FORM NO:HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT.

CIVIL REVISION NO.118/2014

M/S RIAZ & SONS VS. CAPITAL DEVELOPMENT AUTHORITY, ETC

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3
01.	08.04.2014:	Mr. Tariq Khushnood Qureshi, Advocate.

O R D E R

MUHAMAD ANWAR KHAN KASI, CJ:

This Civil Revision is directed against the order dated 03.10.2013 and 13.01.2014 respectively, passed by Mr. Muhammad Adnan Jamali, learned Civil Judge and Raja Jawad Abbas Hassan, learned District Judge (West) Islamabad, whereby the former vacated the ad-interim injunction in favour of petitioner / plaintiff while the later dismissed the appeal there against.

2- Brief facts of the case are that in order to strengthen the security arrangements in Supreme Court Building Islamabad, three explosive detectors alongwith other security equipments / system were recommenced to be installed at gate No.1, 2 & 3 of Supreme Court Building, whereafter respondent No.5 prepared PC-1 amounting to Rs.36.167 Millions, alongwith cost estimates / made / specifications etc and forwarded the same to pre-procurement evaluation committee before publication of tenders in the leading newspapers as well as website of PPRA.

3- Subsequently, tenders were received and opened on 25.03.2010 petitioner / plaintiff succeeded in getting the tender vide work order dated 15.07.2010. The bill of quantities [BoQ] was given to him wherein specifications were given with description of models of explosive trades equipments. The plaintiff / petitioner supplied the

equipments with specifications of "Vapour Hand Explosive Detector Model: E-3500 Make Chemilux (Canada)" and started the training of concerned handling staff according to terms and conditions.

4- In the meanwhile, the end user [respondent No.6 – SP Security Supreme Court Building] raised concerns noticed by him during training to the effect that the machine does not detect ammunitions / explosives until its apex is not in touch with the ammunitions / explosives [lack of vapour mechanism], alarm without exposure of ammunition / explosive and also upon exposure of smoking / vehicle's smutch and the machines did not detect the ammunition explosive in packing.

5- Due to the said concern, meeting of the stake holders was convened in the Supreme Court Building on 22.06.2012 chaired by Honourable Mr. Justice Tariq Pervaze [Judge Incharge Security Supreme Court], wherein dissatisfaction upon performance of the machines was shown and it was decided to find alternate equipment in place of supplied explosive detector besides recommending inquiry against the responsible who proposed the machine. Afterward another meeting was held on 04.06.2013 chaired by Honourable Mr. Justice Ejaz Afzal Khan. The minutes of the said meeting at para-6 shows that tender process was decided to be scrape in lieu of the warranty period.

6- After this meeting respondent No.5 issued letter dated 03.09.2013 whereby it was intimated to the concerned that an amount of Rs.4.700/- Millions is recoverable from the petitioner /plaintiff against the work "Security Arrangement at Supreme Court of Pakistan Building, Islamabad", therefore, it was directed that the said amount may be adjusted against the dues / payments

payable by the authorities for other formation to the petitioner / plaintiff contractor.

7- Aggrieved by this letter, respondent instituted a suit for Declaration, Permanent and Mandatory Injunction along with application for temporary injunction with the prayer that operation of letter dated 03.09.2013 may kindly be suspended / cancelled. Learned Trial Court initially allowed interim relief vide order dated 26.09.2013 but on the next date of hearing i.e 03.10.2013, the application under Order XXXIX Rules 1 & 2 was dismissed and appeal against the said order also met the same fate.

8- Learned counsel for petitioner submits that both the learned Trial Court as well as Appellate Court ignored the material available on record and disregarded the facts from the minutes of meeting, expert report and inquiry that specifications of items were not questioned and equipment was correctly provided, therefore, the orders impugned are result of misreading and non-reading.

9- It is next submitted that learned Courts failed to exercise jurisdiction vested in them and committed material illegality, irregularity while passing the impugned orders.

10- Heard and record perused.

11- The core of petitioner's claim is that he has supplied the equipments strictly in accordance with the specifications given in the bill of quantity [BoQ], while the said claim is not established from record because according to him, up-gradation of the equipments in question was considered by respondent no.5, therefore, apparently it can be gathered that the same equipment if would have been supplied in up-graded form could have catered the requirement. Moreover, it is evident that the supplied equipment was not the only make and model which was specified in the BoQ rather choice of other equipment was given viz-a-viz

the required purpose which was to detect the explosive inter alia home made and other military grade.

12- The contention of respondent in the written statement that the brochure with the supplied equipment categorically specified that "Military (including plastic), commercial and home made explosive, C4, TNT, NG, Dynamics, Black Powdered PTN, Smtex, RDX ANFO, ICAO, Targant, home made explosive etc." is requires to be inquired through evidence and in presence of said contention, prima facie no case, is made out in favour of plaintiff.

13- In addition, admittedly warranty condition was part of agreement which has not expired and the scope of impugned letter is made limited to amount specified therein, therefore, element of irreparable loss is also missing.

14- In view of above, the orders impugned are not exceptionable; hence do not warrant any interference, therefore, present petition is dismissed in limine.

(CHIEF JUSTICE)

AMER BAIG.