

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.1573 OF 1995

AND

APPEAL SUIT No.312 OF 1997

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COMMON JUDGMENT:

1. These two Appeals are preferred against the decree and judgment dated 14.08.1995 passed in Original Suit No.60 of 1988 by the II Additional District Judge, East Godavari District at Rajahmundry (for short, 'the trial Court').

2. The appellant in Appeal Suit No.1573 of 1995 is the defendant and the appellant in Appeal Suit No.312 of 1997 is the plaintiff before the trial Court. For convenience of reference, the ranks given to the parties, before the trial Court, will be adopted throughout this common judgment.

3. As the plaintiff died prior to filing of Appeal Suit No.312 of 1997, appellants 2 to 4 were impleaded as his legal heirs *vide* order of this Court in A.S.M.P. No.16569 of 1996 on 03.02.1997.

4. The plaintiff filed the suit, against the defendant, for recovery of Rs.1,97,000/- together with interest at 18% p.a. alleging that the plaintiff is engaged in electrification work for several industries on large scale and the defendant placed an order with the plaintiff for electrification work to be done for its industry on 18.06.1982 in Reference No.Sudha/Electrification/81-82/205 dated 18.06.1982 and the work was executed or completed by the plaintiff on 01.06.1983. The plaintiff had periodically withdrawn an amount of Rs.3,50,867-30 p.s. and by 01.06.1983 the amount due by the defendant was Rs.1,28,893-70 p.s. In spite of repeated demands by the plaintiff, the defendant did not pay the amount due to the plaintiff.

5. Having no other alternative, the plaintiff sent a notice dated 05.10.1983, marked as Ex.A-7, demanding payment of the amount due and, on receipt of the same, the defendant issued a contentious reply dated 15.11.1993, marked as Ex.A-2, agreeing to settle his account within short time but no amount was paid even after the lapse of 30 months. Therefore, the plaintiff filed the suit for the aforesaid reliefs.

6. The defendant filed written statement denying material allegations and raised a specific contention that the Court at Rajahmundry has no territorial jurisdiction since no part of cause of action arose at Rajahmundry. It is further contended that the plaintiff approached the defendant to entrust the electrification work for the defendant's factory building and submitted a quotation; after due deliberations at the factory premises, the defendant entrusted the work by work order in the reference cited supra for Rs.3,75,000/- and receipt of the same was acknowledged and accepted by the plaintiff on the same day. As per the terms of work order, the total cost of the work including the material was Rs.3,75,000/- and out of the same, 30% is payable on confirmation, 60% on dispatch of material and the balance on commission of the plant. Accordingly, on 18.06.1982, the defendant issued a cheque for Rs.1,05,000/- drawn on State Bank of India, Peddapuram Branch towards advance. Further, the plaintiff agreed to commence the work during October and complete the same by December, 1982 but he did not execute the work for the different reasons. It is further contended that the plaintiff failed to supply even the material and consequently the defendant was obliged to purchase some material in the open market, at the request of the plaintiff on condition of adjusting the value thereof at the time of settlement of accounts, for the progress of work as shown in the schedule. Accordingly, the defendant purchased the electrical items worth Rs.46,292.89 p.s. and, in addition to that, an amount of Rs.3,51,574-50 p.s. was given to the plaintiff by way of cash, cheques and draft *etc.*,

thus, the defendant incurred more amount and also paid Rs.50,000/- towards wages and thus paid total amount of Rs.4,47,867-39 p.s. for completion of the work entrusted to the plaintiff. Therefore, the defendant is entitled for refund of the excess amount over and above the value of the work entrusted to the plaintiff under the order referred supra and finally prayed to dismiss the suit.

7. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether this Court has jurisdiction to entertain this suit?
2. Whether the plaintiff is entitled to the suit claim?
3. Whether the plaintiff is entitled to interest and if so at what rate?
4. Whether the plaintiff completed to work?
5. To what relief?

8. During course of trial on behalf of the plaintiff, PWs.1 to 3 were examined and Exs.A-1 to A-8 were marked. On behalf of the defendant DW.1 is examined and Exs.B-1 to B-121 were marked.

9. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court decreed the suit in part for Rs.66,869/- with proportionate costs but without interest.

10. Aggrieved thereby, the defendant preferred the Appeal Suit No.1573 of 1995 on the ground that passing of a decree for Rs.66,869/- is erroneous for the reason that the plaintiff himself admitted about receipt of Rs.3,50,867-30 p.s. and the balance, if any, due is less than Rs.24,132.70 p.s.; however, the defendant incurred more than Rs.90,000/- for completion of the work at the instance of the plaintiff himself and the plaintiff agreed to adjust the said amount at the time of settlement of the account but he did not do so. Therefore, he is

not entitled even to recover Rs.24,132.70 p.s. out of the value of the work entrusted to the plaintiff but the trial Court did not appreciate this contention and committed an error and finally prayed to allow the Appeal setting-aside the decree and judgment under challenge.

