



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 24TH DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO.100012 OF 2019 (FDP)

BETWEEN:

SHRI P.B. IBRAHIM, AGE: 60 YEARS,
CLASS I CONTRACTOR, S/O SHEIK ABBA,
R/AT: BUNDER ROAD, BHATKALA,
UTTARA KANNADA DISTRICT-581320.

- APPELLANT

(BY SRI. SRIRANGA SUBBANNA, SENIOR COUNSEL FOR
SRI. K.L. PATIL, ADVOCATE)

AND:

1. THE MANAGING DIRECTOR,
KARNATAKA URBAN INFRASTRUCTURE,
DEVELOPMENT & FINANCE CORPORATION (KUIDFC),
BENGALURU-560037.
2. THE EXECUTIVE ENGINEER,
KARNATAKA URBAN INFRASTRUCTURE,
DEVELOPMENT & FINANCE CORPORATION (KUIDFC),
GREEN STREET, KARWAR-123035.
3. THE SUPERINTENDING ENGINEER,
KARNATAKA URBAN INFRASTRUCTURE,
DEVELOPMENT & FINANCE CORPORATION,
KUDCEM PROJECT, KARWAR-123035.

- RESPONDENTS

(BY SRI. N.G. RASALKAR, ADVOCATE FOR R1-R3)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96
R/W ORDER XLI RULES 1 & 2 OF THE CPC, 1908, AGAINST THE
JUDGMENT AND DECREE DATED 26.09.2018 PASSED IN
F.D.P.NO.7/2016 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL
JUDGE KARWAR, PARTLY ALLOWING THE SUIT FILED UNDER ORDER
20 RULE 12(C) READ WITH SECTION 151 OF CPC, 1908.



THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.10.2024 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **SREENIVAS HARISH KUMAR J.,** DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

The petitioner in F.D.P. No.7/2016 on the file of Prl. Sr. Civil Judge, Karwar, (in short, 'the trial court') has assailed the judgment and order dated 26.09.2018.

2. For the purpose of narration of facts and discussion, it is better to refer to the parties with respect to their ranks in the trial court.

3. Petitioner is a Class-1 Contractor, his bid for the tender called by the first respondent for construction of storm water drainage at Ankola and Karwar under package nos. 2110 (A) and 2110 (B) was accepted and pursuant to the same he entered into an agreement on 05.02.2003 with the first respondent. The first respondent by order



dated 17.06.2004 suspended the pre-qualification of the petitioner as Group-1 Class-B Contractor and then terminated the contract on 28.06.2004. The petitioner challenged this order before the High Court in W.P. No. 41397/2004. Writ Petition was allowed in part as regards suspension of pre-qualification of petitioner as Group-1 Class-B Contractor and for the other reliefs claimed in the writ petition, he was directed to file a suit. Accordingly, the petitioner instituted O.S. No. 35/2005 in the Court of Addl. Sr. Civil Judge, Karwar for declaration that termination of contract on 28.06.2004 was null and void and for refund of security deposit, and other consequential reliefs. The suit having been dismissed by the trial court, he preferred an appeal, R.A. No. 88/2010 to the District Court, which allowed the appeal and decreed the suit partly and directed preliminary decree to be drawn in regard to the relief claimed at Sl. No. A. Six months time was granted for the parties to settle their accounts amicably and he was also permitted to initiate final decree proceeding to ascertain the amount due to him if



settlement was not possible. It appears that settlement did not come through and therefore he initiated final decree proceeding in which he claimed an amount of Rs.2,43,06,588/- from the respondents.

4. The first respondent filed statement of objections and contested the proceeding. After holding an enquiry, the trial court found that the petitioner was entitled to recover a sum of Rs.24,09,182/- with interest at the rate of 9% p.a. from the date of petition. Aggrieved by the judgment and order, this appeal has been filed.

5. We have heard the arguments of Sri Sriranga, learned senior counsel who argued on behalf of the petitioner's counsel, and Sri N.G. Rasalkar, learned counsel for respondent nos.1 to 3.

