

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.11.2016

PRONOUNCED ON: 16.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.415 of 2009

M/s.Mugilan Enterprises
represented by its Partner
J.Rajendra Prasad

Plaintiff

Vs

1. The Chief Engineer, Chennai Metropolitan
Development Scheme, Division 1, Guindy
Chennai-32
2. The Superintending Engineer (H)
Chennai Circle, Guindy, Chennai-32
3. The Divisional Engineer, Highways
Chennai Metropolitan Development Scheme
Division 1, Guindy, Chennai-32

Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with
Order XXXVII Rule 1 of the Original Side Rules for the reliefs as stated
therein.

For Plaintiff : Mr.P.Balasubramaniam

For Defendants : Mr.T.Jayaramaraj

JUDGEMENT

This civil suit has been filed to pass a judgement and decree,

against the Defendants:-

- a) declaring that the order dated 14.08.2008 of termination of the contract dated 09.01.2007 made by the 3rd Defendant is illegal.
- b) directing the Defendants to pay to the Plaintiff a sum of Rs.52,46,975/- with interest at 6% p.a. on Rs.51,19,000/- from the date of the plaint till the date of realization.
- c) directing the Defendants to pay the costs of the suit.

2. The plaint averments are that the Plaintiff is a Partnership Firm and is a registered Class I Civil Engineering Contractor and doing road works with the Tamil Nadu Highways Department, Corporation of Chennai etc. and other such public authorities. The Defendant had called for tenders for widening the single lane to double lane and strengthening of Chennai-Vandalur- Kelambakkam Road to Urapakkam - Nallambakkam Road (via) Onambacheri. The Plaintiff had submitted its tender and offered the lowest tender at 29% above the estimated rate as on 2005-2006. The tender was accepted and the Plaintiff had deposited a sum of Rs.1,30,000/- by a demand draft No.349541, dated 28.8.2006 purchased at Canara Bank and also furnished a bank guarantee for a sum of Rs.3,44,000/-, including FSD of Rs.2,14,000/-. The Articles of Agreement was also signed by the Plaintiff and by the Superintending Engineer (H), Chennai Circle, on 5.1.2007. The Plaintiff had stated that they immediately started the work, which was to an extent of 4.8 kms. Out of

the said 4.8 kms, 1.2 kms of road was taken away by the Police Academy and consequently, the extent was reduced to 3.6 kms. It had been further stated that out of 3.6 kms, 1 km was under the control of the Forest Department and they did not permit the Plaintiff to do the work. It had been further stated that this was intimated to the 2nd Defendant, by letters dated 10.7.2007 and 27.8.2007. The Defendants had failed to get clearance from the Forest Department. The 3rd Defendant had orally instructed the Plaintiff to commence the work and that they would not have any problem from the Forest Department. Consequently, the Plaintiff had executed the widening work in the stretch, but the Forest Department had confined the Plaintiff's men and machinery for encroaching on the property of the Forest Department.

3. It had been further stated in the plaint that when the work was commenced in Onambacheri for a stretch of 1.58 kms, the Department had removed the electricity board post, temple encroachment and tenements encroachments. The local people had obstructed the work, stating that unless the electricity board posts in the middle of the road were removed, they would not permit the Plaintiff to proceed with the work. With much difficulty, the Plaintiff had completed the widening of road on the stretch 1.8 kms. With all the above impediments, the Plaintiff had completed 2.6 kms of road widening and 700 meters of asphaltting

work. The Plaintiff had also erected machinery and labourers were accommodated at the work site to complete the work. The Plaintiff had continuously informed the Defendants about all these factors and finally by letter dated 1.9.2008, sought refund of the withheld amount deducted at 5%. Even before this, on 14.5.2008, the 3rd Defendant had cancelled the contract, dated 5.1.2007 and also forfeited the earnest money deposit of Rs.1,30,000/- and the bank guarantee of Rs.2,14,000/-. They had also informed that they had proposed to re-tender the balance work and additional expenses will be recovered from the Plaintiff.

