

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

RFA.No. 385 of 2013 ()

AGAINST THE JUDGMENT IN OS 149/2011 of SUB COURT, PERUMBAVOOR DATED
29-01-2013

APPELLANT/2ND DEFENDANT:

THE FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED
UDYOGAMANDAL
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH

SRI.P.BENNY THOMAS

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

RESPONDENTS/PLAINTIFF AND IST DEFENDANT:

1. K.K.KAREEM, AGED 58 YEARS
CONTRACTOR, S/O KUNJUMARAKKAR
KOACHUPUTHNAPURAYIL HOUSE, VELOORKARA
PUTHENCROUS VILLAGE, PUTHENCROUZ PO, ERNAKULAM DISTRICT
PIN:682 308.

2. VADAVUCODE-PUTHENCROUZ GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PUTHENCROUZ PO
ERNAKULAM DISTRICT, PIN:682 308.

ADDL R3. STATE OF KERALA REPRESENTED BY ITS PRINCIPAL
SECRETARY TO GOVERNMENT OF KERALA IN THE DEPARTMENT
OF LOCAL SELF GOVERNMENT INSTITUTIONS IS IMPEADED
AS ADDL R3 AS PER ORDER DATED 25.10.2013 IN
R.F.A.385/13 AND 464/13.

R1 BY ADV. SRI.SAJI VARGHESE KAKKATTUMATTATHIL

R3 BY ADV. SRI.RAMAPRASAD UNNI

R2 BY ADV. SRI.BABU CHERUKARA

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02-06-2015
ALONG WITH R.F.A.NO.464 OF 2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

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R.F.A.Nos.385 and 464 of 2013

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Dated this the 02nd day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

These two appeals arise from a suit for recovery of money in the form of damages.

2. R.F.A.No.385 of 2013 is filed by the second defendant FACT and R.F.A.No.464 of 2013 is filed by the first defendant Vadavucode-Puthencruz grama panchayat. We have heard learned for the FACT and the learned counsel for the grama panchayat, as also the learned senior counsel appearing for the plaintiff.

3. FACT has a unit called 'Cochin division'. It has a residential colony attached to that division for the purpose of its employees. It appears that it is laid down in the form of a small township. FACT wanted its roads inside that dwelling township to be bitumen surfaced. The materials indicate that, at that point of time, FACT did not have funds to carry out the work. It therefore requested the grama panchayat to extend the facility by taking over the work and get the tarring work done at the expense of the

grama panchayat. The panchayat agreed to that and proceeded to have the work done utilizing its own funds. Ext.B1 filed by the grama panchayat shows that concurrence was obtained from the Director of Panchayats for expending funds for bitumen surfacing the roads inside that colony. There is no privity of contract between FACT and the contractor.

4. The suit was filed by the contractor alleging that after bitumen and broken road metals were brought to the work site, he was prevented from carrying on the work with intermittent access been provided for about five days. The fact of the matter remains that the contractor moved this Court by filing a writ petition. A learned single Judge had granted some reliefs. Later, in writ appeal, the Bench had modified the judgment leaving the contractor to sue and establish damages, however that, Division Bench had directed release of an amount of Rs.1,60,000/- which was to be adjusted as against any decree that may be ultimately passed in any suit. These appeals arise from the suit that followed the writ petition and the writ appeal.

5. While the learned counsel for the panchayat strenuously argued that there is no material on record to indicate

that the plaintiff was visited with damages, as a result of any conduct attributable to the grama panchayat, we see that while the grama panchayat did not adduce any evidence at all, the plaintiff tendered evidence as PW1 and also examined PW2, who was the President of the grama panchayat at the relevant time. A Commissioner was deputed for local inspection to be assisted by an Assistant Executive Engineer of the PWD wing of the State Government. Exts.C1 and C1(a) reports were placed. They form part of the records of the case. That report of the Commissioner and the data furnished by the Engineer through Exts.C1 and C1(a) are not challenged. No objections were agitated by summoning the Commissioner. It is in this context that we would also record the submission on behalf of the contractor that what is reflected through Exts.C1 and C1(a) is hardly 1/3rd of what was available in the form of Ext.P7 when the parties were litigating in writ jurisdiction.

6. Be that as it may, what we see is that the learned trial Judge has assimilated the material evidence and has fixed the damages based on the materials before it. Exts.C1 and C1(a) corroborated by PW1 clearly sustain the decree in the absence of

any contra evidence. We, therefore, do not find our way to disturb the decree in so far as the principal amount is concerned.

7. Be that as it may, we cannot ignore the fact that actual execution of the contract appears to be false, though not on account of any reason attributable to the plaintiff. Nor could the grama panchayat be exclusively saddled with the responsibility to pay interest as if it was a failed commercial transaction. Under such circumstances, having heard the learned counsel on either side in that regard as well, we are of the view that ends of justice would be satisfied if the rate of interest is trimmed down to 6% per annum from the date of suit till date of decree.

8. As already indicated above, the privity of contract was between the grama panchayat and the contractor, and no legal right accrued in favour of the plaintiff as against FACT, in the absence of any bilateral or tripartite contract involving FACT. Therefore, the decree passed against FACT is not sustainable.

In the result,

(i) R.F.A.No.385 of 2013 is allowed vacating the decree granted by the trial court as against the second defendant, FACT. No costs.

(ii) R.F.A.No.464 of 2013 filed by the grama panchayat, first defendant is allowed in part modifying the rate of interest to be @6% per annum from the date of suit till date of decree.

The decree impugned in the aforesaid appeals will stand modified as above.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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