

Money Suit No. 219/08

HIGH COURT FORM No.(J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District...Kamrup

In the Court of Munsiff No.3, Guwahati

Present :- Mrs Audri Bhattacharyya
16th Day of May, 2011

Money Suit NO219/2008

M/S H.K.Rajkhowa and AssociatesPlaintiff(s)/Petitioner(s)

-Versus-

North Eastern Electric Power Corporation

Ltd and othersDefendant(s)/Opp. Party(ies)

Money Suit No219/08

Give dated or dates This suit/Case coming on for final

hearing on 21-04-2011 in the presence of

Shri Puspa Pd.Das

Shri Sanjib Saharia Advocate(s) for Plaintiff.

Shri K.P.Sharma,

Shri A.C.SharmaAdvocate(s) for Defendant.

and having stood for consideration to this day the Court

delivered the following judgment:

JUGDMENT

This is a suit for realization of money amounting to Rs. 1,90,000/- along with interest at the rate of 9% per annum from the date of filling of the suit till realization of the money . The suit has been filed by M/S. H.K.Rajkhowa and Association presently known as M.S. Rajkhowa Aarchi and Shri Hiranya Kumar Rajkhowa against (1) North Eastern Electric CPower Corporation Ltd.(NEEPCO) represented b its Chairman Cum Managing Director, (2) Chairman Cum Managing Director, NEEPCO,and (3) The Executive Director (Project-1) NEEPCO Ltd.

The brief facts of the plaintiff's suit is that the plaintiff no. 1 is the sole proprietorship firm with its registered office at Moniram Dewan Road and plaintiff no. 2 is the sole proprietor of Plaintiff No. 1 and as such the plaintiff No. 2 will represent the plaintiff no. 1 in the suit.

The plaintiff firm submitted Architectural plan and general layout plan before defendant no. 3 for construction of a 4 storied R.C.C. Field Hostel and being satisfied with the architectural plan, the defendant no. 1 issued a letter on 27-01-2006 requesting the plaintiff to submit other details as per enclosed scope within 15 days and to attend office of the defendant no.3 on 30-01-06 for finalization of rates , terms and conditions.

A negotiation meeting was held with the plaintiff on 01-02-06 and thereafter on 03-02-06, the defendant no. 3 issued a work order for Architectural and Structural Design Services for construction of a 4 storied R.C.C. Field Hostel. According to the work order dated 03-01-2006, the value of the work was offered at 2%(two percent) on the approved estimated cost of the field hostel subject to maxim of Rs. 2,00,000/- and it was further offered that 95% shall be paid tot the plaintiff on completion of services and balance 5% on completion of construction of building. the plaintiff submitted acknowledgement on the same day regarding acceptance of the said work.

As per work order, on 10-02-06 the Plaintiff firm submitted before the defendant no. 3 the Architectural drawing and detailed cost estimate with quality calculation sheets and internal and external electrical cost estimate for construction of the said building and the defendant no. 3 approached the GMDA Authority for approval of the said construction of the building and the approval was granted. Thereafter the plaintiff firm on 27-04-07 requested the Defendant no. 3 to take necessary action for release of payment to the plaintiff for services rendered by the firm as per work order dated 03-02-006. The defendant failed to make the payment and thereafter on 18-07-07 and on 10-10-07, the plaintiff again issued letter to defendant no. 3 to make the payment. As there was no response, the plaintiff again issued legal notice through their Advocate on 29-01-08 through registered post demanding the defendants to make payments. But till date the defendants failed to take any steps for release of the payment. As the construction of the said 4 storied R.C.C. Building is not yet completed, the plaintiff is entitled to Rs. 1,90,000/-.