4. A letter dated 8.9.2008 was issued by the Plaintiff informing the difficulties faced. Moreover, there was escalation of price of bitumen, blue metal, gravel, etc. and consequently, the Plaintiff had requested to revise the contract rate and to revoke the cancellation order. However, the 1st Defendant, by letter dated 8.9.2008, had informed that the termination of the contract by the 3rd Defendant was justified. It had been further stated that a legal notice had been sent on 12.11.2008 to revoke the cancellation order and to permit to recommence the work on the current revised rate or at a sum of Rs.51,19,000/- for the loss suffered due to the idling of machinery and men and also refund of the earnest money deposit and withheld amount along with interest. The Plaintiff had suffered loss as detailed below:-

(a) "The rent for the total numbers of days (160 days) for the machinery stationed at the work place.

- i. L&T vibrator Roller, Rs.9000x160: Rs.14,40,000.
- ii. WET MIX Raver FINISHER MODAL W.M.6 (HES) Rs.7500 x 160 = Rs.12,00,000/-
- iii. JCB Earth Mover Rs.6000x160 = Rs.9,60,000/-

(b) Security deposits/ EMD/ withheld amounts:
Rs.13,75,000/-

(c) Cost for idling labour and staff for 8 months at the rate of Rs.18,000/- p.m. : Rs.1,44,000.

TOTAL Rs.51,19,000/-"

The Plaintiff had demanded interest at 18%, but in the suit, had restricted it to 6% p.a. The Plaintiff had claimed that the delay in completing the work and the loss suffered by the Plaintiff were only due to non cooperation of the Defendants' Engineers. The Plaintiff therefore had filed the suit for the above reliefs.

5. In the written statement, filed by the 3rd Defendant and adopted by the Defendants 1 and 2, it had been stated that the project had been allotted to the 3rd Division as per GO.Ms.No.95, Highways (HK-3), Department, dated 3.4.2007 and by the Chief Engineer (Highways), Metro, Chennai, in memo No.13/2008/SDO dated 8.4.2008. It had been stated that the road from Chennai to Vandalur, Chennai-Vandalur-Kelambakkam Road to Urapakkam Road via Onambacheri from km 0/0-4/8 was classified as Other District Road (ODR). It was taken up for

widening from single lane to double lane under the Chennai Metropolitan Development Traffic and Transportation Scheme for the year 2005-2006. It was administratively sanctioned by the Government for Rs.240 lakhs vide GO.MS.No.229 (HW-1), Highways Department, dated 14.11.2005 and technically sanctioned for Rs.200 lakhs. After following the departmental procedures, the work was allotted to the Plaintiff on 5.1.2007 at 29% above the estimated rate for the year 2005-2006. The Plaintiff had deposited the bank guarantee for Rs.3,44,000/- including TSD of Rs.2,14,000/-.

6. It had been stated that the allegation of the Plaintiff that the Forest Department denied permission was false and it was stated that the Plaintiff had actually been paid for the work of the said 1 km. The Plaintiff did not take up the work to complete the same as stipulated in the agreement. It had been stated that obstructions like electricity board post, tenements and other difficulties were cleared well before starting the work in the stretch in Unamancheri for a stretch of 1.58 km. Consequently those allegations in the plaint were also denied. It had been stated that there was no obstruction even with respect to Pillayar Temple and the Plaintiff had been suitably advised how to proceed with the work. It had been stated that the contract was cancelled on 14.8.2008 after numerous show cause notices had been issued and only due to the failure of the Plaintiff in

carrying out the work, according to the terms of the agreement. It had been stated that the letters of the Plaintiff had been replied by the Defendants. The Defendants further justified the cancellation of the agreement, stating that it was within the terms of the agreement and they also denied the claim of Rs.51,19,000/-. They had further stated that the Plaintiff has not produced any evidence with respect to idling of materials or machinery or men. The Defendants had further stated that they had issued letters dated 4.5.2008, 2.6.2008, 17.6.2008 and 23.7.2008, calling upon the Plaintiff to complete the work. The Plaintiff refused to receive the letters dated 4.5.2008, 2.6.2008, 17.6.2008 and 23.7.2008. Moreover, the Plaintiff did not receive the letters sent through the registered post/speed post. It was under such circumstances that the contract was terminated. It had been stated that the Plaintiff had committed breach of contract and consequently, it had been terminated. The Defendants therefore had prayed that the suit must be dismissed.

7. On perusal of the rival pleadings of the parties, by order dated 17.12.2011, the following issues were framed:-

1. Whether the Forest Department gave clearance in writing for doing the work allotted to the Plaintiff?
2. Whether the local people obstructed the Plaintiff work saying that unless the Electricity Board Post in the middle of the road are moved, they will not permit the Plaintiff to proceed with the work?

