

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS**

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

RFA.No. 580 of 2008

**JUDGMENT DATED 12-07-2007 IN OS 344/1999 OF II ADDL. SUB COURT,
THIRUVANANATHAPURAM**
.....

APPELLANT(S)/DEFENDANTS:

- 1. STATE OF KERALA, REP. BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE SUPERINTENDING ENGINEER,
BUILDINGS AND LOCAL WORKS, SOUTH CIRCLE,
KERALA PWD , THIRUVANANTHAPURAM.**

BY ADV. GOVERNMENT PLEADER

RESPONDENT(S)/PLAINTIFF:

**P.PARAMESWARAN PILLAI,
AGED 56 YEARS, CONTRACTOR,
RESIDING AT, 'ASHA BHAVAN' NEDUVATHOOR, NEELESWARAM,
KOTTARAKKARA.**

BY ADV. SRI.K.A.MANZOOR ALI

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

**THOTTATHIL B.RADHAKRISHNAN
SUNIL THOMAS, JJ.**

RFA. No. 580 of 2008

Dated this the 21st day of July, 2015

JUDGMENT

Sunil Thomas,J

This appeal arises from the judgment and decree in O.S. No.344/1999 of the 2nd Additional Sub Court, Thiruvananthapuram, in a suit for recovery of money and declaration.

2. The plaintiff, who was a contractor with Class A registration with the Kerala Public Works Department, had submitted a quotation dated 2/9/1993 for construction of a school building. It was accepted by selection notice dated 10/1/1994, at a reduced rate of 45% over the estimated rate and the work was quoted for an accepted PAC of Rs.21,77,535/-, less the costs of departmental materials. An agreement was entered into on 3/8/1994 with an agreed period of 12 months reckoned from 10/1/1994,for completion

of the work. Thereafter, the plaintiff claimed that he tried to complete the work within the stipulated time, but it was not successful, due to various reasons attributable to the delay caused by the defendants. The agreement was entered into much later. The main work could be started only belatedly, due to the delay in laying of foundation stone by the concerned Minister. The plaintiff was not expected to start the main construction work before the laying ceremony. There was considerable delay in supplying the MS items and the cement by the defendants . Due to non supply of the materials, the bed concreting of the foundation for the building could be completed only on 29/4/1995. After completion of the basement, the plaintiff approached the authorities requesting to use wire cut bricks instead of country burnt bricks, which was not available in the local market. It was not responded by the defendants for a long period. On 5/5/1996, the plaintiff requested the defendants to close the agreement and to supply the account. It was replied by the defendants only by the end of 1996. There were disputes relating to engagement of local workers which also caused considerable delay. Monthly payment exceeding Rs.500/- for the

work done was to be paid at regular intervals, which was also not complied with. The plaintiff, who had invested several lakhs of rupees till then, found it extremely difficult to continue to work, due to paucity of funds. In the meanwhile, the rates quoted by the plaintiff on the basis of the schedule of rate of 1990, became irrelevant, inapplicable and unexecutable. The request for reasonable hike in the rate was also not accepted for a long time. In the meanwhile, the plaintiff was served with an order dated 21/8/1996 by the 2nd defendant informing that the contract has been terminated at his risk and costs. The 2nd defendant has no authority or right to terminate the contract. A sum of Rs.3,50,000/- is due and payable to the plaintiff in terms of the recorded measurements of the defendants. Since the contract has been illegally terminated, the security furnished for the work by way of TSA passbook pledged with the defendants may be declared to be released to the plaintiff. He is entitled for a decree for 4,76,000/- with 12% future interest on the principal amount of Rs.3,50,000/-.

3. The defendants, in their written statement, denied the various allegations. It was admitted that the agreement was

entered into much belatedly. The delay was caused due to laches of the plaintiff. Selection notice was issued on 10/1/1994, but the charge of the site was taken only on 14/9/1994. The contractor did not make any attempt to start the work even after taking charge of the site. In spite of the direction of the departmental officer to commence the work, he did not come forward to execute the agreement. The trees standing on the site alignment have been cut and removed by the department on time. The function of laying the foundation was only a formal function and in the meanwhile he could have completed the earth work including excavation. The laying the foundation had not delayed the work. Even though materials were available, the contractor did not turn up to collect the materials on time. When he belatedly approached the department, there was paucity of stocks. Local purchases were made by the contractor and he was paid on 31/3/1995 itself. The contractor completed the basement work only in July 1995, which indicates that he took ten months to execute even the basement level work. Regarding the intervention of the local people, necessary steps had been taken by the defendants to avoid it. The plaintiff did not request

for payment of work done by him. Since he failed to complete the contractual obligations, the contract had to be terminated. The Department had taken all steps to co-operate with him. Due to the re-arrangement of the work, the Department had sustained a loss of Rs.17,61,119/- towards the risk and costs.

4. On the basis of the above pleadings, the plaintiff let in his oral evidence as PW1 and Exhibits A1 to A8 were marked. On the side of the defendants, DW1 was examined and Exts.B1 to B3 were marked. The court below, on an evaluation of the available inputs, held that the delay was caused partly by the Defendants and the plaintiff was entitled for money for the work done by him. The suit was hence partly decreed, for a sum of Rs.3,50,000/- with 12% interest from 21/8/1996 till the date of the decree and thereafter at 6% for p.a. . This is assailed by the defendants in this appeal.