The defendants appeared after receiving summons and contested the suit by filling written statement. It is submitted by the defendants in their written statement that there is no cause of action for the suit and the plaintiff has no locus standi to file the instant suit. It is further submitted that the Architectural and General layout drawing for the building were originally prepared by departmentally. The plaintiff prepared the drawings on the basis of the earlier departmentally prepared drawings without significant value addition. The defendants further submitted in their written statement that as per terms of the contract, the scope of work is defined as all the work listed in Annexure 1 of the said work order and free services as mentioned in the record notes of Negotiation Meeting as Annexure II of the said work order. The following part of the scope of work as per the order could not be rendered by the plaintiff:-

- i) The plaintiff could not submit the tender documents including the Technical Specification which is major part of his assignment. All those documents have been prepared by the NEEPCO.
- ii) The plaintiff submitted the structural drawings without any supporting design calculation. Necessary Design calculations were carried out departmentally. Mistakes in drawings were rectified departmentally during construction.
- iii) The Plaintiff miserably failed to provide electrical drawings with the design calculations.
- iv) The cost estimate submitted by the plaintiff was found to be erroneous and the relevant calculation sheets were evident in this regard. ;The complete estimate was done Departmentally and the

same was sent back to the plaintiff for incorporation. The plaintiff resubmitted the same with seal and signature.

- v) No bar bending schedule was supplied by the Plaintiff.
- vi) No drawings relating to drainage, water supply and plumbing work is supplied by the Architect Firm.
- vii) No concept drawing for the landscape design in the entire premise of NEEPCO Bhawan has been submitted by the Architect Plaintiff.
- viii) No working drawings of pavements, seats , pathways approaches , parking area, garden , horticulture and ornamental plans, water waysetc in the entire premises of the NEEPCO Bhawan has been prepared by the plaintiff.
- ix) The plaintiff could not provide any advice for fire protection and Fire Fighting systems for the building.
- x) No scheme on environment management and waste management in the premise of NEEPCO Bhawan has been supplemented by the plaintiff.

It is submitted by the defendants that the plaintiff failed to render any of the free services which assessed to Rs. 1,05,000/- as mentioned in the work order. There is no provision on the work order to make payment on partly completed work. the plaintiff miserably failed to complete the work awarded to him. Under the circumstances the corporation had to put its own engineers for completing the balance work of the project which hampered the design and engineering work of the office and as such plaintiff is not entitled to the relief claimed by it in this suit.

Upon pleadings of both the parties, the following issues were framed in the suit:-

- 1) Whether the plaintiffs completed the allotted work of letter no. H.K.R.A./N-IV/F/2006/27 dated 13-02-2006 within time?
- 2) Whether the plaintiff are entitled to the decree as prayed for?
- 3) To what relief are the plaintiffs entitled?

The plaintiff adduced evidence of two witnesses who were cross examined and exhibited certain documents. The Defendant side adduced evidence of one witness who was cross examined and certain documents were exhibited. Argument was heard on behalf of both the sides.

DISCUSSIONS, DECISION, AND REASONS THEREOF:

I have carefully examined the evidence and perused the documents. My decision on the above issues are as follows:-

ISSUE NO. 1 :-

This issue relates as to whether the plaintiffs completed the allotted work of letter no. H.K.R.A./N-IV/F/2006/27 dated 3-02-2006 within time. PW1 Shri Hiranya Kumar Rajkhowa, who is the proprietor of the plaintiff firm stated in his evidence in chief that after receiving the work order on 03-02-2006, the plaintiff submitted acknowledgement of the receipt of the said work order on the very same day. Thereafter on 10-02-2006, the Plaintiff firm submitted before the defendant no. 3 the Architectural drawing and detailed cost estimate with quality calculation sheets and internal and external electrical cost estimate for construction of the said building and the

defendant no. 3 approached the GMDA Authority for approval of the said construction of the building and the approval was granted. After receiving necessary approvals for construction of the said R.C.C. Building, on 08-01-07, the plaintiff firm submitted the structural and architectural working drawing along with structural calculations and electrical drawings. pw1 exhibited the following documents:-

- i) Exhibit 1 is the registration issued by the Council of Architecture .
- ii) Exhibit 3 is the letter dated 27-01-06 issued by the executive director (Project)-1 NEEPCO, Guwahati-5 and Exhibit 3(1) is the signature of Executive Director.
- iii) Exhibit 4 is the work order dated 03-02-06 and Exhibit 4(i) is the signature of the Executive Director(p) -1 NEEPCO .
- iv) Exhibit 5 is the letter dated 03-02-2006 issued by PW1 and Exhibit 5(1) is his signature.
- v) Exhibit 6 is the letter dated 10-02-2006 issued by PW1 and Exhibit 6(1) is his signature.
- vi) Exhibit 7 is the letter dated 08-01-07 issued by PW1 and Exhibit 7(1) is his signature.
- vii) Exhibit 8 is the detail estimate for the cost of construction of the 4 Storied R.C.C. Building and exhibit 8(1) and 8(2) are his signatures.
- viii) Exhibit 9 is the letter dated 27-04-07 issued by pw1 and Exhibit 9(1) is his signature.
- ix) Exhibit 10 is the letter dated 18-07-07 issued by PW1 and Exhibit 10(1) is the signature of PW1.

