



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

S.A.(MD)No.293 of 2015

A.G.L.Irudhayaraj .. Appellant/Appellant/Plaintiff
Vs.

1.Bharath Heavy Electricals Ltd.,
Tiruchirapalli-14,
represented by its General Manager,
Ancillary Development,
An Sub Contracting, BHEL,
Tiruchy-620 014.

2.The Department of Industries and Commerce,
represented by its Director,
Chepauk, Chennai-600 005.

3.The Director(Ancillary),
Ministry of Industries,
Government of India,
Office of the Development Commissioner,
Nirman Bhavan,
New Delhi-110 011.

... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.04.2014, made in A.S.No.281 of 2012 on the file of the II Additional Subordinate Court at Tiruchirapalli, confirming the judgment and decree dated 04.09.2012 made in O.S.No.1347 of 2002, on the file of the II Additional District Munsif Court, Tiruchirapalli.

For Appellant : Mr.M.Joseph Thatheus Jerome

JUDGMENT

The above Second Appeal arises against the judgment and decree passed in A.S.No.281 of 2012, on the file of II Additional Subordinate Court, Tiruchirappalli confirming the judgment and decree passed in O.S.No.1347 of 2002, on the file of II Additional District Munsif Court, Tiruchirappalli.

2.The plaintiff is the appellant and the respondents were the defendants in the suit. The plaintiff filed the suit in O.S.No.1347 of 2002 to declare that the action of the first respondent refusing to allot work to the plaintiff without Bank guarantee from 1992-1993 onwards is contrary to the BPE Guidelines and scheme framed by the Government of



India, Ministry of Finance forming a Cell called bureau of Public Enterprise and is in violation of human rights as a result of which the ancillary unit of the plaintiff came to a standstill, illegal against the provisions of general law and for damages.

3. It is the case of the plaintiff that he was selected to function as an ancillary by the committee and he invested a sum of Rs.12 Lakhs and as per the BHEL scheme, the plaintiff is entitled to get work upto 720 tonnes per annum. However, the BHEL has not allotted work to the tune of 720 tonnes per annum. Further it is the case of the plaintiff that BHEL dropped the arbitration clause from 1992-93 and there is no settlement mechanism available to resolve the disputes. In these circumstances, the plaintiff has filed the suit.

4. According to the first defendant, investment of capital and return based on the scheme of Government of Tamil Nadu is a matter between SIDCO and the plaintiff and that the first respondent BHEL is no way connected with the same. The BPF guidelines cannot be clothed with the promissory estoppel as per the earlier proceedings. The guideline was valid during the contract and the same cannot be challenged before the Court of law at the earliest point of time. The Bank guarantee was insisted upon by the BHEL as abundant caution and all the contractors have been given the guarantee, except the plaintiff, even though he was directed to pay a sum of Rs.9,000/- by the Umpire. In these circumstances, the first defendant prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, P.W.1 was examined and 24 documents - Exs.A.1 to A.24 were marked. On the side of the defendants, D.W.1 was examined, however no document was marked. The trial Court, after taking into consideration the oral and documentary evidences of the parties, dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.281 of 2012 and the lower Appellate Court also confirmed the judgment and decree of the trial Court. Aggrieved over the concurrent findings of the Courts below, the plaintiff has filed the above Second Appeal.

6. The appellant has raised the following Substantial questions of Law in the Second Appeal:

"(a) Whether the courts below are right in dismissing the suit without any material evidence on the part of the 1st defendant to prove that the Board proceedings in Exs.A.1 and A.8 are not binding?

(b) Whether the Courts below are right in dismissing the claim of the plaintiff on the ground of laches ignoring the Exhibits and evidence let in by the plaintiff relating to the talks, arbitration and Civil proceedings as between the plaintiff and the 1st defendant till institution of the suit?

(c) Whether the Courts below are right in shouldering the plaintiff with the law of estoppel when the action of the plaintiff in not executing the bank guarantee was only the right action and the insistence of bank guarantee by the defendant was an illegality?

(d) Whether the Courts below are right in finding that the plaintiff's action not to comply with the illegal demand of



the defendant contrary to the Board Proceedings even after Ex.A.1 could be by any stretch of imagination determined as acquiescence?

(e) Whether the Courts below are right in dismissing the suit without considering the question of equity and promissory estoppel as an issue between the plaintiff and the 1st defendant, particularly when the plaintiff is an exclusive ancillary unit of the 1st defendant?

(f) Whether the Courts below are right in dismissing the suit without considering the question of equity as an issue between the plaintiff and the 1st defendant atleast to an extent of 50% of the suit claim from 1992?"

7. On a perusal of the materials available on record, it is clear that the relief sought for by the plaintiff to declare the action of the first respondent to allot work to the plaintiff without Bank guarantee from 1992-1993 onwards was sought for at a belated stage, after a lapse of 10 years. The suit was filed in the year 2002, whereas the plaintiff claimed the relief in respect of the years 1992-93. The petitioner has not explained the reasons for the delay. That apart, he has not explained how the suit filed by him for declaration and damages is not barred by limitation.

8. On a perusal of the materials available on record, it could also be seen that there was no continuous cause of action after 1992-93. Such being the case, the suit filed by the plaintiff cannot be said to be within time. The plaintiff cannot approach the Court as and when he wishes. The Courts below, taking into consideration all these aspects rightly dismissed the suit.

In these circumstances, I do not find any ground much less any substantial question of law to interfere with the concurrent findings of the Courts below. The Second Appeal is liable to be dismissed at the admission stage itself. Accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-

The Assistant Registrar(Crl.side)

/True copy/

Sub-Assistant Registrar

To

1. The II Additional Subordinate Judge, Tiruchirapalli,
2. The II Additional District Munsif Court, Tiruchirapalli.

+1cc to Mr. Joseph Thateheus Jerome, Advocate SR.No.48359

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S.A. (MD) No.293 of 2015
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