3. Whether the Plaintiff has committed any breach of contract in laying the road?

4. Whether there is any escalation of prices of bitumen, blue metal, gravel, etc.?

5. Whether the Plaintiff has suffered loss or not?

6. To what relief is the Plaintiff entitled to?

8. Both the parties, to substantiate their rival claims, had let in oral and documentary evidence. On the side of the Plaintiff, one J.Rajendra Prasad, the partner of the Plaintiff Firm, was examined as PW.1 and Exs.P1 to P13 were marked. On the side of the Defendants, D.Chokkalingam, the 3rd Defendant, was examined as DW.1 and Ex.D1 to D10 were marked.

9. This court heard the rival submissions advanced by the learned counsel on either side and also perused the materials placed on record.

10. The Plaintiff had filed the suit against the Defendants, namely, (1) The Chief Engineer, Chennai Metropolitan Development Scheme, Division 1, Guindy, Chennai-32, (2) The Superintending Engineer (H), Chennai Circle, Guindy, Chennai-32 and (3) The Divisional Engineer, Highways Chennai Metropolitan Development Scheme, Division 1, Guindy, Chennai-32. Under Section 79 of CPC when a suit has been laid against the State, it is imperative that the State Government

represented by its Secretary should be made as party to the suit. In this case, the Plaintiff has not impleaded the State Government. Consequently, one other additional issue is framed: "whether the suit is bad for non joinder of necessary party, namely, the State Government?"

11. Issues (1), (2), (3) and (4):- The Plaintiff is a partnership firm registered under the Partnership Act. Ex.P1 is the partnership deed of the Plaintiff Company and Ex.P2 is the acknowledgement of registration of the firm of the Plaintiff. The main objectives of the Plaintiff Firm is to carry on the business of civil construction works by laying roads, foot path, building maintenance work, more particularly with respect to Government contracts. The Government of Tamil Nadu had issued GO.MS.No.229 (HW-1), Highways Department, dated 14.11.2005 for widening the single land to double lane and strengthening in the stretch of 4.8 kms of road between Chennai-Vandalur-Kelambakkam to Urapakkam Road via Onambacheri under the Chennai Metropolitan Development Traffic and Transportation Scheme for the year 2005-2006. Administrative sanction was for Rs.240 lakhs and technical sanction was for Rs.200 lakhs. The Plaintiff, which is a partnership firm, is engaged in the business of civil construction and is a registered Class I Civil Engineering Contractor, had applied for the tender and had offered lowest tender at 29% above the estimated rate (2005-2006). This tender offered by the Plaintiff was

accepted by the Defendants by Ex.P3.

12. The 2nd Defendant, by letter no.915/2006/D4, dated 8.12.2006, addressed to the Plaintiff, had intimated the acceptance of the tender of the Plaintiff. This letter had been marked as Ex.P3. In the said letter, it had been stated that the tender for the work, namely, widening the single lane to double lane and strengthening of Chennai-Vandalur-Kelambakkam Road to Urapakkam, Nallambakkam Road via Onambacheri Road for an extent of 4.8 kms, had been accepted at 29% above the estimated rate (2005-2006) for a total amount of Rs.2,21,81,300/- and the Plaintiff was requested to furnish security deposit of Rs.2,14,000/- and also an earnest money deposit of Rs.1,30,000/-. It had been stated that the Plaintiff should employ technical assistants, possessing minimum qualification of 2 Degrees in Civil Engineering or not less than 2 retired Assistant Executive Engineers/ Assistant Divisional Engineer and Diploma Holder in Civil Engineering or not less than 4 retired Junior Engineers to supervise the work.

