

State of Gujarat

Vs

Dahyabhai Zaverbhai

Civil Appeal No. 1821 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

24.02.1997

ORDER

1. Delay condoned.
2. Leave granted. We have heard the learned counsel on both the sides.
3. This appeal by special leave arises from the judgment of the Gujarat High Court, dated 21-8-1995 passed in First Appeal No. 3875 of 1995.
4. Admittedly, the respondent-contractor had entered into an Agreement No. B-1/17 of 1981-82 to complete the work of protective measures for the road bridge across River Ambica. The appellant had issued the work order on 3-6-1981. It is true that there was a delay in handing over the worksheet and the specifications. But the trial court after considering the entire evidence had noted its finding thus :

"In the present case the land on which the construction work was required to be made was land of the Government and not of private party or private owner, so there was no hurdle in the construction work of the plaintiff but the plaintiff himself has left the construction and hence, in the present case, only the plaintiff can be held a person who has revoked the contract. Before revoking the contract, the plaintiff was given sufficient time and reasonable opportunity to complete the work but the plaintiff has not done anything to complete the work and left the work and the site so we have no option, the deft/Department to take the decision for revocation of the contract."

5. In view of the above finding, the inevitable conclusion is that the respondent had abandoned the execution of the work in spite of the opportunity having been given to him to complete the work. Clause 3 of the contract reads as under :

"3. In any case, in which under any clause or clauses of this contract, the contractor shall have rendered himself liable to pay compensation amounting to the whole of his security deposit (whether paid in the sum or deducted by instalments) or in the case of abandonment of the work owing to serious illness or death of the contractor or any other cause, the Executive Engineer, on behalf of the Government of Gujarat shall have power :

(a) to rescind the contract (of which rescission notice in writing to the contractor under the hand of the Executive Engineer shall be conclusive evidence) and in that

case the security deposit of the contractor shall stand forfeited and be absolutely at the disposal of Government."

That in view of this express provision the Hon'ble High Court erred in holding that the petitioner/State is not entitled to forfeiture of the deposit.

6. A reading thereof would clearly indicate that in any case, under any clause or clauses of the contract, the contractor would have rendered himself liable to pay compensation amounting to the whole of his security whether paid in the sum or deducted by instalments; in the case of abandonment of the work owing to serious illness or death of the contractor or any other cause, the Executive Engineer is empowered to have the contract rescinded; in that case the security deposit of the contractor shall stand forfeited and be absolutely at the disposal of the Government. In consequence, forfeiture of the security deposit, on account of abandonment of the work by the appellant, was perfectly valid. The High Court, therefore, was not right in directing the appellant to refund the security deposit. The learned counsel for the respondent contends that time was not the essence of the contract, and therefore, the rescission of the contract was not for a valid reason. We are, however, not on the validity of the rescission of the contract on the ground of time being the essence of contract but on the question whether the backdrop arises whether the rescission of the contract was correct in law. In view of the above facts, the action was legal. In that perspective, the ratio in *Hind a Construction Contractors v. State of Maharashtra* ((1979) 2 SCC 70 : AIR 1979 SC 720) has no relevance. Therein, the contract was not rescinded. Work was executed after the extended time and the claims were made before the Arbitrator for the work done during the extended time. Therein, the contention was raised that time was the essence of the contract. The respondent-contractor having not completed the work within the scheduled time, he was not entitled to the amount under the award. In that contract, this Court had held that time was not the essence of the contract. That question, however, does not arise in this case for the reason that the respondent had abandoned the contract.

7. The appeal is accordingly allowed. No costs.