- x) Exhibit 11 is the letter dated 07-08-07 issued by PW1 and exhibit 11(1) is his signature.
- xi) Exhibit 12 is the letter dated 10-10-07 issued by PW1 and Exhibit 12(1) is his signature.
- xii) Exhibit 13 is the legal notice dated 28-01-2008
- xiii) Exhibit 14 and 14(1) are the postal receipts dated 29-01-08.
- xiv) Exhibit 15 and 15(1) are the acknowledgement cards.

PW2 Shri Naren Kalita, who is an employee in the plaintiff firm supported the corroborated the evidence of PW1.

DW1, Shri Ranendra Sharma, who is employed as Senior Manager (Civil) of the defendant No. 1 Corporation deposed that he was duly authorized by the competent authority to depose evidence. He submitted in his evidence on affidavit that as per the scope of work referred in letter dated 03-02-2006, the plaintiff firm has failed to perform the following parts, namely:-

- i) detailed analysis and design of building including foundation system
- ii) preparation of bar-bending schedule and material takes off for the building.
- iii) preparation of preliminary and final drawing of the building indicating drainage, water supply and plumbing works.
- iv) submission of concept of landscape design in the entire premises of NEEPCO Bhawan.

- v) preparation of working drawings of pavements, seats , pathways, approaches, parking areas, garden, horticulture and ornamental plants, water ways etc. in the entire premises of NEEPCO Bhawan.
- vi) provide advice of fire protection and fire fighting system for the building.
- vii) advice on environment management and waste management of the entire premises.

It is further submitted by the DW1 that the defendant corporation had to complete the remaining part departmentally to start with the construction of building. The plaintiff firm submitted structural plan of three storied R.C.C.Building The defendant corporation requested the plaintiff firm to submit the ble print of Four storied R.C.C.Building as agreed upon but the plaintiff firm failed to submit the same. The defenant corporation had no other alternative but to apply before the Guwahati Metropolitan Development Corporation for building permission of Three Storied R.C.C. Building.

DW2 exhibited the following documents:-

- i) Exhibit B is the NOC for three storied R.C.C.Building passed by GMDA.
- ii) Exhibit C and D are the structural drawing /blue print of the three storied R.C.C.Building passed by GMDA.

During cross examination, DW1 stated that he did not mention in his evidence on affidavit as to who is his competent authority and when he was authorized by his competent authority to depose his evidence in

affidavit in the suit. He also stated that the exhibited document B, C ,and D were not filed along with the written statement and he could no depose as to whether any prior permission of the Hon'ble court was taken to exhibit these documents in his evidence on affidavit. No document from the side of the department regarding rectifying of the said work was submitted by the DW1.

The statement of the DW1, the sole witness of the defendant side makes it clear that the Architectural drawing and detailed cost estimate with quality calculation sheets and internal and external electrical cost estimate for construction of the said building was submitted by the plaintiff but was incomplete and the remaining portions of work were carried out departmentally and then the GMDA Authority approved the said construction of the Three storied R.C.C. building.

On the other hand as per Exhibit 6,which is the letter dated 10-02-2006 issued by PW1, reflects that the plaintiff firm submitted Architectural drawings and detail cost estimate with calculation sheets and internal electrical cost estimate for construction of 4 storied R.C.C. field Hostel (Guest House) at NEEPCO Bhawan premises, R.G.Baruah Road, Guwahati-5.

As per the work order dated 03-02-2006, which is exhibited as Exhibit 4, the date on which the work is proposed to be completed is mentioned to be 10-02-06. So, so far as the date of the submission of the assigned work by the plaintiff is concerned, as per Exhibit 6, it is submitted within time.