6. It is the argument of Sri Sriranga that during enquiry the petitioner produced joint report of the Commissioners which was marked as Ex.P.1. This report clearly states that the petitioner had completed 96% of the work



assigned to him by the first respondent Company. There was no justification for terminating the contract with the petitioner. The remaining work was entrusted to another contractor. The petitioner gave security deposit to the respondents after he entered into an agreement with them. After his contract was terminated the security deposit was to be refunded to him and he was also to be paid for the work completed by him and in all this amounted to Rs.2,43,06,588/-. In the joint report submitted by the Commissioners it is clearly mentioned that the petitioner had completed 96% of the work. In the same report it is clearly mentioned that a sum of Rs.57,35,862/- was payable to the petitioner. The respondents did not object to this report. In fact the trial court refers to the report of the Commissioners but makes no reference to work being completed by the petitioner and has given a finding erroneously that the petitioner has not substantiated his claim for Rs.2,43,06,588/-. The petitioner is entitled to interest on the security deposit to be refunded to him. The trial court has simply accepted



the respondent's contention that amount refundable is only Rs.24,09,182/. Therefore the impugned order is not sustainable and appeal deserves to be allowed for the entire claim.

7. Sri N.G. Rasalkar, learned counsel for the respondent nos.1 to 3 has argued that the petitioner did not complete the work entrusted to him and even the work he attended was not completed in accordance with the specified time schedule. After termination of the contract with the petitioner, the work had to be entrusted to the another contractor and thereby the respondent nos.1 to 3 incurred double expenditure which the petitioner has to make good. The joint report of the Commissioners may indicate that the petitioner had completed 96% of the work, but in reality it is not so. Respondent nos.1 to 3 made calculations after allowing deductions from the security deposit made by the petitioner and the amount due was only Rs.24,09,182/-. The trial court has found this



amount correct and therefore there is no infirmity in the impugned order.

8. Now if the impugned judgment and the order is seen, it may be stated that even though the trial court refers to the oral evidence and documentary evidence, more particularly the joint report of the Commissioners as per Ex.P.1, it appears that the trial court has not considered the fact of 96% of the work being completed by the petitioner for the reason that the balance work that remained after termination of the contract had to be entrusted to another contractor and thereby the first respondent Company incurred excess expenditure of Rs.17,95,000/-. In this regard, though it is observed by the trial court that statement to this effect is not forthcoming in the objections filed by the first respondent to the petition for final decree, it has referred to the oral testimony of RW1 who has stated that the balance work and some other works were entrusted to the another contractor. Probably this could be the reason for the trial



court accepting the contention of the respondents that a sum of Rs.24,09,182/- was the amount due to the petitioner.

9. After assessing the entire evidence, it may be stated that the petitioner has not been able to substantiate his claim for Rs.2,43,06,588/-. To this extent, the findings of the trial court are acceptable. But it is to be mentioned here that the petitioner and the respondents have accepted the joint report of the Commissioners as per Ex.P.1. They are the experts who after inspecting the work executed by the petitioner made a report that the petitioner had completed 96.78% work entrusted under the contract. They have also noted that the respondents over estimated the work and the contractor had to face hurdles because of indecisiveness of and, change in the nature of work and change in the design and modifications effected during execution by the respondents. Taking note of all these aspects of the matter, the Commissioners gave a report that the petitioner is to be paid a sum of



Rs.57,35,862/- with interest. Break up figures have been given by the Commissioners. Though Sri N.G. Rasalkar disputed these break up figures, it is to be stated that because the report of the Commissioners was not objected to by the respondents in the trial court, his argument in this regard cannot be accepted and the respondents are bound by this report. The trial court has ignored this part of the Commissioners report and it has blindly accepted the stand of the respondents to hold that the petitioner is to be paid only a sum of Rs.24,09,182/-. In this view, the impugned judgment is not sustainable.

10. Of course the petitioner is entitled to interest. No doubt it is a commercial transaction. The Commissioners have stated that the court has to take a decision in regard to compensation, interest and overhead charges payable as claimed by the petitioners. But we are of the opinion that in the facts and circumstances of the case if interest at the rate of 12% p.a. on an amount of Rs.57,35,862/- is awarded it meets the ends of justice. The interest is to be



paid from the date of termination of contract. Therefore,
the following

ORDER

Appeal is allowed partly. Impugned judgment is modified. The respondent nos.1 to 3 are hereby directed pay a sum of Rs.57,35,862/- to the petitioner with interest at the rate of 12% p.a. from 28.06.2004 till date of repayment of the entire amount. The petitioner is also entitled to costs of the final decree proceedings and this appeal.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**

BVV
LIST NO.: 1 SL NO.: 1