



A.S.No.76 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.76 of 2021

and

C.M.P.No.4997 of 2021

1. Government of Tamil Nadu,
Represented by the Chief Engineer (C and M),
State Highways Department, Chepauk,
Chennai - 5.
2. The Superintending Engineer (C and M),
State Highways Department,
Chennai Circle, Anna Salai,
Chennai - 6.
3. The Divisional Engineer (C and M),
State Highways Department,
Opposite to VIT, Katpadi,
Vellore Taluk, Vellore District.

... Appellants

Vs.

R.Venkataraman

... Respondent

PRAYER: Appeal suit filed under Section 96 CPC r/w Order XII
Rule 1 of Act V of 1908, to set aside the judgment and decree in



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O.S.No.33 of 2016 dated 16.09.2020 on the file of the Additional District, Court-II at Ranipet.

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For appellants : Mr.T.Chandrasekaran
Special Government Pleader
For respondent : Mr.S.Salai Geethan

JUDGMENT

The State/defendants are the appellants before this Court challenging the judgment and decree dated 16.09.2020 passed by the learned Additional District Judge-II, Vellore at Ranipet in O.S.No.33 of 2016.

2. The case is briefly set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

3. The plaintiff has filed the suit for recovery of a sum of Rs.10,02,167/- together with interest at the rate of 18% per annum from



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the date of the plaint till realization and for mandatory injunction directing the defendants to return the two original fixed deposits.

4. The plaintiff would submit that he is a registered PWD and Highways Contractor. He had worked in two contracts relating to the widening and improvements of Arcot - Kannamangalam Road (State Highways 129) and the construction of culverts and widening of narrow culverts, etc. The plaintiff would further submit that the value of the two contracts were Rs.73,17,042/- and Rs.56,90,974/- respectively. The plaintiff and the second defendant had entered into two agreements dated 23.12.2011 and the plaintiff had paid Earnest Money Deposits (EMD) of Rs.46,000/- for the first work and Rs.38,000/- for the second work. Two fixed deposits from the Villapakkam Canara Bank, both dated 23.12.2011 for Rs.1,47,000/- and Rs.1,15,000/- towards Further Security Deposits (FSD) were also handed over to the defendants.

5. The plaintiff would further submit that the EMD amount



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was returned after the agreement was signed but the fixed deposits receipts continued to be with the second defendant which should be returned to the plaintiff on the completion of the work. As per the agreement, date of commencement of work was on 23.12.2011 and the work was to be completed on or before 22.07.2012.

6. It is the further case of the plaintiff that he had commenced the work as per the schedule. However, due to circumstances beyond his control, the work was delayed and he had requested for extension of time which was also granted and the time stood extended till 31.05.2013. The plaintiff would submit that he had completed the work and the defendants had been making payments stage by stage. After completion of the work, the officers of the Highways Department inspected the works, took measurements, prepared the Measurement Book and handed over the signed completion certificate to the third defendant. The plaintiff would submit that the contract value after the completion was Rs.69,65,312/- and Rs.53,59,843/-. The defendants have failed to return the fixed deposits and to repay the balance amount



even after two years of completion of work. The third defendant refused to sign the bills for payment and the plaintiff had visited the third respondent on several occasions but in vain. The plaintiff therefore, issued a legal notice dated 22.10.2015 calling upon the defendants to pay the amount due, to which, the third defendant issued a reply letter dated 09.11.2015 containing false allegations. Therefore, the plaintiff was left with no other alternative except filing the suit in question.

7. The defendants have filed a written statement *inter alia* admitting the signing of two agreements and they would contend that the object of obtaining the Further Security Deposit (FSD) Amount is only to ensure the completion of the contract as contemplated under the agreements. The FSD and EMD are retained till the fulfillment of the contract. The defendants would submit that the plaintiff had not completed the work and therefore, they retained the FSD. The defendants would submit that the plaintiff had not completed the work within the period from 23.12.2011. They would further submit that as



on the date of the written statement, the work had not been completed.

They would further submit that the completion certificate would be valid only after it is signed by the Superintending Engineer. Since the work was not completed and there was a reference to five numbers of culvert work unexecuted, the plaintiff cannot contend that the work entrusted was completed as per the procedure. In all, the defendants had stated that the retention of the FSD was valid and the suit was barred by limitation and the same has not been filed within the stipulated period of time.

TRIAL COURT:

8. The learned II Additional District Judge had framed the following issues on 20.01.2017.

“1. Whether the plaintiff has not completed the contract work as per agreement?

2. Whether the defendants are entitled to retain EMD for completing the unexecuted work through other agency?



3. Whether the suit claim is barred by limitation?

4. Whether the plaintiff is entitled for suit amount?

5. Whether the plaintiff is entitled for mandatory injunction?

6. To what relief? ”

9. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A9. On the side of the defendants, they had examined D.W.1 and D.W.2 and marked Exs.B1 to B10.

