

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 11295 of 2011 (J)

PETITIONER:

R.SACHIDANANDAN PILLAI
S/O.RAGHAVAN PILLAI, PADA-NORTH, KARUNAGAPALLY
KOLLAM DISTRICT.

BY ADVS.SMT.M.M.DEEPA
SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT(S) :

1. THE KERALA SMALL INDUSTRIES DEVELOPMENT
CORPORATION LTD., HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM REPRESENTED
BY ITS MANAGING DIRECTOR, PIN-695 001.

2. THE CHIEF ENGINEER, M/S.KERALA SMALL
INDUSTRIES DEVELOPMENT CORPORATION LTD.
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM, PIN-695 001.

3. THE MANAGER, THE FEDERAL BANK LTD.,
THODIYOOR BRANCH, PIN-690 523.

R,R1 & R2 BY ADV. SRI.R.T.PRADEEP
R,R3 BY ADV. SRI.K.ANAND (A.201)
R,R3 BY ADV. SMT.LATHA KRISHNAN
R BY SRI.B.S.KRISHNAN (SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A P P E N D I X

EXT.P1: TRUE COPY OF THE CERTIFICATE 26.10.1989 ISSUED BY THE 2ND RESPONDENT CERTIFYING THE WORK UNDERTAKEN BY THE PETITIONER.

EXT.P2: TRUE COPY OF THE LETTER DATED 14.10.1993 ISSUED BY THE 2ND RESPONDENT IN FAVOUR OF THE PETITIONER.

EXT.P3: TRUE COPY OF THE JUDGMENT DATED 30.06.2003 IN O.S.NO.727/1996 ON THE FILE OF THE SUBORDINATE COURT, THIRUVANANTHAPURAM.

EXT.P4: TRUE COPY OF THE JUDGMENT DATED 04.01.2011 IN WPC.NO.28052/2006 OF THIS HON'BLE COURT.

EXT.P5: TRUE COPY OF THE REPRESENTATION DT.14.1.2011 ADDRESSED TO THE CHAIRMAN, 1ST RESPONDENT ESTABLISHMENT WITH COPY TO 1ST AND 2ND RESPONDENTS.

EXT.P6: TRUE COPY OF THE REPLY DT.22.01.2011 ISSUED BY THE 2ND RESPONDENT.

EXT.P7: TRUE COPY OF THE LETTER DT.22.03.2011 ISSUED BY SENIOR MANAGER OF THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS

EXT.R1(a): TRUE COPY OF AGREEMENT DT.18.7.1990 OF REARRANGEMENT OF WORK WITH 2ND CONTRACTOR FOR RS.10,39,343/-.

EXT.R1(b): TRUE COPY OF PAYMENT ORDER DT.10.04.1990.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.11295 of 2011-J

Dated this the 24th day of February, 2015

JUDGMENT

From Ext.P7 it is seen that a sum of Rs.3,44,104/- is the outstanding balance as on 04.01.2011 in respect of the Fixed Deposit in the name of the petitioner.

2. The petitioner, who was a contractor of the work for providing internal roads, side drains and culverts for Kerala Oil Expeller Unit, Adinadu, Karunagapally pursuant to an agreement executed on 08.12.1988, has filed this Writ Petition praying for a direction to issue a No Objection Certificate for releasing the amount of Rs.3,44,104/- specified in Ext.P7.

3. The contract entered into between the petitioner and respondents 1 and 2 was terminated by the respondents on 25.05.1990.

4. I have heard the learned counsel on either side.

5. The petitioner had earlier approached the civil court in O.S.No.727 of 1996 while the 1st respondent was initiating

proceedings for revenue recovery towards the alleged amount incurred by them towards additional work on account of the alleged breach on the part of the petitioner. At the same time, the petitioner claimed that bills to the tune of Rs.76,371/- and security deposit of Rs.47,500/- were lying with 3rd respondent. He sought recovery of the same and sought injunction to the respondents against the proceedings initiated under the Revenue Recovery Act.

6. The civil court found that the respondents cannot proceed against the contractor in realising the amount stated in the demand notice by proceedings under the Revenue Recovery Act. It was found that there was no evidence to arrive at any finding as to the breach of contract on the part of the contractor or to assess the damages sustained by the respondents. Hence it was found that the respondents cannot initiate revenue recovery proceedings against the contractor for the damages alleged to have been sustained by the respondents to the tune of Rs.2,85,004/-.

7. At the same time the court below also found that the petitioner's claim is genuine, though it was found that the amount was due to him and a fixed deposit was lying in the hands of the 3rd respondent, the respondents' claim was barred

by limitation.

8. However by Ext.P7 he was informed that a sum of Rs.3,44,104/- was lying in his account number.

9. In view of the fact that respondents 1 and 2 have sustained loss on account of the alleged breach of contract by the petitioner and it was submitted that the bills for a sum of Rs.76,311/- was due to the petitioner apart from the fixed deposit to the tune of Rs.4,62,220/- lying with them, I am of the view that there cannot be any enrichment in the damages especially for an establishment like respondents 1 and 2 at the instance of a petty contractor.

Accordingly this Writ Petition is disposed of directing respondents 1 and 2 to disburse a sum of Rs.1,15,120/- (Rupees One lakh fifteen thousand one hundred and twenty only), ie. the difference between the amount which was due as per Ext.P7 and the amount accrued as on 10.07.2014, to the petitioner within a period of one month.

The Writ Petition is accordingly disposed of.

Sd/-
(P.V.ASHA, JUDGE)

rtr/