

Law relating to abandonment of contract by Contractors

Supreme Court of India in its recent Judgment that was pronounced on 31st March 2022 in the matter of Shripati Lakhu Mane case¹ settled the law relating to the usual allegation of employers against the contractor that the contractor abandoned the contract and ran away despite the fact that there were lapses on the Employer, that resulted in stoppage of the work. Many a times employers fail to handover the land, to get necessary approvals, release timely payments but put they blame the contractor that the contractor could not adhere to the approved execution plan. But in the above said case, the Supreme Court Bench consisting of Justice Mr Hemant Gupta and Justice Mr V Ramasubramanian, held that the refusal of a contractor to continue to execute the work, unless the reciprocal promises are performed by the other party, cannot be termed as abandonment of contract.

The plaintiff in a suit for recovery of money came up with the above said appeal to the Supreme Court challenging the Judgment and decree of the High Court of Bombay in a regular Appeal under Section 96 of the Code of Civil Procedure, 1908 by which the decree granted by the trial court for recovery of an amount of Rs. 24,97,077 together with interest at 10% per annum was modified into a decree for recovery of Rs.7,19,412. The High Court reduced certain claims granted by the trial court on the ground of abandonment of contract by the contractor. Hence, the plaintiff came to Supreme Court on an Appeal against the High Court order.

The Appellant is a registered contractor with the State of Maharashtra. In a tender for the execution of the work of Regional rural piped water supply scheme in Ratnagiri District, the appellant became the successful tenderer. He was issued with a work order on 03.07.1986 for the execution of the work at the cost of Rs.80,45, 034. The appellant started executing the work from 29.12.1986. But the Respondent could not supply the pipes, then respondent changed the work order changing the diameter of the pipes, the respondent asked the contractor to stop the work and start another work, work order was again changed, bills raised by the contractor was not paid etc., Hence, the contractor stopped executing the work. The Respondent threatened the contractor of termination and imposition of penalty. Then the appellant filed the suit for recovery of amounts due and certain damages.

Hence, the Supreme Court of India, to see whether there was abandonment on the part of the appellant went into the timeline of events, as reflected by the documentary evidence on record. After

¹ Shripati Lakhu Mane Vs The member Secretary, Maharashtra Water supply and Sewage Board and others (2022 SCC Online SC 383)



analyzing each event the Court came to a conclusion that the appellant was not guilty of anything including abandonment. It also relied on S.67 of the Contract Act, which is reproduced below:

“67. Effect of neglect of Promise to attend promisor reasonable facilities for Performance: If any promise neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.”

From the above section it can be understood that if the employer does not provide reasonable facilities for the performance of his promise, the promisor contractor is excused by such neglect or refusal as to any non-performance caused thereby. In the present case the employer could not supply the cement pipes in time, it changed the scope of work many times, failed to release the bill amounts, stopped the work, granting of additional work for its own reasons and hence the employer created all hurdles to the contractor that resulted in stoppage of work. Moreover Clause 3(a) of the Contract enabled the respondents to rescind the contract, forfeit the security deposit and entrust the work to another contractor at the cost and risk of the Contractor but the Respondent never invoked the said clause. Then the Respondent also extended the contract upto December 1989. The Court held that the High Court ought not to have come to the conclusion that the Contractor abandoned the contract. The Court further held that a refusal by one party to the contract, may entitle the other party either to sue for the breach or to rescind the contract and sue on quantum meruit for the work already done.

Hence, Supreme Court of India observed that from the facts of the case it can be understood that the Contractor stopped the work but never abandoned and since the employer did not fulfill the reciprocal promises it cannot claim that the contractor abandoned the work. Hence finally the law relating to abandonment of contract is settled.