10. With reference to the first issue, as to whether the plaintiff has not completed the work as per the agreement, the learned Judge, on considering the evidences, both documentary and oral, had come to the conclusion from the evidence of P.W.1 that the defendants had issued the completion certificate to the plaintiff for the work done by him, despite which, they had refused to make the payment. The learned Judge, therefore, answered the first issue in favour of the plaintiff. The learned Judge also held that the defendants are liable to return the FSD



receipts to the plaintiff. Ultimately, the suit was decreed as prayed for with 12% interest per annum and it is this judgment and decree, become the subject matter for the appeal herein.

11. The only point that arises for consideration in the above first appeal is

“(A) Whether the plaintiff has obtained the completion certificate and consequently, whether the defendants were justified in not returning the FSD and paying the amounts due for the work executed?”

DISCUSSION:

12. To prove their contentions, the appellants/defendants would submit that the completion certificate as contemplated has not been handed over and therefore, the plaintiff cannot contend that since the completion certificate has been issued, the defendants are liable to return the fixed deposits and pay the sum of Rs.10,02,167/-.

13. The documents, particularly Exs.A8 and A9 would show that the completion certificate has been issued.



14. D.W.1, in his cross-examination, has admitted as follows:

“ஒப்பந்த பணிகளை நான்தான் மேற்பார்வை பார்த்துவந்தேன். அந்த ஒப்பந்தத்திற்கு மே 2015 வரை கால நீட்டிப்பு செய்துள்ளோம் என்றால் சரிதான்.”

(14.1) Further, he had deposed as follows:

“ஒப்பந்த பணிகளை நான்தான் மேற்பார்வை பார்த்து வந்தேன். அந்த ஒப்பந்தத்திற்கு மே 2015 வரை கால நீட்டிப்பு செய்துள்ளோம் என்றால் சரிதான். வாதி செய்த பணிகளை நாங்கள் அளவீடு செய்துள்ளோம். பி.வா.சா.ஆ.2 முதல் பி.வா.சா.ஆ.8 வரையுள்ள மேசர்மன்ட் புத்தகங்கள் வாதி செய்த வேலைகளுக்கு உண்டானது என்றால் சரிதான். வாதி பணி செய்தவரை நானும் என்னுடைய உதவிகோட்ட பொறியாளரும் தயார் செய்த பணி நிறைவு சான்றுகள் தான் என்னிடம் காட்டப்படுவது என்று சொன்னால் சரிதான். அந்த பணி நிறைவு சான்றுகள் வா.சா.ஆ.8 மற்றும் வா.சா.ஆ.9.”



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“வா.சா.ஆ.8 மற்றும் வா.சா.ஆ.9 ஆகியவற்றில்
நானும் எனக்கு மேல் உயர் அதிகாரியாக இருந்தவரும்
கையெழுத்து செய்துள்ளோம் என்றால் சரிதான். மேற்படி
வா.சா.ஆ.8 மற்றும் வா.சா.ஆ.9 ஆவணங்களை
எங்களுடைய கோட்ட பொறியாளர் அலுவலகத்திற்கு
அனுப்பவில்லை என்றால் சரிதான். வேலை பாக்கி
இருந்ததால் கோட் பொறியாளருக்கு அனுப்பவில்லை.
Completion Certificate என்றால் பணி முடிந்த பிறகு
வழங்கப்படும் சான்று. அதன்படி வா.சா.ஆ.8 மற்றும்
வா.சா.ஆ.9 வழங்கப்பட்டது. வாதி செய்த பணிக்கு
மட்டும் நாங்கள் Completion Certificate தாயர் செய்து
வைத்திருந்தோம். ஒப்பந்தம் ஏற்பட்டவுடன் வாதி
எங்களிடம் இரண்டு செக்யூரிட்டி டெபாசிட்களை
கொடுத்துள்ளார் என்றால் சரிதான்.”

15. Therefore, it is clear that the defendants have issued the completion certificate to the plaintiff for the works done by him and it



is clear that the defendants have deliberately and willfully denied the payments to the plaintiff. As per the terms of the contract, the defendants were bound to return the FSD which they have failed to do.

16. With regard to the issue of limitation, it is seen that as per Exs.A1 and A2, the contract entered into between the plaintiff and the second defendant was to be completed on or before 22.07.2012. The plaintiff had subsequently sought for an extension of time and this extension had been granted till 31.05.2013 and the completion certificate was issued on 31.05.2013 and only thereafter, the amount becomes payable. The suit has been filed within three years from the date of completion certificate and therefore, the suit was not barred by limitation.

17. It is also noticed that the defendants had prepared the Measurement Book and worked out the amount payable to the plaintiff and had arrived at the figure by taking the measurements and therefore, the completion certificate having been issued, the plaintiff is entitled to



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the FSD and the amount, as per the terms of the contract. The Trial Court, on considering the issues, rendered the finding in favour of the plaintiff. This Court has no contra finding with regard to the evidence in the above case.

Accordingly, this first appeal is dismissed. Connected C.M.P. stands closed. No costs.

19.10.2023

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The II Additional District Judge,
Vellore, Ranipet.
2. The Section Officer, V.R. Section, High Court, Madras



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P.T.ASHA, J.,

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