

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.764 of 2015
and
MP No.1 of 2015

- 1.Tamilnadu State Transport Corporation,
Salem, Rep. By its Managing Director.
- 2.The General Manager,
Tamilnadu State Transport Corporation,
Salem.
- 3.The Chief Accounts Officer,
Tamilnadu State Transport Corporation,
Salem, Salem Division-I, Salem.
- 4.The Deputy General Manager (materials),
Tamilnadu State Transport Corporation,
Salem.
- 5.The Branch Manager,
Tamilnadu State Transport Corporation,
Sankari Branch. Appellants/Defendants

Sri Lakshmi Traders,
Rep. By its power of attorney B.Senthil,
Son of A.Ponnusamy,
100/116, Sidhan Nagar,
Krishnampalayam, Erode. Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Subordinate Judge, Sankari dated 19.02.2013 in A.S.No.17 of 2010 confirming the judgment and decree passed by the learned District Munsif, Sankari in O.S.No.189 of 2005 dated 31.03.2008

For Appellant : Mr.D.Venkatachalam
For Respondents : Mr.R.Tholgappian

J U D G M E N T

The appellants are the defendants. The respondent as the plaintiff filed the suit for recovery of money.

2.The case of the plaintiff is that they became the successful bidder for purchasing the scrap materials lying with the defendants and for such purpose, a sum of Rs.71,100/- was deposited by them towards Earnest Money Deposit. It is the further case of the plaintiff that while lifting the scrap materials, the persons employed by them for doing such job, have mistakenly loaded some other items along with the scrap materials which are the subject matter of tender confirmed in favour of the plaintiff. Thus, it is contended by the plaintiff that on realising the mistake, even though the plaintiff sent a communication to the defendants and apologised for such conduct of their employees, the defendants did not permit the plaintiff to remove the scrap materials which were agreed to be sold to the plaintiff. Therefore, as no materials were removed from the premises of the defendants, the plaintiff wanted the earnest money deposit back and for such purpose, they issued a demand notice.

3.The defendants contested the suit by stating that the plaintiff made an attempt to remove some materials which were not the subject matter of the tender which was prevented by the defendants. Therefore, they contended that such conduct of the plaintiff debars them from getting their earnest money deposit back.

4.Both the courts below concurrently found against the defendants and decreed the suit as prayed for. The specific finding given by both the courts is that the defendants have not marked any document to show as to what are the terms and conditions of the auction.

5.The second appeal was admitted by this court by framing the following substantial questions of law:

"a. Had not the courts below have committed an error in decreeing the suit with the nature of relief of recovery of EMD the same was deposited in a successful bid which is a contract and when especially breached by the defendant?

b. Whether the courts below have committed an error in decreeing the suit when there is no specific relief for performing the contract of bid?

c. Had not the courts below erred in decreeing the suit as the transaction between the parties is contract in nature and the suit for recovery of money is not maintainable?"

6. After admitting the matter and taking the same for final disposal, this court in order to find out as to whether the terms of the contract between the parties entitle the defendants to retain the earnest money deposit amount, directed the learned counsel for the appellant to produce the terms and conditions of the auction before this court. For such purpose, this matter was adjourned on several occasions. However, when this matter is taken up today, the learned counsel appearing for the appellants submitted that such document is not available with the defendants and hence he is not in a position to produce the same.

7. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and perused the materials placed before this court.

8. It is not in dispute that the respondent as the plaintiff was declared as successful bidder for removal of certain metal scraps available at the hands of the defendants and for such purpose, they have deposited Rs.71,100/- as earnest money deposit. It is also not in dispute that the employees of the plaintiff, while removing the scrap, have loaded some other material which was not the subject matter of the tender. However, it is stated by the plaintiff that such mistake was committed by the employees without their notice and hence immediately, they sent a communication to the defendants through Ex.B6 indicating that such mistake was not with their knowledge and only due to the inadvertent act of their employees. In any event, the fact remains that for such conduct of the plaintiff, the defendants did not permit them to remove even the materials which are subject matter of the tender. Therefore, it is an admitted fact that the plaintiff has not removed any materials from the premises of the defendants, even though they paid a sum of Rs.71,100/- as earnest money deposit. Therefore, the question is whether the defendants can retain the earnest money deposit. Needless to say that the defendants have to prove by way of filing documents before the court justifying their action in retaining the earnest money deposit. In this case, the tender conditions were not marked before the court below. Even when an opportunity is given to the defendants before this court to file such document, they have not come forward to file the same. Therefore, nothing is there on record to show that the defendants are entitled to retain the earnest money deposit. When the defendants failed to prove such entitlement, naturally the plaintiff who deposited the money and not removed any material from the premises of the defendants, is entitled to get back the earnest money deposit, which both the courts below have

concurrently found in favour of the plaintiff. Such concurrent findings rendered based on appreciation of facts and circumstances do not warrant any interference by this court. Accordingly, the substantial questions of law raised in this appeal are answered against the appellants. Accordingly, the second appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vri

To

1.The Subordinate Judge,
Sankari.

2.The District Munsif,
Sankari.

copy to

The Section Officer
VR Section High Court, Madras

+1 cc to Mr.D.Venkatachalam Advocate sr 58409

+1 cc to Mr.R.Tholgappian Advocate sr 58678

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gj (co)
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