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A.S.(MD)No.120 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.120 of 2022

R.S.Mani

...Appellant

Vs.

1.The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswarar Tirukovil,
Madurai – 1.

2.The Thakkar/Trustee,
Arulmighu Meenakshi Sundareswarar Tirukovil,
Madurai – 1.

3.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai.

4.The District Collector,
Madurai.

...Respondents

PRAYER: This Appeal Suit filed under Order 41 Rule 1 read with Section 96 of C.P.C., aggrieved by the judgment and decree passed by the I Additional District Judge, Madurai, dated 23.06.2017, in O.S.No.108 of 2011.

For Appellant	: Mr.H.Arumugam
For R1& R2	: Mr.S.Manohar
For R3 & R4	: Mr.P.T.Thiraviam
	Government Advocate



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JUDGMENT

The present appeal is filed by appellant who was the successful bidder to run prasadha stall against the judgment and decree dated 23.06.2017 passed in O.S.No.108 of 2011 by the I Additional District Court, Madurai. The plaintiff is the appellant herein and the defendants are the respondents herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

2. The plaintiff is the contractor for running prasadha stall in Arulmigu Meenakshi Sundareswarer Thirukoil for the pasali 1413. The plaintiff had participated in the tender proceedings. Initially, the tender for running the stall the upset price was fixed as Rs.45,00,000/-. However, since there were no bidders, the temple has reduced the amount to Rs.31,75,000/- and in spite of the same there were no bidders. Further the temple authorities had reduced the amount to Rs.23,70,000/- and then also there were no bidders. Finally, the upset price was fixed at Rs.21,51,000/- for the pasali 1414 and tender process was conducted on 12.05.2004 and there were no bidders even for Rs.21,51,000/-.

3. Hence, the persons participated in the tender process put forth three demands like the temple should permit the successful bidder for selling extra



items, for putting up one more stall and to increase the price of the items. If these conditions are fulfilled, the contractors expressed their willingness to take the stall for Rs.30,00,000/-. There was a promise by the temple authorities that the said conditions may be accepted, but the same would be subject to the approval from the Commissioner of HR&CE. Therefore, the contractors accepted the tender process and finally for pasali 1414, the stall was sold for Rs.32,00,000/-. The temple authorities also submitted the proposal to the Commissioner of HR&CE. However, the Commissioner declined the same and rejected the proposal.

4. The plaintiff was aggrieved by the rejection since the rejection is against the promise. Hence, he had filed a writ petition in W.P.No.9265 of 2005 and the same was dismissed, vide order, dated 15.03.2006, since there is an alternative remedy before the Commissioner. Thereafter, the plaintiff preferred a revision petition in the year 2006 before the Commissioner. After hearing the revision, the Commissioner had dismissed the same in the year 2011 and directed the plaintiff to file a civil suit. Hence, the plaintiff preferred a civil suit in O.S.No.108 of 2011. After considering the evidences, the Trial Court has dismissed the suit. Aggrieved over the same, the present Appeal Suit is preferred before this Court.

5. The points for consideration are as follows:



- a. Whether the suit is barred by limitation?
- b. Whether there is any contract between the plaintiff and the defendant to increase the amount, to open more stalls, to sell more items?
- c. whether the plaintiff is entitled to any relief under the principle of promissory estoppel?

6. The preliminary contention of the Learned Counsel appearing for the defendants is that the suit itself is barred by limitation since the impugned tender was conducted for the pasali 1414, i.e., in the year 2004-2005 and the suit is filed in the year 2011 which is beyond three years period. The Learned Counsel appearing for the plaintiff submitted that the plaintiff initially preferred a writ petition immediately after the auction in the year 2005 itself. When the same was dismissed, he preferred a revision petition before the Commissioner which was dismissed in the year 2011. Thereafter, in the year 2011 itself, the plaintiff has preferred the suit. Therefore, the litigation period from the date of filing the writ petition till the dismissal of revision petition ought to be deducted for calculating the limitation. If the same is deducted then the suit is filed within limitation.

