

HIGH COURT OF TRIPURA
AGARTALA

RFA No.01 of 2022

Sri Chitta Ranjan Kar,
S/O. Late Sanatan Kar,
Resident of vill : South Badharghat (Netaji Nagar),
P.O - ONGC, P.S.- Amtali, District : West Tripura.

..... Plaintiff /Appellant.

Versus

1. The State of Tripura,
Represented by the Secretary to the Government of Tripura,
Department of Agriculture, Civil Secretariat,
New Capital Complex, Agartala, West Tripura.
2. The Director,
Department of Agriculture,
Government of Tripura, Agartala, West Tripura
3. The Chief Engineer, Department of Agriculture,
Government of Tripura, Agartala, West Tripura.
4. The Executive Engineer (West), Department of Agriculture,
Government of Tripura, Agartala, West Tripura.

..... Defendant(s) /Respondent(s).

_B_E_F_O_R_E_

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

For Appellant : Mr. R. G. Chakraborty, Advocate.
For Respondent(s) : Mr. D. Sharma, Addl. Govt. Advocate.
Date of hearing : 12th December, 2023.
Date of judgment : **19th December, 2023.**
Whether fit for reporting : NO.

_J_U_D_G_M_E_N_T_

S. Datta Purkayastha, J.

This appeal arises from the judgment dated 21.11.2019 passed by learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala in Money Suit No.2 of 2016 and consequent decree thereof whereby the money claim of

Rs.12,44,191/- of the appellant with compound interest thereupon and cost, was dismissed.

[2] In fact, this is a second round of litigation going on between the parties. The appellant, as plaintiff, filed another money suit earlier bearing no. MS 25 of 2000 before the same trial court for recovery of the cost of work namely, construction of sale hall at Sunder Tilla market and Hapania market to the tune of Rs.6,77,293/-. According to the appellant, he was favoured with the aforesaid two works on submission of his tender and after successful bidding thereof, two separate work orders were issued to him. While doing such work at Sunder Tilla as per work order dated 7.3.1986, he had to execute some extra works on verbal instructions of the authority and out of final bill of Rs.1,25,000/- payment was made for Rs.50,000/- through running bills and rest amount of Rs.75,000/- was kept pending. Regarding the execution of the construction of sale hall at Hapania market in respect of work order dated 02.08.1989, similarly, he had to execute some extra works namely, construction of sanitary latrine, urinal, surface drain, water tank etc. but no payment was made. Moreover, regarding the work of Hapania market, he had to remove 'dunda-mooram' (*one kind of soil harder than the technical term 'hard soil'*) as per verbal order of the Executive Engineer. Appellant further asserted that the Overseer recorded the Measurement Book (MB), but subsequently the entry therein was tempered and in place of 'dunda-mooram' in the MB, it was shown as 'hard soil' to the prejudice of the appellant and he was also not paid for the construction of one tank measuring 30 feet x 15 feet x 8 feet. Regarding work of removing said 'dunda-mooram', he even approached various authorities including Superintending Engineer and Chief Engineer for settlement of his claim and consequently, a high power committee was also constituted for consideration of the claim of the appellant and finally, the committee recommended payment of Rs.21,140/- on account of construction of tank etc. and accordingly, the said sum

was paid to him. Then being dissatisfied, he issued a notice under Section 80(1) of the Code of Civil Procedure(CPC) and ultimately, instituted the suit bearing no. M.S.25 of 2000.

[3] On contest, said money suit No. M.S. 25 of 2000 was dismissed by the Civil Judge (Senior Division), Court No.1, West Tripura, Agartala, vide judgment dated 25.09.2001 and resultant decree dated 29.09.2001.

[4] Being aggrieved thereby, he challenged the said judgment and decree in RFA No.39 of 2001 and learned Single Judge vide judgment dated 20.01.2012 decreed the suit in the following terms:

“On the 20th day of January, 2012 it is ordered and decreed that the respondents (the defendants in the suit) shall ascertain the rate of removing the ‘Dunda-Mooram’ as was prevalent at that point of time. After deciding the rate for removing ‘Dunda-Mooram’ per cu.m., the respondents shall calculate the entitlement of the appellant (the plaintiff) in the mode as follows :

3600 cu.m. x the rate as would be determined.

The entitlement/cost of the work as would be arrived in the said mode shall be paid by the respondents (the defendants in the suit) as expeditiously as possible but by any rate not later than 31st March, 2012. The entitlement/cost of the work shall carry interest at 6% per annum from the date of submission of the bills till the actual payment is made.

However, it is made clear that if any payment is by now made on the same account that amount shall be deducted by the respondents at the time of making payment.

With such modification and observation, the appeal is allowed granting the relief to the extent as indicated and the impugned judgment and decree are set aside as consequence thereof.

No order as to costs”

This way the matter got its finality during the first round of litigation.

[5] In the second round, this appellant as plaintiff filed Money Suit No.02 of 2016 with the grievance that after passing of the judgment in RFA No.39 of 2001, the respondents paid only total Rs.1,07,000/- and odd in 2(two) installments to him,

and the said amount was not the actual cost of the work done but rather was much less than the amount claimed and payable. Then, he wrote a letter to the Executive Engineer (West), Department of Agriculture, (respondent No.4 herein), intimating his grievances but the same went futile. After that, the appellant issued a notice to the respondents on 25.09.2013 which having remained un-responded, present Money Suit No.02 of 2016 was filed claiming Rs.12,44,191/- with compound interest etc., as indicated above.