5. Heard both sides and examined the records.

6. There seems to be no dispute regarding the essential facts in relation to the contract and the quantum of work done. Admittedly, the selection notice was issued on 10/1/1994, and agreement entered into on 3/8/1994 with 12 month period

commencing from 10/1/1994. The foundation stone was laid on 13/3/1996 and the basement was completed in July 1995. The contract was terminated on 21/8/1996.

7. The plaintiff attributed the cause for the delay on the defendants. Various reasons have been set up by the plaintiff as the cause for the delay in the execution of the agreement and for the work done.

8. According to the plaintiff, though the selection notice was issued on 10/1/1992, the agreement was executed only on 3/8/1994, with a period commencing from an anterior date. Regarding the execution of the agreement, the specific contention of the plaintiff was that the delay was caused by the defendants. The court below held that there were two letters dated 28/4/1994 and 12/5/1994 available on record, calling upon the plaintiff to execute the agreement. In spite of these two letters, the agreement was executed only on 3/8/1994. The court below on the above basis arrived at the correct conclusion that the delay in execution of the agreement was partly caused by the plaintiff.

9. There is a further allegation that there were trees

standing in the property, which were cut and removed by the defendants belatedly. It is an admitted fact that the trees were cut and removed only on 27/10/1994. The defendants have no case that the trees did not stand in the area covered by the construction and hence it did not cause any delay. On the other hand, it is evident that the plaintiff could not have constructed the building without clearing the land. Hence, this has also attributed to the delay.

10. Admittedly, the foundation stone was laid only 13/3/1995. Strangely, it was after the expiry of the period of performance, which was stipulated as 10/1/1995, reckoned from the date of commencement of 10/1/1994. Evidently, the foundation stone was laid at the instance of the defendants and the plaintiff cannot have much role in that. The plaintiff could not have done any substantial work without completion of the foundation laying ceremony. Ext.A2 letter dated 4/3/1995, also indicates that the laying of the foundation got delayed and major works were undertaken only thereafter. Hence, the delay can only be attributed to the defendants.

11. Regarding the supply of cement and stock, rival

contentions are set up by the plaintiff and the defendants. According to the plaintiff, in spite of his request, materials were not supplied and there was considerable delay in the supply and even when he attempted to collect, it was not available in the store. On the other hand, the contention of the defendants is that stock was available and whenever they were requested they lodged it and ultimately when it was about to be taken, the stock was not available. It is hard to believe that the plaintiff, who had commenced the work and had claimed that he had taken loan for the work, could have purposefully delayed the collection of the materials. Hence, it can be presumed that the delay was at the instance of the defendants.

12. Evidently, the plaintiff was bound to use country made burnt bricks. It was possible to use wire cut bricks also with the permission of the defendants. According to the plaintiff, country bricks were not available in the local market and hence, permission was sought to use wire cut bricks. The permission was granted only in 1996. Hence, this delay can be attributed only to the defendants.

13. It is also admitted that there were issues relating to the

local labourers, evidenced by Ext.A4 and Ext.B1. Though the defendants have taken some steps, it had also contributed to the delay. It is also admitted that as per the clause 6 and 7 of the contract, the plaintiff was entitled to get money for the work done, at regular intervals. The contention of the defendants was that no attempt was made by the plaintiff. It cannot be believed even for a moment that one who is entitled to money would voluntarily delay the collection of the money due to him.

14. Though the contract provided that it has to be completed before 9/1/1995, the court below has noted that, in para 8 of the written statement, the defendants have taken a stand contrary to what is stated in Ext.B2 agreement. According to the written statement, the period of completion of the work expired on 13/9/1995 and the period of twelve months has to be reckoned from the date of handing over of the site. Consequently, the period could have expired only on 13/9/1995. According to the defendants, the plaintiff did not apply for extension of the time to complete the construction and the defendants cannot be held liable for the delay caused for completing the work. Ext.A3 showed that the plaintiff had duly

applied for extension of time and the letter was issued on 11/5/1995.

15. On an appreciation of the entire facts, the court below correctly concluded that the delay was mainly attributable to the laches on the part of the defendants. The court below, in answer to the issue No. 2, has also held that the termination order was issued by a person who did not have authority. Based on the legally admissible materials, the court below held that the plaintiff had done the work for a sum of Rs.3,78,943/-. According to the defendants, the value of the stock and materials has to be recorded. Further, due to the rearrangement of the contract work, a loss of Rs.17,61,199/- was also to be recovered from the plaintiff. However, the court below has correctly held that the above claim cannot be accepted in the absence of any cogent evidence.

16. On an appreciation of the entire facts, the court below has correctly held that the plaintiff is entitled for recovery of Rs.3,50,000/- with interest at the rate of 12% from 21/8/1996 till the date of the decree and thereafter at 6%.p.a. with respective costs. This finding is supported by cogent evidence and there is

no factual or legal infirmity in the appreciation of the evidence. However, the court has held that due to laches on the part of the plaintiff, the security furnished by him cannot be returned. This finding is unassailable.

The appeal is without any merit and hence does not call for any interference. Accordingly, the appeal is dismissed.

Sd/-
THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

dpk