7. The Learned Counsel appearing for the plaintiff relied on the judgment



rendered in the case of ***Sesh Nath Singh and another Vs. Baidyabati***

Sheoraphuli Co-operative Bank Limited and another reported in (2021) 7

Supreme Court Cases 313 and the relevant paragraph is extracted hereunder:

“79. In our considered view, Explanation (a) cannot be construed in a narrow pedantic manner to mean that Section 14 can never be invoked until and unless the earlier proceedings have actually been terminated for want of jurisdiction or other cause of such nature. Explanation (a), which is clarificatory, only restricts the period of exclusion to the period between the date of initiation and the date of termination. An applicant cannot claim any further exclusion.”

This Court is of the considered opinion when the plaintiff had preferred to contest the case but had preferred incorrect courts / forums, then the period of litigation pending before other Courts / Forums ought to be deducted, if deducted the suit is filed within limitation. Therefore, the plea of limitation raised by the defendants is rejected.

8. The contention of the plaintiff is that there were no bidders for the stall, when the upset price was fixed at Rs.23,00,000/-, then it was reduced to Rs. 21,50,000/-. At this stage, there was negotiation between the contractors and the temple authorities to put up extra stall, to sell extra items and for increased price. When these three conditions were accepted by the temple, the rate of the tender



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upset price was fixed by Rs.30,00,000/-. Finally, the successful bidder had taken the bid for Rs.32,00,000/- which is evident from the letter, dated 22.10.2004, which is marked as Exhibit A3. The contents of the letter are extracted hereunder:

“பார்வை -2 ல் காணும் அணையர் குறிப்பில் கேட்கப்பட்ட விபரங்களுக்கு கீழ்க்கண்டவாறு அறிக்கை பணிவுடன் சமர்ப்பிக்கப்படுகிறது.

மதுரை, அருள்மிகு மீனாட்சி சுந்தரேசுவரர் திருக்கோயில் பிரசாத விற்பனை உரிமம் பசலிதோறும் பொது ஏலம் மூலம் உயர்ந்த கேள்விதாருக்கு முடிவு செய்யப்பட்டு ஆணையர் அவர்கள் அனுமதி பெறப்பட்டு வரப்படுகிறது. அதுபோன்று 1414ம் பசலி சில்லரை குத்தகை உரிமத்திற்கு 12.05.2004 அன்று பொது ஏலம் நடத்தப்பட்டது. ஆதில் இத்திருக்கோயில் பிரசாத விற்பனை உரிமத்திற்கு நடத்தப்பட்ட பொது ஏலத்தில் திருக்கோயில் மதிப்பு ரூ.23,70,000/-க்கு கேள்வி ஆரம்பிக்கப்பட்டது. இதற்கு மேல் ஏலத்தில் கலந்துகொண்டவர்களின் கேள்வி கேட்க முன்வராததால் ஏலம் ஒத்திவைக்கப்பட்டது.

மேற்கண்ட பிரசாத விற்பனை உரிமத்தின் 1413-ம் பசம் ஏலத் தொகை ரூ.21,51,000/- ஆகும். 12.05.2004 ந் தேதி நடைபெற்ற 1414-ம் பசலி பொது ஏலத்தில் கலந்துகொண்டவர்கள் தற்போதைய விற்பனை இனங்களுடன், கூடுதலாக விற்பனை இனங்களை சேர்த்து, விற்பனை விலையினை மாற்றி அமைத்து கொடுத்தால், 1413 பசலியைவிட திருக்கோயில் மதிப்புக்கு மேல் கேள்வி கேட்பதாக தெரித்ததன் அடிப்படையிலும், இத்திருக்கோயில் பிரசாத விற்பனை ஏல உரிமம் குறித்தது. இத்துறை ஆணையர் அவர்கள் மதுரை முகாமின்போது ஏலதாரர்கள் கோரிக்கையினை ஏற்கும்பட்சத்தில் ஏலத்தொகை ரூ.30,00,000/- க்கு (ரூபாய் முப்பது லட்சம்) மேல் இருக்க வேண்டுமென அறிவுறுத்தியதன் அடிப்படையிலும்) மேற்படி உரிமத்திற்கு 04.06.2004 அன்று நடைபெற்ற மற் பொது ஏலத்தில் உயர்ந்த கேள்விதாரரான ஆர்.எஸ்.மணி என்பருக்கு ரூ. 32,00,000/- (ரூபாய் முப்பத்து இரண்டு இலட்சம்)க்கு ஏலம் முடிவு