11. Whereas the plaintiff preferred the Appeal Suit No.312 of 1997 claiming balance of amount out of the suit claim contending that the trial Court did not consider the evidence on record, more particularly the evidence, which discloses about execution of work in addition to the work entrusted under Ex.A-1; the trial Court did not appreciate the specific contention about the execution of work for Rs.4,79,761/- in total, but erroneously granted a decree for Rs.66,869/- and requested this Court to reappraise the entire evidence and pass a decree for the balance amount of the suit claim.

12. During course of argument, Sri M.V. Suresh, learned counsel for the appellant in A.S. No.1573 of 1995, would contend that in the absence of any pleading about execution of additional work, the plaintiff is not entitled to claim recovery of balance amount towards value of the additional work. It is further contended that the admission in Para 4 of the plaint is sufficient to conclude that the plaintiff received substantial amount of Rs.3,50,867-30 p.s. towards the value of the work executed as per the work order stated above and the balance would be around Rs.24,132.70 p.s. Therefore, the plaintiff is not entitled to claim any amount more than Rs.3,75,000/- in total. However, the plaintiff himself admitted about the receipt of Rs.3,50,867-30 p.s. in Para 5 of the plaint. Even if this admission is taken into consideration, in the absence of any pleading and evidence regarding execution of additional work, the plaintiff is not entitled to recover the additional amount. On this ground also the plaintiff is disentitled to claim any amount in addition to Rs.3,75,000/- and prayed to allow the Appeal setting-aside the decree and judgment of the trial Court.

13. *Per contra*, Sri A.L. Raju, learned counsel for the appellant in A.S. No.312 of 1997, contended that in Para 4 of the pleading the plaintiff himself disclosed that he claimed Rs.1,97,000/- and odd though there is no specific pleading in the plaint about the execution of the additional work; later correspondence which is part and parcel of the plaint would go to show that the plaintiff executed additional work and thereby he is entitled to claim recovery of Rs.1,97,000/- and prayed to pass a decree for the balance of suit claim.

14. Considering rival contentions and perusing the material available on record, the points that arise for consideration are:

1. Whether the plaintiff executed any electrical work, in addition to the work entrusted under Ex.A-1 work order?
If so, is the plaintiff entitled to claim Rs.1,97,000/- in total?
2. Whether the defendant is liable to pay balance of the value of the work under Ex.A-1 work order?

15. **POINT No.1:** Undisputedly, there was an agreement between the plaintiff and defendant for execution of the work under Ex.A-1 for Rs.3,75,000/-. Usual terms were incorporated for completion of the work but it is the contention of the plaintiff that the plaintiff executed work in addition to the work entrusted to him under Ex.A-1 quantifying the same at Rs.1,28,893-70 p.s. and thereby he is entitled to recover the amount as the work was not executed gratuitously.

16. *Per contra*, learned counsel for the appellant in A.S. No.1573 of 1995 contended that in the absence of any pleading in the plaint about execution of the additional work, the plaintiff is disentitled to claim recovery of Rs.1,28,893-70 p.s. towards value of the additional work.

17. In view of the rival contentions, I find that it is appropriate to advert to the pleadings *i.e.*, plaint; in Para 4 of the plaint, there is a bald

averment that the plaintiff is entitled to recover Rs.1,97,000/-; whereas, in Para 5 of the plaint, there is a reference about entrustment of work worth Rs.3,75,000/- and receipt of Rs.3,50,867-30 p.s. towards proportionate value of the work executed by the plaintiff. In the entire plaint, there is no whisper about execution of additional work; even in cause of action paragraph also there is nothing to show that the plaintiff executed additional work in addition to the work entrusted under Ex.A-1. Pleading includes plaint and written statement as per Order VII Rule 1 of C.P.C. and according to Rule 2 of C.P.C, pleading has to state material fact and not evidence. The material fact herein is execution of additional work and it is not even a material particular; material fact is a part of cause of action and in the absence of disclosure of material fact in the plaint, the plaintiff, without any whisper in the entire plaint, is not entitled to claim the relief on the bald allegation that he is entitled to recover Rs.1,97,000/- towards execution of additional work.

