



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 10.02.2026	Judgment pronounced on : 13.03.2026
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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S. No.163 of 2023

Arumugham

..Appellant

Vs.

Rajasekaran

..Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree passed in O.S. No.14 of 2019 dated 11.08.2022 on the file of the District Court, Karaikkal.

For Appellant : Mrs.P.Srividhya

For Respondent : Mr.V.Ananthanatarajan

JUDGMENT

The plaintiff in O.S.14 of 2019, aggrieved by dismissal of the suit is the appellant herein.



II. PLEADINGS:

2 (1). Complaint in brief:

The plaintiff was employed as Transport Officer in ONGC and during employment, he became acquainted with the defendant who was operating a logistics services for ONGC under the name of M/s.Sivaraj Road Lines. After the retirement of the plaintiff on 31.01.2016, the defendant persuaded the plaintiff to take care of his administration of his logistics services at Karaikal as a consultant and managed the affairs of the Company. The plaintiff agreed to the same. The plaintiff further submitted that the defendant, for business operations, was maintaining an account with State Bank of India, Nagapattinam in the name of the Accountant of the defendant by name, Uma Maheswaran. The defendant used to transfer funds to the said account to meet out expenses through the Accountant, Uma Maheswaran. In the course of business, the plaintiff having been appointed as Consultant on a fee of Rs.22,000/- per month, was requested to meet any shortfall from his own funds. The plaintiff had joined the defendant on 04.02.2016. The plaintiff trusted the defendant that all expenses incurred by the plaintiff would be reimbursed. The defendant made periodical visits to Karaikal and he is fully aware of the expenses that are incurred by the plaintiff. The plaintiff has expended about Rs.7,00,000/- from 04.02.2016 to 30.06.2016 on behalf of the defendant. The plaintiff was also not



paid his salary for five months, amounting to Rs.1,10,000/-. The plaintiff therefore, issued a lawyer's notice on 11.08.2017, after resigning from the job, calling upon the defendant to reimburse the expenses and also pay the unpaid salary of Rs.1,10,000/-. The said notice was received by the defendant's mother, however no reply was sent. The plaintiff attempted to amicably resolve the disputes by approaching local panchayats, Mediators as well as Police, but none of the attempts yielded any results. The defendant prepared a working sheet through a Chartered Accountant and claimed Rs.6,02,217/- to be payable to him, apart from arrears of salary of Rs.1,10,000/-. The plaintiff has thus filed the suit for recovery of the said amount, together with interest and costs.

2(2). Written Statement filed by the defendant in brief:

The defendant denies the plaint averments and allegations. The defendant admits the fact that he is running a business of logistic services to ONGC under the name and style of M/s.Sivaraj Road Lines and that for the purposes of business operations, he has been maintaining accounts with the State Bank of India in the name of his Accountant, Mr.Uma Maheswaran. The defendant further admits that he has been in the habit of transferring funds to the said account to enable Uma Maheswaran to meet out the expenses at Karaikal. However, the defendant states that the said Uma Maheswaran was expelled for



acting against the interest of the defendant. The defendant has no acquaintance with the plaintiff and never approached the defendant and persuaded him to come in as a Consultant for the defendant's Company. Self-serving claims of Rs.22,000/-, the plaintiff meeting shortfall of his own funds and defendant agreeing to reimburse expenses are all far from true and a made up story. The defendant also denies that he was aware of the expenses being incurred by the plaintiff and that he has promised to reimburse the same. The defendant also denies that he is liable to pay an alleged arrears of salary to the tune of Rs.1,10,000/-. The defendant further states that the plaintiff has colluded with the Uma Maheswaran, the expelled Manager of the defendant and has filed the vexatious suit, collecting photostat copies from Uma Maheswaran. The suit is only a result of inducement of Uma Maheswaran, who has been expelled from the Company. The pre-suit notice was suitably replied to, however, the reply notice was returned. The defendant has not liable to pay any money much less the suit herein.

2(3) Issues:

Based on the pleadings the Trial Court has framed the following issues:-

1. பிரதிவாதி நடத்திவந்த சிவராஜ் ரோடுலைன்ஸ் நிறுவனத்தின் ஆலோசகராக வாதி நியமிக்கப்பட்டு வாதிக்கு மாதச்சம்பளமாக ரூ.22,000/- பிரதிவாதி கொடுத்தார் என்பது சரியா?



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2. வாதி கூறுவதுபோல் பிரதிவாதி நிறுவனத்திற்கு ரூ.6,02,217/- வாதி செலவு செய்தார் என்பது சரியா?

