

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).Nos.1007 and 1008 of 2015
and M.P.Nos.1 and 1 of 2015

1.Tamil Nadu Water Supply and Drainage Board
Represented by its Managing Director
Chennai.

2.Tamil Nadu Water Supply and Drainage Board
Rep. by its Chief Engineer, Eastern Region
Thanjavur.

.. Petitioners/Defendants in
both the petitions

Vs.

M/S.IVRCL Infrastructures and Projects
Ltd., rep. by its Senior Manager (Projects)

.. Respondent/Plaintiff in
both the petitions

Prayer:- Civil Revision Petitions are filed under Article 227 of Constitution of India, against the fair and decreetal order dated 14.11.2014 in I.A.Nos.319 and 338 of 2014 in O.S.No.118 of 2007 on the file of the II Additional District Sessions Court, Thanjavur.

For Petitioners : Mrs.S.Thamizharasi
For Respondent : Mr.J.Ravikumar

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decreetal order dated 14.11.2014 in I.A.Nos.319 and 338 of 2014 in O.S.No.118 of 2007 on the file of the II Additional District Sessions Court, Thanjavur.

2.The respondent herein as a plaintiff filed a suit for recovery of money due on the work carried out by them on the basis of the contract. The revision petitioners/defendants filed a detailed written statement and contesting the same. At the time of cross-examination of P.W.1, some of the documents were not marked. Hence, the respondent/plaintiff has come forward with the applications in I.A.Nos.319 and 338 of 2014 to recall P.W.1 and for condonation of delay for reception of documents. The trial Court, after hearing both sides, allowed the applications on payment of costs to the defendants. After application was allowed, the respondent/plaintiff issued notice to the defendants to produce the original of the documents now he sought for to be marked. Instead of giving reply, the defendants have come forward with the present revisions.

3.Learned counsel for the revision petitioners/defendants submits that while filing application for condonation of delay for reception of documents, the respondent/plaintiff ought to have produced the original of the documents. The documents are of the year 2001. After work has been carried out, the documents were handed over to the Municipality. So the defendants have not possessed those documents. Therefore, he prayed for allowing the revision petitions.

4.Resisting the same, learned counsel for the respondent/plaintiff submits that the respondent/plaintiff was already examined as P.W.1. Even though all the documents are filed along with the plaint, the documents sought for to be marked are omitted to mark before the trial Court. Hence, he filed two applications for condonation of delay for reception of additional documents and also recall P.W.1 to mark those documents. He further submits that since the documents are office copies, their originals are only with the revision petitioners/defendants. Hence, the respondent/plaintiff is entitled to let in secondary evidence as per Section 65 of Indian Evidence Act. Therefore, he prayed for dismissal of the revisions.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The respondent herein is a contractor and the revision petitioners/defendants are Tamil Nadu Water Supply and Drainage Board. There was a contract entered into between the defendants and the plaintiff on 04.01.2001. On the basis of the contract, the respondent/plaintiff carried out the work. Since there was an amount due of Rs.3,01,50,838/- by the defendants, the plaintiff was forced to file the suit for recovery of amount. At the time of filing the suit, the plaintiff has filed nearly 13 documents. The defendants filed a written statement and contesting the suit. After framing of issues, P.W.1 was cross-examined. Then the plaintiff/respondent came to know that some of the documents were not marked. Therefore, he has come forward with the applications in I.A.Nos.319 and 338 of 2014 to recall P.W.1 and for condonation of delay for reception of documents.

7.On perusal of the plaint, it reveals that those documents are only copies and the revision petitioners are in possession of the originals. So in order to let in secondary evidence, the plaintiff

issued notice to the defendants to produce the originals of nearly 31 documents, instead of giving reply, the defendants filed the revisions. Some of the documents pertain to the inter transaction between first and second defendants. So the original documents are only with the defendants. In such circumstances, not mentioning the possession of original documents in the affidavit filed in I.A.No.338 of 2014 is not fatal to the case. Since the respondent/plaintiff is not a party to some of the transactions between defendants 1 and 2, copy alone has been filed by the respondent/plaintiff, as originals are with the revision petitioners/defendants. It is to be noted that the revision petitioners/defendants, without giving reply to the notice to produce the documents, have come forward with the revisions, which is a sheer abuse of process of Court that too by the Government. Therefore, the impugned order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. I find no merits in the revisions and the revisions are liable to be dismissed and they are hereby dismissed.

8.At this juncture, learned counsel for the respondent/plaintiff submits that in pursuance of the notice sent by the

respondent/plaintiff, the revision petitioners/defendants filed eight original documents.

9. In fine, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.12.2015

Index: Yes/No
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To

The II Additional District Sessions Court, Thanjavur.

R.MALA,J.

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