18. According to the principle laid down by the Apex Court in ***Maria Margarida Sequeria Fernandes Vs. Erasmo Jack De Sequeria***^[1], pleading is the foundation to the litigation and it must contain only relevant material. Therefore, it is settled law that pleading is the foundation for the claim but here there is absolutely no factual foundation to claim additional amount for the alleged work executed by the plaintiff in addition to the work entrusted to him under Ex.A-1 work order. In the absence of any pleading, it is difficult to accept the contention of the plaintiff about execution of additional work. Even if any evidence is adduced to establish the execution of such additional work, that cannot be looked into since the Courts cannot travel beyond the pleadings and pass a decree in favour of the party. Time and again the Apex Court consistently laid down the same principle in ***State of Maharashtra Vs. Hindustan Construction Company Limited***^[2] and ***Kalyan Singh Chouhan Vs. C.P. Joshi***^[3].

19. In ***Union of India Vs. Ibrahim Uddin and another***^[4], the Apex Court ruled as follows:

"Relief not founded in pleading cannot be granted. A decision of a case cannot be based on ground outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of pleadings in that respect. No party can be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the parties in support of the case set up by it."

It was further held therein as follows:

"Where evidence was not in lines of pleadings, the said evidence cannot be looked into or relied upon."

20. The Apex Court in ***Hindustan Construction Company Limited***⁷ and ***Kalyan Singh Chouhan***⁸, held as follows:

"Pleadings and particulars are required to enable the Court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the Court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule, relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ."

21. If the principle laid down by the Apex Court in the decisions referred supra, is applied to the present facts of the case, it is difficult for this Court to accept the contention of the learned counsel for the appellant in A.S. No.312 of 1997 as to the execution of additional work in addition to the work entrusted to him under Ex.A-1 work order, since the plaint is bereft of any material particular regarding execution of additional work. Therefore, on this ground alone the plaintiff is disentitled to claim any amount in addition to the amount covered by

Ex.A-1 i.e., Rs.3,75,000/-.

22. One of the major contentions of learned counsel for the appellant in A.S. No.1573 of 1995 is that, in view of admission made in Para 5 of the plaint about entrustment of the work worth Rs.3,75,000/- and receipt of Rs.3,50,867-30 p.s., the plaintiff is disentitled to claim more than Rs.3,75,000/- in total. Here, the plaintiff in Para 4 of the plaint, specifically contended that the work entrusted to him under Ex.A-1 was for Rs.3,75,000/- out of which he received Rs.3,50,867-30 p.s. periodically but contended that Rs.1,28,893-70 p.s. was due to the plaintiff by 01.06.1983.

23. In the entire body of the plaint, nothing was brought to the notice of this Court about execution of additional work which represents the amount claimed in the plaint. In the absence of material particular as to the execution of additional work, the plaintiff is disentitled to claim recovery of amount in addition to the work entrusted under Ex.A-1. Undoubtedly, the defendant entrusted the work worth Rs.3,75,000/- under Ex.A-1 out of which Rs.3,50,867-30 p.s. was paid and the balance is only Rs.24,132.70 p.s. which is due by the defendant and payable after completion of the electrification work. At best, the plaintiff is entitled to recover the said amount in view of the clear admissions made in Para 5 of the plaint i.e., pleading.

24. Admissions are of two kinds; one is judicial admission and the second one is evidentiary admission. Here the admission made in Para 5 of the plaint is a judicial admission and it need not be proved in view of Section 58 of Indian Evidence Act, 1872 in view of the principle laid down by the Apex Court in ***Sita Ram Bhau Patil Vs. Ramachandra Nago Patil (dead) by L.Rs. and another***^[5], wherein it was held as follows:

“Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is

decisive of the matter, unless successfully withdrawn or proved erroneous. Admission may in certain circumstances, operate as an estoppel. The question which is needed to be considered is what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission. In view of the above, the law on the admissions can be summarized to the effect that admission made by a party though not conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous. Even if the admission is not conclusive it may operate as an estoppel. Law requires that an opportunity be given to the person who has made admission under cross-examination to tender his explanation and clarify the point on the question of admission. Failure of a party to prove its defence does not amount to admission, nor it can reverse or discharge the burden of proof of the Plaintiff."

25. In another decision of the Apex Court in ***Nagubai Ammal and others Vs. B. Shama Rao and others***^[6], it was held as follows:

"Admission made by a party is admissible and best evidence; unless it is proved that it had been made under a mistaken belief. While deciding the said case reliance has been placed upon the judgment in ***Slatterie v. Pooley***, wherein it had been observed "What a party himself admits to be true, may reasonably be presumed to be so."

