



S.A.No.882 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

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M/s.Tamil Nadu Magnesite Limited,
Rep. by its Chairman & Managing Director,
A Government of Tamil Nadu Undertaking
No.5/53, Omalur Main Road,
Jagirammappalayam Post,
Salem - 636 302.

... Appellant

Vs.

1. S.Subramani

2. M/s.Salem District Magnesite Pattali Thozhil Sangam,
Rep. by its General Secretary,
Arabic College Buildings,
Salem.

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 13.09.2017 passed in A.S. No.89 of 2015, on the file of the Principal District Court, Salem, upholding the decree and judgment dated 23.09.2014 passed in O.S.No.128 of 2008, on the file of the I Additional Sub Court, Salem.



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For Appellant : Mr.J.Deliban
For R1 : No appearance
For R2 : Mr.A.Nagarathinam

JUDGMENT

The appellant is the first defendant in O.S.No.128 of 2008, on the file of the I Additional Sub Court, Salem. The first respondent / plaintiff filed the suit for recovery of a sum of Rs.1,18,365/- together with interest at the rate of 18% per annum from the first defendant.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

The plaintiff is a labour contractor. He used to pay wages in various forms such as salaries, daily wages and weekly wages to the labourers. On 01.04.2006 (Ex.A1) a contract was entered into between



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the plaintiff and the first defendant to do mining works at S.K.D. and Mines. As per the agreement, the plaintiff deposited a sum of Rs.92,400/- with the first defendant and supplied labourers to S.K.D. and Mines. The deposit was refundable and the plaintiff performed his part of the contract. The first defendant, being satisfied with the services of the plaintiff, extended the contract till 31.05.2006 (Ex.A6). The plaintiff had paid the wages, salaries and other benefits to the labourers as per the terms and conditions of the contract. However, the first defendant did not refund the security deposit of Rs.92,400/- to the plaintiff after completion of the contract. The plaintiff also came to understand that some of the labourers filed a petition before the Assistant Commissioner of Labour, Chennai, claiming some amount to be paid by the plaintiff to them. Since the demand made by the labourers are unlawful, the plaintiff filed a counter before the Assistant Commissioner of Labour, Chennai. In the meanwhile, the first defendant refused to return the EMD security deposit of Rs.92,400/- and in this regard, the plaintiff issued legal notices dated 01.11.2006 (Ex.A2) and 13.11.2006 (Ex.A4) to him. The first defendant sent a reply notice dated 21.11.2006 (Ex.A3) which, according to the



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plaintiff, contained false allegations. Therefore, the plaintiff filed the suit for recovery of a sum of Rs.92,400/- with interest from the defendant.

4. The suit was resisted by the first defendant on the following grounds:

- i. The plaintiff did not pay wages, salaries and other benefits to the workers, on account of which the labourers raised a conciliation proceedings before the Chief Labour Commissioner, Chennai, which is still pending in M-5/14/06/B2.
- ii. In the said proceedings, the first defendant was also made as a party.
- iii. There is no cause of action for filing the suit. Therefore, the suit is liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed the following issues :



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"i. Whether the suit is bad for non joinder of necessary parties ?

ii. Whether the plaintiff is entitled for the suit claim ?

iii. Whether the defendant is entitled to claim compensatory costs

?

iv. To what other reliefs ?"

6. In the trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A6. One witness was examined on the side of the defendants and Ex.B1 to Ex.B5 were marked.

7. The learned trial court judge after analysing the oral and documentary evidence on record, decreed the suit in favour of the plaintiff vide his decree and judgment dated 23.09.2014.

8. Aggrieved over the same, the first defendant filed an appeal in A.S. No.89 of 2015, before the Principal District Court, Salem. The learned Principal District Judge, Salem, after analysing the evidence on record, upheld the findings recorded by the trial court vide his decree and



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judgment dated 13.09.2017, as against which the present second appeal is filed.