[6] The respondents in their joint written statement raised various pleas regarding maintainability of the suit including the pleas of *res-judicata*, barred by limitation and non-service of notice under Section 80(1) of CPC upon them. According to them, all payments were already made to the appellant after proper calculation through a cheque dated 19.06.2012 and subsequently, further interest was also paid on 21.11.2012 as full and final payment. Therefore, the suit was barred by limitation. Regarding payment of cost of removing 'dunda-mooram', according to the respondents, was determined to be Rs.99,609/- and accordingly, the same was paid along with interest @ 6% per annum thereupon (calculating to Rs.7,678. 59 p.) as per order of the learned Single Judge.

[7] During trial, both sides led their oral evidences and each side examined one witness for them. The appellants also proved four documents into evidence marked as Exbt.1 to Exbt.4 series. The respondents opted not to prove any documents into evidence.

[8] Finally, learned trial court dismissed the suit, as stated, with the following observations :

"In fact the entire discussion made above makes it very much clear that the plaintiff has filed this suit only on the ground that though payment was made to him but it was not properly estimated.

To this, it is observed that the plaintiff could not produce any document or any other cogent evidence to opine that the plaintiff is entitled for a rate beyond the schedule rate. The High Court of Tripura gave discretion to the defendants to fix the rate but as it was prevalent at the relevant point of time.

The defendants accordingly fixed the rate as per the Tripura Schedule Rate 1985 which is an admitted position.

Be it again repeated that there is no documents or evidence on record to observe that the plaintiff was not properly paid.

Here this court also like to keep in mind that the plaintiff has accepted the payment made by the defendants subsequent to the direction given by the Hon'ble High Court of Tripura though with objection.

In his plaint the plaintiff without any reasoning abruptly asserted that he has filed this suit for a money decree amounting to Rs.12,44,191/- with interest. The plaint is silent as to how the plaintiff has arrived such an amount or how the calculation is made especially when the Hon'ble High Court of Tripura has determined the quantity of work done for removal of Dunda Moorum which is 3600 cu.m.

The defendants on the other hand could place before this court that they made the payment as per the schedule rate prevalent. To discard and reject such assertion by the defendants, the plaintiff could not produce any document or any evidence.

Under such a circumstance this court finds no infirmity in the payment made by the defendants as per the order given by Hon'ble High Court of Tripura.

The plaintiff has failed to establish his claim of Rs.12,44,191/- along with interest against the defendants. The plaintiff accordingly is found to be not entitled for a decree as prayed for.

The issues are decided accordingly.”

[9] Mr. Rana Gopal Chakraborty, learned counsel for the appellant, referring to the factual backdrop of the case, submitted that the judgment of the Single Bench of the High Court was not complied with by the respondents leading to utter financial loss of the appellant. The rate claimed by the appellant was Rs.165/- per cu.m for cost of removing ‘dunda-mooram’ whereas the department granted only Rs.13.40/- per cu.m creating a huge difference between the two rates without proper assessment and basis. Learned counsel also refers to the cross-examination of DW-1 Shri Ajoy Jamatia, a Mechanical Engineer of the department, who admitted that

the rate as per Measurement Book was Rs.136/- per cubic meter. Therefore, submits Mr. Chakraborty, the rate as determined by the respondents and as confirmed by the Trial Court was too less to the huge monetary thrashing to the appellant and therefore, the findings of trial Court were flawed.

[10] Mr. Dipankar Sharma, learned Additional Government Advocate, mainly argued on two points, that the suit was barred by the principle of *res-judicata*, in as much as the matter had already reached its finality by the previous decision of the Single Bench of this Court and that apart, the direction given in said judgment and decree were also properly complied with by the Respondents.

[11] In our considered view, in the former suit, the claim of the appellant was for compensation for extra works done by him in relation to both the said work orders including the cost of removal of 'dunda-mooram' from Hapania work site by the appellant. All the materials available to the appellant were also placed by him in that suit. Finally, Ld. Single Judge granted some reliefs to him in the form of a decree as extracted above. The appellant therein claimed the cost of work of removal of 'dunda-mooram' at the rate of Rs.165/- per cu.m and volume of such work to be 3600 cu.m to support his total claim of Rs.6,10,995/- on that count. Learned single judge also dealt with alleged alteration in Measurement Book (MB) and finally, came to the conclusion that the respondents were under obligation to make payment of extra work of removing 'dunda-mooram' only as per the method as indicated in the said previous decree.

[12] Thus, the claim of compensation for extra work done by the appellant including the removal cost of 'dunda-mooram' was directly and substantially in issue in the former suit which was decided in RFA No.39 of 2001 with categorical findings. Now, again in this subsequent suit, the appellant has claimed money decree of Rs.12,44,191/- with interest but even did not indicate under which count(s), he

was claiming so. The subject matter, issues involved therein and the parties of both the suits are common, but with only one addition that Director of Agriculture, Govt of Tripura is also added as Defendant/Respondent in the present suit. Therefore, the suit is held to be barred by Section 11 of the Code of Civil Procedure. Even otherwise, on appreciation of evidence on record also, it appears that nothing could be proved satisfactorily by the appellant to substantiate his higher claim. Though DW-1 admitted in his cross-examination that the rate as per the measurement book was Rs.136/- per cubic meter but same alone was not sufficient to justify the claim of the appellant. Therefore, the trial court committed no mistake in dismissing the suit.

[13] In the result, the appeal is dismissed with costs in favour of respondents. Decree be drawn up accordingly.

Reconsign the LCRs.

Pending application(s), if any, also stands disposed of.

(S. DATTA PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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