

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.382 of 2011

Mr. Maqbool Ahmed Solangi-----Plaintiff.

Versus

Board of Trustees KPT & another-----Defendants.

Date of hearing: 30.09.2016

Date of Judgment: 30.09.2016

Plaintiff: Through Mr. Taqdir Ali Khan, Advocate
alongwith Muhammad Haris Sami.

Defendants: Through Mr. Muhammad Sarfaraz
Sulehry, Advocate.

J U D G M E N T

MUHAMMAD JUNAID GHAFFAR J.- This is a Suit for recovery of Rs.47,30,000/- alongwith mesne profit and damages of Rs.5,00,00,000/-.

2. Briefly the facts as stated are that pursuant to an advertisement published by the defendants for plantation and maintenance of 100,000 Mangrove Trees for five years in China Creek Back Waters, the plaintiff participated in the Tender and offered an amount of Rs. 99,33,000/- for such purpose, which was accepted by the defendants and the plaintiff was issued a Letter of Intent dated 05.03.1996, whereafter an Agreement dated 30.10.1996 was also executed between the parties and the plaintiff was issued a work order. It is the case of the plaintiff that the plaintiff carried out the entire work within the stipulated period and he was paid three installments of an aggregate amount of

Rs.47,00,000/- approximately. However, at the time of 4th installment, some hurdles were created by the defendants and the payment was finally stopped, whereas, the Federal Investigation Agency and NAB authorities had also initiated an inquiry in the award of Tender and after conducting the inquiry, the same was closed by NAB against the plaintiff as well as the employees of the defendants. It is further stated that thereafter the Joint Committee of the defendants and FIA as well as NAB conducted survey of the work carried out by the plaintiff and they found no irregularity in the same. Subsequently, another Joint Committee was formed by the defendants, who also recommended for accepting the claim of the plaintiff, however, the Board of Trustees of the defendants vide Letter dated 11.06.2008 refused to make the payment and closed the matter at their end. It is further stated that thereafter a new Investigation Committee was formed and vide Letter dated 04.01.2010 his attendance was sought in the meeting being held on 06.01.2010, wherein, according to the plaintiff, his claim was accepted and he was asked to give some concession and was offered a sum of Rs.3,000,000/- in lump sum, however, such offer was refused by the plaintiff, hence instant Suit.

3. Pursuant to issuance of summons, the defendants filed their written statement and denied the claim of the plaintiff, whereafter vide Order dated 03.09.2012 the following Issues were framed by the Court:-

- i. Whether the suit is maintainable in its present form?
- ii. Whether the plaintiff is entitled to claim for the amount as mentioned in prayer clause (a) of the plaint along-with 15% mark-up?
- iii. Whether the plaintiff is entitled to claim damages as mentioned in prayer clause (b) of the plaint, if yes to what extent?

- iv. Whether the plaintiff is entitled to claim for mark-up to the amount which was utilized by the defendants, if yes to what extent?
- v. What should the decree be?

4. The evidence was recorded by the Commissioner, wherein, the plaintiff's evidence was led by Muhammad Haris Sami, attorney of the plaintiff, who produced his affidavit as Ex.P/4, Power of Attorney as Ex.P/1, Tax documents as Ex.P/2, Tender Documents as Ex.P/3, Agreement and Work Order as Ex.P/4 & P/5, Certificates as Ex.P/9-A to P/9-4, Letter of defendants as Ex.P/10, Refusal Letter as Ex.P/11, another Letter as Ex.P/12, another Letter as Ex.P/13, Legal Notice as Ex.P/14 to P/16. Similarly defendants led their evidence through Ismail Soomro, the Civil Engineer of defendants and produced certain documents as Ex.D/1 to D/7 and also relied upon the documents produced by the plaintiff as Ex.P/3, P/4, P/6 and P/11.

5. Counsel for the plaintiff while making his submissions has relied upon the documents exhibited by the plaintiff in his evidence and has contended that there is no dispute to the effect that a tender was called by the defendants and the offer of the plaintiff was accepted, whereafter, plaintiff planted 100,000 mangrove trees. He further submits that the only dispute is to the effect that the plaintiff had allegedly failed to maintain the mangroves for a period of 5 years, whereas, according to the plaintiff such claim of the defendant is not supported by any evidence. Counsel has read out the cross-examination of the plaintiff as well as the defendants' witness and submits that insofar as the execution of work is

concerned, the same stands established and therefore the plaintiff is entitled for the decree as prayed.