26. Therefore, in view of the law declared by the Apex Court in the decisions referred supra, admission is the best piece of evidence and the same can be taken into consideration unless it is withdrawn for explaining the reason for making such admission but here the plaintiff did not withdraw his admission. Hence, it is a conclusive proof that he received Rs.3,50,867-30 p.s. out of Rs.3,75,000/-

27. It is the contention of learned counsel for the appellant in A.S. No.1573 of 1995 that, at the instance of the plaintiff, he purchased electrical equipment and paid Rs.50,000/- as wages to the coolies in

execution of the work on the promise made by the plaintiff to adjust the same at the time of settlement of account. He produced some documentary evidence but the trial Court did not accept the contention of the defendant, assigning its own reasons; the same is assailed by the defendant before this Court on various grounds. Even otherwise, he relied on Exs.B-1 and B-2; Ex.B-1 is the entry at Page No.99 in the ledger of the defendant for the year 1982-83; Ex.B-2 is another entry at Page Nos.72-73 of the ledger for the year 1982-83; Ex.B-3 is another entry at Page No.125 in the ledger of the defendant for the year 1983-84. All these documents at best disclosed that the defendant purchased electrical equipment worth Rs.5,787-28 p.s. and the entries in Exs.B-2 and B-3 disclosed the factum of purchase of electrical equipment. Exs.B-4 to B-112 also disclosed about the purchase of various electrical items but none of the documents would go to establish that they were purchased at the instance of the plaintiff with a promise to adjust the same at the time of settlement of account. The plaintiff adduced oral evidence in support of it but it is not worthy of credence in the absence of written promise made by the plaintiff to adjust the same at the time of settlement. Therefore, the contention of the defendant that he is not liable to pay suit amount to the defendant or at least Rs.24,132.70 p.s. cannot be accepted.

28. In any view of the matter, it is evident that the defendant did not pay Rs.24,132.70 p.s. *i.e.*, Rs.3,75,000/- (-) Rs.3,50,867-30 p.s. In the absence of any agreement to adjust the amount incurred by the defendant to purchase electrical equipment and payment of wages, the plaintiff is entitled to Rs.24,132.70 p.s. but the trial Court passed a decree in favour of the plaintiff for Rs.66,869/- without assigning any reason for arriving at such amount. Therefore, the un-reasoned judgment of the trial Court in passing a decree for Rs.66,869/- in favour of the plaintiff is liable to be set-aside, however the plaintiff is entitled to recover Rs.24,133/- from the defendant.

29. The plaintiff also claimed interest on the balance of amount payable to the plaintiff as per the trade custom, usage and practice and drawn the attention of this Court to Para 5 of the plaint where he pleaded that there is a trade practice for payment of interest at 18% p.a. Though the defendant denied about the liability to pay interest in the absence of any agreement for such payment, the trial Court did not consider the same in proper perspective.

30. Undoubtedly, there is no agreement for payment of interest on the delayed payment of amount after execution of the work; however, Section 3 of the Interest Act, 1978 permits the Court to grant current rate of interest on the amount due but I find no evidence on record as to the prevailing rate of interest. In the absence of any evidence to establish the rate of interest prevailing in the trade of 'electrification' contract works, I am of the considered view that it is appropriate to grant interest at the rate of 12% p.a., in view of Section 3(1)(b) of the Interest Act, till the date of decree and thereafter at 6% p.a. from the date of decree till realization of Rs.24,133/-. Accordingly, the point is answered.

31. **POINT No.2:** As the defendant failed to establish the agreement between the plaintiff and defendant for adjustment of the amount, incurred by the defendant towards purchase of electrical items and wages to the coolies, at the time of settlement of the account, it is difficult to accept the contention of the plaintiff and thereby the defendant is not entitled to claim any benefit under the alleged promise; consequently, the plea of the defendant cannot be accepted holding that the defendant is liable to pay Rs.24,133/- together with interest at the rate of 12% p.a. from the date of Ex.A-7 notice till the date of decree and with subsequent interest at 6% p.a. from the date of decree till the date of realization.

In view of my finding on Point Nos.1 and 2, the impugned decree and judgment is modified and both the Appeal Suits are, accordingly, disposed of.

In consequence, miscellaneous petitions, if any, pending in these Appeals shall stand closed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 30-06-2015.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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APPEAL SUIT Nos. 1573 OF 1995

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AND

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[\[1\]](#) AIR 2012 SC 1727

[\[2\]](#) 2010 (4) SCC 528

[\[3\]](#) AIR 2011 SC 1127

[\[4\]](#) 2012 (8) SCC 148

[\[5\]](#) AIR 1977 SC 1712

[\[6\]](#) AIR 1956 SC 593