But the contention of the defendant that as per work order the plaintiff failed to perform their work in a complete way as a result of which the incomplete portions have to be carried out departmentally is not proved by any documentary evidence. The defendant did not intimate the plaintiff even after submission of Exhibit 6 ,which is the letter dated 10-02-2006 issued by PW1, whereby plaintiff firm submitted Architectural drawings and detail cost estimate with calculation sheets and internal electrical cost estimate for construction of 4 storied R.C.C. field Hostel (Guest House) at NEEPCO Bhawan premises, that the Architectural drawings was in respect of three storied building only. Rather the permission of the GMDA, was obtained for constructing the building.

In view of the above discussion, it is held that plaintiffs completed the allotted work of letter no. H.K.R.A./N-IV/F/2006/27 dated 13-02-2006 within time.

ISSUE NO. 2 and 3:-

For the sake of convenience, these two issues are taken up together. These issues relate to the entitlement of the plaintiffs to get decree or any other relief or reliefs as prayed for.

As per work order dated 03-02-06, which is Exhibited as Exhibit 4 by PW1 and Exhibit-A by the DW1, the” **value of the Work**” is mentioned as follows:-

“2%(two percent) on the Approved Estimate Cost of the Field Hostel subject to maximum of Rs. 2,00,000/- (Rupees Two Lacs only) excluding service tax.”

As per the terms of payment, it is mentioned as follows:-

“4. Terms of Payment: 95% payment on completion of the Services assigned in Scope of work and balance 5% on completion of the construction of the building.”

In view of the discussions made hereinabove in the foregoing issues, it is evident that the plaintiffs have proved their case against the defendants that even after completion of the work by them in time as per contract, the defendants did not take any action for release of payment to the plaintiff for services rendered by the firm as per work order dated 03-02-006 and as such the plaintiff are entitled to get the decree and other relief/reliefs as prayed for. These issues are answered and decided in affirmative accordingly.

O R D E R

In the result, the suit of the plaintiffs is decreed against the defendants for realization of Rs. 1,90,000/-with interest @ 9% per annum with cost.

Prepare decree accordingly.

Given under my hand and seal of this Court on this the 16 th day of May, 2011.

Mrs. Audri Bhattacharyya,

Munsiff No. 3.

Appendix

List of Witness of the plaintiff:-

- i) PW1 Shri Hiranya Kumar Rajkhowa
- ii) PW2, Shri Naren Kalita,

List of witnesses of the defendant:-

- i) DW1, Shri Ranendra Sharma,

Document exhibited by the plaintiff:-

- i) Exhibit 1 is the registration issued by the Council of Architecture.
- ii) Exhibit 3 is the letter dated 27-01-06 issued by the executive director (Project)-1 NEEPCO, Guwahati-5 and Exhibit 3(1) is the signature of Executive Director.
- iii) Exhibit 4 is the work order dated 03-02-06 and Exhibit 4(i) is the signature of the Executive Director(p) -1 NEEPCO .
- iv) Exhibit 5 is the letter dated 03-02-2006 issued by PW1 and Exhibit 5(1) is his signature.
- v) Exhibit 6 is the letter dated 10-02-2006 issued by PW1 and Exhibit 6(1) is his signature.
- vi) Exhibit 7 is the letter dated 08-01-07 issued by PW1 and Exhibit 7(1) is his signature.

- vii) Exhibit 8 is the detail estimate for the cost of construction of the 4 Storied R.C.C.Building and exhibit 8(1) and 8(2) are his signatures.
- viii) Exhibit 9 is the letter dated 27-04-07 issued by pw1 and Exhibit 9(1) is his signature.
- ix) Exhibit 10 is the letter dated 18-07-07 issued by PW1 and Exhibit 10(1) is the signature of PW1.
- x) Exhibit 11 is the letter dated 07-08-07 issued by PW1 and exhibit 11(1) is his signature.
- xi) Exhibit 12 is the letter dated 10-10-07 issued by PW1 and Exhibit 12(1) is his signature.
- xii) Exhibit 13 is the legal notice dated 28-01-2008
- xiii) Exhibit 14 and 14(1) are the postal receipts dated 29-01-08.
- xiv) Exhibit 15 and 15(1) are the acknowledgement cards.

Document Exhibited by the defendant:-

- i) Exhibit A is the work order dated 03-02-2006.
- ii) Exhibit B is the NOC for three storied R.C.C.Building passed by GMDA.
- xv) Exhibit C and D are the structural drawing /blue print of the three storied R.C.C.Building passed by GMDA.