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9. The Trial Court has considered the said letter. However, the Trial Court has come to the conclusion that it is only negotiation and it has not culminated into contract and held the plaintiff is not entitled to any relief by relying on the said letter. After considering the arguments especially the letter cited supra, this Court is of the considered opinion that the Trial Court is absolutely right in stating that the letter indicates the negotiation but the same had not culminated into contract. In the contract signed by the parties there is no permission to increase the price, to sell other items and to open more stalls. Therefore, this Court is of the considered opinion that there is no contract between the parties for the said three conditions.

10. But the Trial Court has failed to consider the fact that based on the negotiations only, the upset price has been increased to Rs.30,00,000/-, therefore the plea of promissory estoppel ought to be considered and the Trial Court has not dealt with the said plea.

11. The respondents submitted that the promissory estoppel cannot be taken into account, since there was no promise made by the Joint Commissioner.



However, the proceedings, dated 22.10.2004 indicates that while the Commissioner HR&CE was in Camp Office, the Commissioner HR&CE had suggested that the upset price may be increased to Rs.30,00,000/-. Even though the promise was not given by the Joint Commissioner, there was a suggestion by the Commissioner HR&CE to increase the upset price to Rs.30,00,000/- based on the three demands, therefore the respondents now cannot take a plea that the Joint Commissioner had not given any promise. The Commissioner HR&CE is one of the parties in the present suit who has been arrayed as 3rd respondent. Since the three demands made by the contractors was considered as stated supra, the present contractor plaintiff has acted upon. Even though the said promise was not incorporated in the tender conditions, the same ought to be considered since there is a promise to consider the same on the increased upset price. The Learned Counsel had relied on the judgment rendered in the case of ***Union of India and others Vs. Godfrey Philips India Limited***, reported in ***AIR 1986 Supreme Court 806*** and the relevant paragraphs are extracted hereunder:

“9. Now the doctrine of promissory estoppel is well-established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true, to its form, stepped in to mitigate the rigour of strict law. This doctrine though of



ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was, in his celebrated judgment in *Central London Property Trust Ltd. v. High Trees House Ltd.* (1956) 1 All ER 256. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action: it can only be a shield and not a sword: but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in *Motilal Sugar Mills v. State of Uttar Pradesh* (1979) 2 SCR 641: (AIR 1979 SC 621), it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defense but it can also found a cause of action. The decision of this Court in *Motilal Sugar Mills* case (*supra*) contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision.

.....

11. The resultant position was summarized by this Court in *Motilal Sugar Mills* case (AIR 1979 SC 621) (*supra*) in the following words:

The law may therefore now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it



13. Since the contract is pertaining to temple, this Court is not inclined to grant the entire Rs.12,00,000/- to the plaintiff and the amount is restricted to Rs. 4,50,000/-. Therefore, the temple authorities are directed to pay Rs.4,50,000/- to the plaintiff / appellant herein within a period of two months from the date of receipt of a copy of this judgment.



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14. With the above said observations, the appeal suit is partly allowed. No costs.

23.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

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To:

1. I Additional District Judge,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.
3. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai.
4. The District Collector,
Madurai.



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