9. Heard Mr.J.Deliban, learned counsel for the appellant and Mr.A.Nagarathinam, learned counsel for the second respondent. No representation for the first respondent.

10. Mr.J.Deliban, learned counsel for the appellant contended that the first respondent / plaintiff in his plaint had clearly admitted that there was a conciliation proceedings before the Assistant Commissioner of Labour, Chennai, in which the appellant was made as a party. Moreover, the first defendant was also directed to deposit a sum of Rs.75,294/- to the credit of Assistant Commissioner of Labour, Chennai. In the circumstances, the plaintiff's suit is not maintainable.

11. A perusal of the records shows that the plaintiff is a labour contractor and he supplied labourers to the appellant to carry out work in S.K.D. and Mines. The contract period was from 01.04.2006 to



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31.02.2006 as is seen from the contract Ex.A1. Subsequently, it was extended till 31.05.2006 (Ex.A6). As per the terms of the contract a sum of Rs.92,400/- was paid by the plaintiff towards security deposit. It is admitted that some of the labourers raised a dispute before the Assistant Commissioner of Labour, Chennai, claiming payment of bonus to them. According to the first defendant, they deposited a sum of Rs.75,294/- to the Assistant Commissioner of Labour and therefore, they are not in a position to refund Rs.92,400/- to the plaintiff. In the written statement, there is no specific plea that a sum of Rs.75,294/- was deposited by the first defendant with the Assistant Commissioner of Labour, Chennai. However, Mr.J.Deliban, learned counsel for the appellant contended that subsequent to the filing of the written statement, they were asked to deposit a sum of Rs.75,294/- by the Assistant Commissioner of Labour. As per the Contract Labour (Regulation and Abolition) Act, 1970, the first defendant is the principal employer. Under Section 21(4) of the Act, if the contractor fails to make payment of wages within the prescribed period or make short payment, the first defendant as a principal employer is entitled to recover from the contractor or deduct the amount if any with



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him towards the wages payable to the contract labourers. In the instant case, the specific contention of the appellant / first defendant is that some of the labourers raised a claim before the Assistant Commissioner of Labour, Chennai. However, it is not the case of the appellant that the plaintiff committed default in payment of wages to the labourers. Apart from that as per Section 21(2) of the Contract Labour Act (Regulation and Abolition) Act, 1970, principal employer can nominate a representative duly authorised by him during disbursement of salary. The first defendant had not filed any report from the authorised person to show that the plaintiff committed any default in payment of wages. The appellant's main contention is that since there was a claim made by some of the labourers that they have not been paid bonus amount, they cannot disburse the security deposit of Rs.92,400/-.

12. It is pertinent to point out that the appellant did not state the actual amount to be paid by the plaintiff towards bonus to the contract labourers. The contract (Ex.A1) entered into between the plaintiff and the first defendant is covered under the Contract Labour Act



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(Regulation and Abolition) Act, 1970. Merely based on the statement made by the appellant in his written statement that the plaintiff owes some money to the contract labourers is not sufficient to hold that the appellant need not refund the security deposit. It is also relevant to point out that the appellant did not send any notice to the plaintiff stating that he did not pay wages to the contract labourers as per the terms of the contract.

13. Both the Courts below after analysing all these aspects had concurrently held that the plaintiff is entitled for the refund of security deposit of Rs.92,400/-. All the observations of both the Courts below are based on factual aspects of the case and there is no substantial question of law involved in the present second appeal.

14. In the result,

- i. the Second Appeal is dismissed. No costs.



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ii. The decree and judgment dated 13.09.2017 passed in A.S. No.89 of 2015, on the file of the Principal District Court, Salem, and the decree and judgment dated 23.09.2014 passed in O.S.No.128 of 2008, on the file of the I Additional Sub Court, Salem, are upheld.

19.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Principal District Court, Salem.
2. The I Additional Sub Court, Salem.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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