

4IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.11.2016
CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.155 of 2009
and
M.P.Nos.1 and 2 of 2013

The Superintending Engineer,
Public Works Department and
Water Resources Organization,
Parambikulam-Aliyar Basin Circle,
Pollachi, Coimbatore District .. Appellant/Defendant

vs.

P.Samiappa Gounder and Brothers,
A registered partnership firm of
Engineering Contractor, rep.by its
Partner, P.Samyappa Gounder,
having its registered Office,
At No.27, Mazid Street, Kangeyam,
Erode District .. Respondent/Plaintiff

Prayer:- Appeal suit filed under Section 96 of C.P.C.
against the judgment and decree dated 30.09.2008, passed by the
Additional District Sessions Court, FTC-III, Coimbatore, in
O.S.No.137 of 2005.

For Appellant :Mr.P.Gunasekaran,Spl.G.P. (AS)

For Respondent :Mr.Thriyambak J.Kannan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this Appeal Suit is to the judgment and
decree, dated 30.09.2008, passed in Original Suit No.137 of
2005, by the Additional District and Sessions Court, Coimbatore.

2.The respondent herein, as plaintiff, has instituted
Original Suit No.137 of 2005, on the file of the trial Court,
praying to pass a money decree, wherein, the present appellant
has been shown as sole defendant.

3. The material averments made in the plaint are that the plaintiff is a partnership firm and registered under the Partnership Act. The defendant has commenced the project by name, 'Rehabilitation of Aliyar Feeder Canal from L.S.0.000 Kms to 13.400 Kms and its distributaries" in Pollachi Taluk, Coimbatore District. On 23.09.1998, the plaintiff has submitted its bid for the said work to the defendant. The bid made by the plaintiff has been accepted. The total value of work is Rs.3,34,18,569/-. The defendant has handed over the site on 22.1.1999 to the plaintiff. After getting the site, the plaintiff has started its work and completed the same. After completing the work, a completion certificate has also been issued by the concerned Engineer. But the defendant is a chronic defaulter in settling the amounts mentioned in the bills. The defendant has failed to pay the amounts mentioned in some bills. Under the said circumstances, a statutory noticee under Section 80 of the Code of Civil Procedure, 1908 has been issued to the defendant. Even after receipt of the same, the defendant has not settled the amounts mentioned in the plaint. Under such circumstances, the present suit has been instituted for the reliefs sought therein.

4. In the written statement filed on the side of the defendant, it is averred that the site has been handed over to the plaintiff on 22.01.1999 and within a period of 24 months, the plaintiff has to complete the work, which has been given to it. The plaintiff has failed to complete the work within the stipulated period and further from 25.01.2002, the present suit has to be filed within a period of three years, but the suit has been filed belatedly. Under the said circumstances, the present suit is liable to be dismissed.

5. On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present appeal suit has been preferred, at the instance of the defendant as appellant.

6. Before contemplating the rival submissions made on either side, the Court has to necessarily narrate the following admitted facts.

7. It is an admitted fact that the defendant has commenced the project by name 'Rehabilitation of Aliyar Feeder Canal from L.S.0.000 kms to 13.400 kms, in Pollachi Taluk, Coimbatore District. The plaintiff has become a successful bidder. The site in question has been handed over to the plaintiff on 22.1.1999. It is also equally an admitted fact that in the agreement, it is stated that the proposed work has to be completed within a period of 24 months. It is also an

admitted fact that the plaintiff has completed the work assigned to it.

8. The present suit has been instituted mainly on the grounds that the defendant is nothing but a chronic defaulter in paying the amounts mentioned in the bills and even for the bills mentioned in the plaint, the defendant has failed to settle the amounts and under the said circumstances, the present suit has been instituted.

9. The learned Special Government Pleader has repletedly contended to the effect that even though the site in question has been handedover to the plaintiff on 22.01.1999, the plaintiff has belatedly completed the work in question and further, as per the period mentioned in the agreement, the present suit has to be instituted within a period of three years from 25.01.2002, but the present suit has actually been instituted on 31.01.2005 and therefore, the present suit is barred by limitation and further, the plaintiff has not finished the work assigned to it within the stipulated period and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

10. Per contra, the learned counsel appearing for the respondent/plaintiff has contended that as per clause 42.1 of the contract, the concerned Engineer should give a certification and from the date of certification, within a period of 28 days, every bill has to be sanctioned and likewise, as per Clause 47.1, the defendant is bound to give amounts due to escalation of prices of materials and since the defendant has failed to honour the bills mentioned in the plaint, the present suit has been instituted and the trial Court, after considering the rival contentions raised on either side, has rightly decreed the suit and further before instituting the present suit, a statutory notice under Section 80 of the Code of Civil Procedure, 1908, has been given and after calculating 60 days period, the present suit has been filed within the period of limitation, on 31.01.2005 and therefore, the judgment and decree passed by the trial Court need not be set aside.

11. As adverted to earlier, the admitted fact is that the defendant has commenced the project by name ' Rehabilitation of Aliyar Feeder Canal from L.S.0.000 Kms to 13.400 Kms in Pollachi Taluk, Coimbatore District. The plaintiff has become a successful bidder and the work in question has been allotted to the plaintiff. The entire value of the work is Rs.3,34,18,569/-.

12. The present suit has been instituted mainly on the ground that as per Clause 42.1 of the contract, within a period of 28 days from the date of certification, every bill has to be settled by the defendant. But the defendant has failed to

settle the bills mentioned in the plaint.

13. The main defence taken on the side of the defendant is that even though in the agreement, the period of execution of work has been fixed at 24 months, the plaintiff has belatedly executed the work and therefore, the plaintiff is not entitled to get the amounts mentioned in the plaint.