6. On the other hand, learned Counsel for the defendants submits that according to the investigation carried out by the defendants, the plaintiff firstly did not plant 100,000/- Mangrove Trees, whereas, he also failed to maintain the same for a period of five years as required under the Agreement and only 27,000 Mangroves Trees were available when the Site was inspected by the defendants. In the circumstances, he prayed that the instant Suit be dismissed.

7. I have heard both the learned Counsel and perused the record and my findings Issue-wise are as under:-

ISSUES No.1: Whether the suit is maintainable in its present form?

8. Since nothing has been adduced in the evidence nor the Counsel for the defendant has raised any objection in this regard. The Issue is answered accordingly by holding that the Suit is maintainable.

ISSUES No.2: Whether the plaintiff is entitled to claim for the amount as mentioned in prayer clause (a) of the plaint along-with 15% mark-up?

9. Insofar as adjudication of this Issue is concerned, perusal of the evidence reflects that the defendant has not disputed that a Tender was awarded to the plaintiff and he was issued a Work Order after execution of an Agreement dated 30.10.1996. The evidence further reflects that the defendants' witness in this regard

had admitted that ***“It is correct that the plaintiff’s firm was pre-qualified for the Tender and it is correct that Letter of Intent was issued to the plaintiff’s company”***. The witness has further confirmed that work order was also issued to the plaintiff’s company. It is also important to observe that in his cross-examination, the witness has admitted that ***“it is correct that the plaintiff in terms of such contract, planted 100,000 Mangroves”***, whereas, he has further stated that KPT paid three installment to the plaintiff in respect of plantation of said Mangroves. In the circumstances, the only question which is now left to be decided by the Court is whether after plantation of 100,000 Mangroves as admitted by the defendants’ witness, the same were being maintained for a period of 5 years or not as per the terms of the Agreement. It appears that the case of the defendants is premised on the facts that FIA and NAB authorities had taken cognizance in this matter and therefore the payments were stopped as according to the defendants, the trees were not being maintained for a period of 5 years and therefore, the plaintiff was not entitled for any payment. However, once again perusal of the evidence i.e. the cross-examination of defendants’ witness reflects that the witness has admitted that ***“It is correct to suggest that a Joint Committee was formed to verify the stock by FIA, NAB and KPT”***. However, when the witness was confronted with the reports of the Joint Committee dated 05.01.2002, 12.02.2002, 13.02.2002 and 20.02.2002, the witness has suggested that ***“It is incorrect that on the basis of these Reports 100,000/- were planted at the site.*** The witness has further admitted that the plaintiff was required to maintain the same was for five years starting from March, 1996 to March, 2001, and when the reports of the Joint Committee as

above are looked into, it appears that in Ex.P/11.2, it is stated that the plantation was jointly surveyed on **05.01.2002** by the following members, the report of the survey reads as under:-

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| i. | Col. Javed | Representative of RAB. |
| ii. | Mr. Haider Raza | Representative of Forest Department |
| iii. | Mr. Aziz Ullah Sheikh | Representative of FIA |
| iv. | Mr. Ghulam Ali Memon | Chief Engineer (KPT) |
| v. | Mr. Gul Mohammad Usmani | Dy. Chief Engineer-II. |
| vi. | Mr. Imam Buksh Baloch | Executive Engineer (W) |

It was observed that more than 100,000/- mangroves trees have been planted by the contractor at the site which were physically inspected & found available where as the KPT awarded a contract for the plantation of 100,000 mangrove trees in China Creek Back Water.

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EXECUTIVE ENGINEER (W)	DY. CHIEF ENGINEER-II	CHIEF ENGINEER

Similarly on **12.2.2002 and 13.2.2002**, a Joint Committee of FIA and NAB authorities surveyed the area and following report has been placed on record as Ex.P-11.3

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|-------|-------------------------|-----------------------------------|
| i. | Col. Najam | Representative of NAB (Sindh). |
| ii. | Mr. Khurram | Representative of NAB (Sindh) |
| iii. | Mr. Aziz Ullah Sheikh | Representative of FIA |
| iv. | Mr. Ghulam Ali Memon | Chief Engineer |
| v. | Mr. Gul Mohammad Usmani | Dy. Chief Engineer-II. |
| vi. | Mr. Imam Buksh Baloch | Executive Engineer (W) |
| vii. | Mr. Naseer Ahmed | Stock Verifier. |
| viii. | Mr. Maqbool | Representative of M/s. Quick Aid. |

It was observed that more than 100,000/- mangroves trees have been planted by the contractor at the site which were physically inspected & found available where as the KPT awarded a contract for the plantation of 100,000 mangrove trees in China Creek Back Water.