3. வாதி கூறுவதுபோல் வாதிக்கு ரூ.7,12,217/- பிரதிவாதி கொடுக்க வேண்டும் என்பது சரியா?

4. வாதி கூறுவதுபோல் ரூ.7,12,217/-க்கு 18 % வட்டியுடன் பிரதிவாதி கொடுக்க வேண்டும் என்பது சரியா?

5. தாவாவானது காலாவதி தோஷத்தால் பாதிக்கப்பட்டுள்ளது என்பது சரியா?

2(4). Trial:

On the side of the plaintiff, the plaintiff himself examined as P.W.1 and also two other witnesses P.W.2 and P.W.3 were examined and the plaintiff marked Ex.A1 to A5 on his side. On the side of the defendant, defendant examined himself as D.W.1 and Ex.B1 to B4 were marked.

2(5). Decision of the Trial Court:-

The Trial Court, deciding the issue of Limitation first, held that the suit claim was not barred by limitation and thereafter, proceeded to decide the other issues and ultimately found that the plaintiff has not proved the suit claim and dismissed the suit.



3. The present APPEAL:-

I have heard Mrs.P.Srividhya, learned counsel for the appellant and Mr.V.Ananthanatarajan, learned counsel for the respondent.

4. Arguments of the learned counsel for the appellant:-

The learned counsel for the appellant Mrs.P.Srividhya, would state that no doubt, the appointment of the appellant as Consultant was only oral. However, she would state that the backbone of defence raised by the respondent was that the plaintiff was a stranger to the defendant and that the plaintiff had colluded with his Manager, Uma Maheswaran. In this regard, the learned counsel would state that the defendant has not filed even a scrap of paper to establish that the said Uma Maheswaran had been removed on account of acting against the interest of the defendant. The learned counsel would also take me through the cross examination of the D.W.1. Referring to Ex.A1, where there is a transfer of Rs.50,000/-, the learned counsel for the appellant would state that there is no explanation on the side of the respondent as to how such transfer was effected when it is the case of the respondent that he was never knew the plaintiff. She would also state that if the appellant was a total stranger, then there was no possibility for the appellant to have produced the ledger accounts of the defendant's Company/Office at Karaikal.



5. The learned counsel would also bring to my notice that I.A. No.5 of 2021 was filed to issue summons to Uma Maheswaran and however, there is no reference to the fate of the said Application in the judgment and the E-courts page/site only reflects the application as disposed of on 22.12.2021. The learned counsel for the appellant would therefore state that the appellant had established employment under the defendant and the Trial Court, on erroneous consideration of facts, had proceeded to dismiss the suit. She would therefore pray for the appeal being allowed.

6. Arguments of the learned counsel for the respondent:-

The learned counsel for the respondent, Mr.V.Ananthanatarajan, would state that not only does the appellant fall back on oral agreements and arrangements, but the documents that have been relied on are all photostats copies which are inadmissible in evidence. He would further state that the Auditor examined to speak about the accounts is also not the plaintiff's Auditor and therefore, no credence can be given to the evidence of a third party, who had nothing to do with either the plaintiff or the defendant. Additionally, the learned counsel would contend that the tender document of the defendant with ONGC, clearly imposes a bar on the defendant employing the plaintiff, who is admittedly an employee of ONGC and therefore, there was absolutely no merit



in the case put forth by the appellant that the appellant an ex-employee of ONGC has been hired by the defendant. The suit is also barred by limitation.

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7. Reply Arguments of the learned counsel for the appellant:-

In reply, the learned counsel for the appellant Mrs.Srividhya, would state that the Rule which is now relied on by the defendant is not applicable to the plaintiff and further, such a plea was not even taken in the written statement and it is therefore, not open to the respondent to now raise this issue for the first time in appeal, in the absence of any appropriate pleading in the written statement.

