place for the appellants to release the amounts to the respondent.

9. I do not see any illegality in the impugned judgment / decree dated January 06, 2020. The appeal is bereft of any merit. The same is dismissed.

V. KAMESWAR RAO, J FEBRUARY 02, 2021/ak