14. As stated earlier, the main gravamen expressed on the side of the plaintiff is that as per Clause 42.1 of the contract, within a period of 28 days from the date of certification, every bill has to be settled by the defendant. But, as rightly pointed out on the side of the plaintiff, the bills mentioned in the plaint have not been settled within the stipulated period. Since, the bills in question have not been settled by the defendant within the stipulated period, it is needless to say that the plaintiff is entitled to get the amounts claimed thereon. Likewise, as per Clause 47.1, the plaintiff is entitled to get escalation of prices of materials. In the plaint, some amount has been claimed towards escalation of prices of materials. Therefore, it is quite clear that the claims made by the plaintiff in the plaint are legally permissible.

15. The main attack made on the side of the appellant/defendant is that even though the contract period has come to an end on 25.01.2002, the present suit has been belatedly filed on 31.01.2005 and therefore, the same is barred by limitation.

16. At this juncture, the Court has to necessarily look into the notice given by the plaintiff under Section 80 of the Code of Civil Procedure, 1908. It is an admitted fact that before instituting the present suit, a notice under Section 80 of the Code of Civil Procedure, 1908 has been issued to the defendant. It is also a settled principle of law that as per Section 80 of the said Code, 60 days period is required. After excluding the period of 60 days, the present suit can be instituted on or before 14.03.2005. But the present suit has actually been instituted on 31.01.2005. Therefore, it is easily discernible that the present suit has been instituted well within the period of limitation. Under the said circumstances, the first and foremost contention put forth on the side of the appellant/defendant is sans merit.

17. The learned Special Government Pleader has raised his residual point to the effect that in the instant case, an agreement has become emerged between the parties. But on the side of the plaintiff, a xerox-copy has been marked and the same cannot be looked into.

18. In fact, this Court has perused the entire averments made in the written statement filed on the side of the defendant, wherein it has not been specifically stated that there is an agreement between the plaintiff and the defendant. Of course, it is true that on the side of the plaintiff, original agreement has not been marked. Since on the side of the defendant, no specific denial has been made with regard to the agreement entered into between the parties, this Court is of the view that the residual argument put forth on the side of the appellant/defendant also goes out without merit.

19. It has already been pointed out that the present suit has been instituted mainly on the basis of Clause 42.1 and 47.1 of the contract entered into between the plaintiff and defendant. Since the present suit has been instituted mainly on the ground of terms of contract and since on the side of the plaintiff, both documentary and oral evidence have been let in, this Court is of the view that the plaintiff is entitled to get a decree as prayed for.

20. The trial Court, after evaluating the available evidence on record, has rightly decreed the suit. In view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant/defendant and altogether the present appeal suit deserves to be dismissed.

In fine, this appeal suit is dismissed with cost. The judgment and decree passed in O.S.No.137 of 2005, by the trial Court, are confirmed. Connected miscellaneous petitions are dismissed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Additional District Sessions Court,
FTC-III, Coimbatore

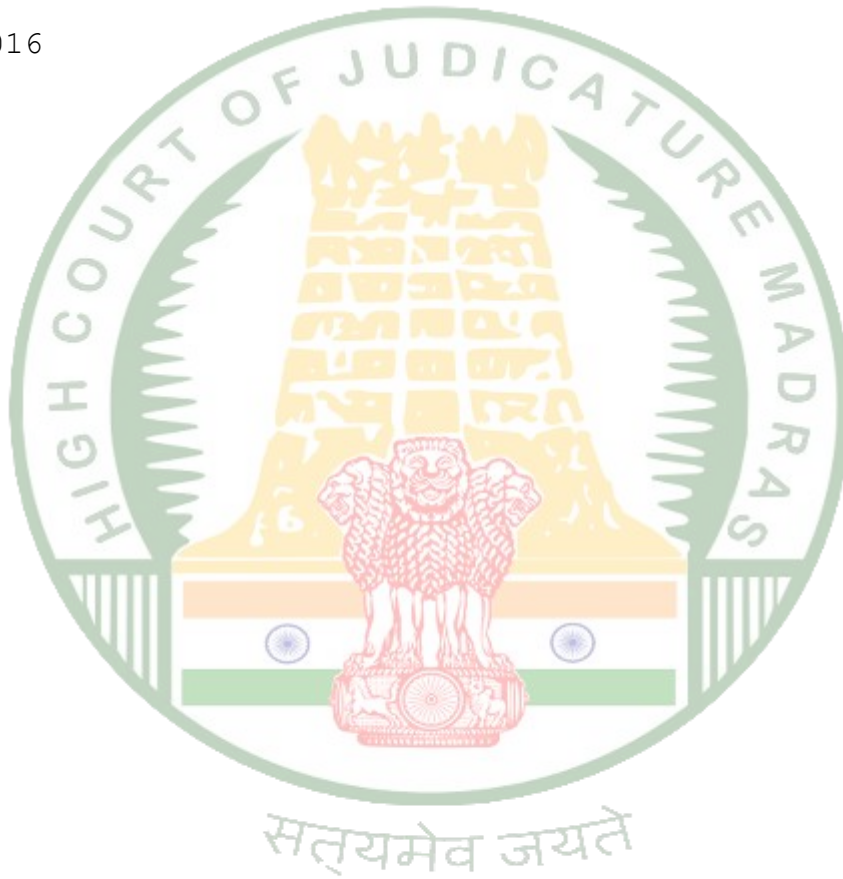
2.The Section Officer
VR Section High Court, Madras

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+1 cc to Additional Government Pleader(AS) sr 66305
+1 cc to Mr.Thriyambak J.Kannan Advocate sr 66062

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