8. ISSUES:-

I have carefully considered the submissions advanced by the learned counsel on either side. The only point that arises for consideration in this appeal is as to *whether the plaintiff has established his claim for recovery of money, based on an oral contract of being employed as Consultant by the defendant?*

9.Even according to the plaintiff, there is no formal appointment order, in and by which the plaintiff was appointed as the Consultant. The plaintiff only relied upon photostat copies of report of the Auditor, Bank Passbook of Uma



Maheswaran, lawyers notice issued by the defendant and the original of the acknowledgment Card indicating due service of notice on the defendant, besides Ex.A1 and Ex.A5 series which were photo stat copies of voucher, manual registers of the defendant's Company. On the side of the respondent, the reply notice dated 13.10.2017 as well as the return cover has been marked as Ex. B1 and Ex.B2. Though Ex.B3 and Ex.B4, tender documents have been filed with regard to the ban on employing the plaintiff, an employee of ONGC, I do not see how any amount of evidence can be let in, in the absence of pleading. There is admittedly no plea with regard to the defendant not being entitled to employ the plaintiff, who was a formal employee of ONGC. Therefore, I do not see any merit with regard to the submissions made in this regard by Mr.Ananthanatarajan, learned counsel for the respondent. In fact, the Trial Court, despite the absence of pleading has gone into the exhibits marked on the side of the respondent/defendant and found that the law relied on by the respondent, would not apply to the plaintiff.

10. However, the fact remains that it is for the plaintiff who has come to Court to establish that there was indeed a contract, in and by which the plaintiff was appointed on a monthly salary of Rs.22,000/- and that the defendant had agreed to reimburse the all expenses incurred by the plaintiff. The burden was



therefore very heavily on the plaintiff's shoulder to establish the factum of employment first and thereafter, secondly, the salary agreed to be paid to the defendant to the plaintiff and thirdly, the agreement regarding reimbursement of expenses and lastly, the actual expenses allegedly incurred by the plaintiff.

11. It is the specific contention of Mrs.Srividya, learned counsel for the appellant that if the case of the defendant is even probable that the plaintiff was a total stranger and never employed as claimed by the defendant, then various transfers made from the defendant's Karaikkal office account through Uma Maheswaran, through the plaintiff remained totally unexplained by the defendant. In this regard, I find that merely because, the plaintiff has been able to establish that there were some payments made by the defendant's Manager, Uma Maheswaran to the plaintiff, it is not sufficient enough to establish that the plaintiff was employed as Consultant by the defendant on a monthly salary of Rs.22,000/- and further, that the defendant has undertaken to reimburse all expenses of the plaintiff. Though it has been argued by Mrs.Srividhya, learned counsel for the appellant that an Application was taken out to summon Mr.Uma Maheswaran, admittedly, the application appears to have been closed and the plaintiff upon whom the burden lied, has not taken any steps to examine the said Uma Maheswaran and prove the plaint averments and allegations with regard to



the employment of the plaintiff/defendant and transfer of monies from Uma Maheswaran's account to the plaintiff being only on account of reimbursement of expenses/salary payable to the plaintiff.

12. The witnesses examined on the side of the plaintiff are not persons who had first hand information or knowledge about the employment of the defendant and on the contrary, in fact P.W.3 has stated that he has prepared the report only based on the documents furnished by the plaintiff. In such circumstances, I do not see how Ex.A1, will prove the suit claim as contended by the learned counsel for the appellant. In fact, P.W.3, has also stated that he prepared report based only on photostat copies. A specific suggestion has been put to P.W.1, that he has colluded with the defendant's Manager Uma Maheswaran. In such circumstances, it is very likely that the case of the defendant, is more probable since according to the defendant Manager, Uma Maheswaran was sent out of employment and excepting Uma Maheswaran, the plaintiff has not shown to have had any acquaintance on behalf of the defendant's Company. In such circumstances, the argument of the learned counsel for the respondent that it is highly possible that in order to settle scores with the defendant, the said Uma Maheswaran has set up the plaintiff and has provided documents, so that a claim could be slapped against the defendant.



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13. Even with regard to the non sending of reply, I find that the reply notice was duly sent to the lawyer who addressed the notice on behalf of the plaintiff and the same has been returned un-served. Therefore, I am unable to accept the argument of Mrs.Srividhya, learned counsel for the appellant that if really, a false claim made by the plaintiff, the defendant would have certainly replied immediately. The Trial Court has also appreciated the oral and documentary evidence in this regard and has rightly come to the conclusion that reply notice was in fact sent by the defendant. The Trial Court has also rightly found that the plaintiff has miserably failed to discharge the burden upon the plaintiff, before becoming entitled to the suit claim. The Trial Court has discussed and rightly appreciated the oral and documentary evidence in a proper prospective. I do not see any grounds warranting interference in appeal. Point is answered in favour of the appellant.

14. RESULT:-

In fine, the Appeal Suit is dismissed with costs.

13.03.2026

Neutral Citation Case: Yes / No
Speaking / Non-speaking order
Index: Yes/No
rkp



To

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



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P.B.BALAJI.J.

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Pre-delivery judgment made in
A.S. No.163 of 2023

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