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STOCK VARIFIER	EX: ENGINEER (W)	DY. CHIEF ENGINEER-II	CHIEF ENGINEER

Again on **20.02.2002**, another Joint Committee of FIA and NAB Authorities inspected and surveyed the site and following report was generated as Ex.P-11.4:-

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|------|-------------------------|-------------------------------------|
| i. | Mr. Fayyaz | Representative of Forest Department |
| ii. | Mr. Aziz Ullah Sheikh | Representative of FIA |
| iii. | Mr. Gul Mohammad Usmani | Dy. Chief Engineer-II. |
| iv. | Mr. Imam Buksh Baloch | Executive Engineer (W) |
| v. | Mr. Naseer Ahmed | Stock Verifier. |
| vi. | Mr. Maqbool | Representative of M/s. Quick Aid. |

It was observed that more than 100,000/- mangroves trees have been planted by the contractor at the site which were physically inspected & found available where as the KPT awarded a contract for the plantation of 100,000 mangrove trees in China Creek Back Water.

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EXECUTIVE ENGINEER (W) DY. CHIEF ENGINEER-II STOCK VERIFIER

Perusal of these three reports reflects that it appears to be an admitted position that in the year 2002, 100,000 Mangroves Trees were available at the Site. These documents are duly signed by the defendants Engineers and other authorized representatives and the objections of the learned Counsel for the defendants that it is not signed by FIA and NAB authorities is frivolous and misconceived as they have no role in adjudication of such matters. The Tender was issued by the defendants and they were required to make the payment once the terms of the agreement were fulfilled and the plaintiff had complied with the requisite condition(s) including plantation of 100,000 Mangroves Trees and their maintenance, for a period of 5 years. The reports as reproduced hereinabove ably demonstrate and prove beyond any shadow of doubt that the mangrove trees were duly planted and were very much available

physically in the year 2002. The defendants have failed to lead any evidence to the contrary, whereas, the oral assertion of defendants witness that only 27,000 trees were available on site has not been substantiated with any cogent and acceptable evidence. In the circumstances, this Issue is answered in the affirmative, however, only to the extent of Rs.47,30,000/- whereas for mark-up a separate issue (Issue No.4) has been framed and would be dealt with while answering the said Issue.

ISSUE No.3:- Whether the plaintiff is entitled to claim damages as mentioned in prayer clause (b) of the plaint, if yes to what extent?

10. Insofar as the plaintiff's claim for damages is concerned, no evidence has been led in this regard, nor the Counsel for the plaintiff, has made any submission to this effect. In the circumstances, the Issue is answered in negative.

ISSUE No.4:- Whether the plaintiff is entitled to claim for mark-up to the amount which was utilized by the defendants, if yes to what extent?

11. Since I have already answered Issue No.2 in favour of the plaintiff that he is entitled for recovery of Rs.47,30,000/- withheld by the defendants for the last so many years without any justification, I am of the view that in the interest of justice, the plaintiff is required to be compensated adequately. The defendants after execution of work withheld the payment and neither furnished any surety before the Court nor offered to deposit the same before this Court for investment in any Government Security and have enjoyed and utilized the amount legitimately belonging to the plaintiff since long. Though the amount has been withheld since due, but then again the plaintiff chose to pursue his remedy before

the defendants and has only come to this Court in the year 2011. In the circumstances, he is only entitled for mark up from the date of filing of this Suit and not from the due date. Therefore, Issue No.4 is answered in the affirmative by holding that the plaintiff is entitled for due compensation of mark-up on the rates as prescribed by the State Bank of Pakistan for profit on long term investments during the relevant period from the date of institution of Suit till realization of payment.

ISSUE No.5:- What should the decree be?

12. In view of hereinabove observations, the plaintiff's Suit is decreed for recovery of Rs.47,30,000/- along with mark-up on the rates as prescribed by the State Bank of Pakistan for profit on long term investments during the relevant period from the date of institution of Suit till realization of payment.

13. Suit decreed in the aforesaid terms. Office to prepare decree accordingly.

Judge