13. Even, at the outset, before going into the grievances of the Plaintiff, with respect to the first issue, relating to Forest Lands within the stretch of 4.8 kms and the issue of obstruction of work by the local people and the issue relating to escalation of price of bitumen, blue metal, gravel, etc., it must be mentioned that the Plaintiff in their pleadings or in their

evidence had not stated that they had sought the assistance of the above named personnel mentioned by the 2nd Defendant in Ex.P3. This is significant because these personnel, namely, technical assistants/retired Assistant Executive Engineers/retired Junior Engineers would have been very conversant with the nature of work and the difficulties faced. They would also have advised the Plaintiff with respect to the manner in which the difficulties have to be overcome. In Ex.P3, it had been further mentioned by the 2nd Defendant that the Plaintiff had not furnished the name and qualification of the technical assistants proposed to be employed by the Plaintiff. Consequently, when the Plaintiff had not availed the experts' assistance in execution of the work, involving public money and for the sake of the public welfare and use, the Plaintiff cannot turn around and blame the Defendants for the delay in execution of the work. The Plaintiff having offered the tender must have been aware about the nature of work involved and further fact that the part of the land was with the Forest Department and also that there were temple obstructions in the road. The Plaintiff had offered to do the work with knowledge of the difficulties faced. The Plaintiff was not enforced to take up the tender. It was a voluntary act of the Plaintiff. Taking up the tender and offering to do the work also involved the acceptance to clear the hurdles. The Plaintiff having quoted the lowest amount and having accepted to do the work

must also accept the difficulties faced therein and it is the Plaintiff's duty to clear the hurdles. The Defendants can only invite tenders and accept the tenders of the Plaintiff. They cannot assist the Plaintiff in executing the work. It is for that purpose the Plaintiff had quoted a huge sum of Rs.2,21,81,300/- for execution of the work.

14. Articles of Agreement between the parties had been filed as Ex.P4 and this had been signed by the 2nd Defendant for and on behalf of the Government of Tamil Nadu and by the Plaintiff. It is the comprehensive document, enclosing all the terms and conditions of the agreement and in Clause (4), it had been stated as follows:-

"4. Time shall be considered as of the essence of the agreement and the Contractor hereby agrees to commence the work as soon as this agreement is accepted by Competent Authority as defined by the Madras Public Works Department Code and the site (or premises) is handed over to him as provided for in the said conditions and agrees to complete the work within twelve months from the date of such handing over of the site (or premises) and to show progress as defined in the tabular statement. "Rate of progress below subject nevertheless to the provisions for extension of time contained in clause 59 of the Standard Preliminary Specification."

The Plaintiff, either in its pleadings or in the evidence both oral and documentary, had not produced any document or statement to show that they had prepared the tabular statement as provided above in the agreement. It is clear that the Plaintiff had delayed the execution of the

work and they are now blaming the Defendants for the same. As a matter of fact, the agreement between the parties in Ex.P4 also contains the schedule of rates and approximate quantities and specific details with respect to each and every work giving the description of the work, giving the approximate quantity required for the surface of the road and also giving the rate and the amount involved at each phase of the work. A reading of Ex.P4 shows the importance given by the Defendants for the work and the expectation and the hope the Defendants had with respect to the execution of the work by the Plaintiff. However, as it is transpired, the Plaintiff had not executed the work as hoped or as trusted by the Defendants. A Key Map of the proposed road was also annexed along with Ex.P4. There was also a specific report provided giving the details for each kilometre. It is thus seen that the Defendants had very clearly set out the terms of the agreement and it is for the Plaintiff, who had voluntarily opted to participate in the tender, to execute the work in accordance with the terms of the agreement.

15. However, as has transpired, the Plaintiff did not execute the work. According to the Plaintiff, there were obstructions from the Forest Department and also from the general public. Even though the period of the contract had ended, the Plaintiff did not complete the work. By Ex.P5, for the first time, on 10.7.2007, the Plaintiff had stated that the reason for the pendency of the work is the forest land acquisition and Onambacheri Temple land acquisition and electricity board post not yet

cleared. However, the stand of the Defendants is that these aspects had been cleared much earlier. In fact, PW.1, the partner of the Plaintiff Company, during his cross examination, had stated as follows:-

“I have not completed the contract work. I do not remember the date of agreement. It was given 18 months to complete the contract work. I do not remember the date of termination. Contract was terminated after the period of 18 months. The reason for the termination given by the Department is that I have not completed the work within the specified period. They gave many oral instructions to complete the work. They also wrote letters instructing me to complete the work. It is not correct to state that I refused to receive some of the letter written by the Department. I have not produced any document to prove the damages.”

This clearly shows that the Plaintiff was not at all interested in executing the work. It is also significant to note that PW.1 is the signatory to the plaint. It was only subsequently during further cross examination that he had stated that as follows:-

“As per clause 109.05 of SSRB contract, I did not complete the work between 5.1.2007 to 14.5.2008. Witness adds: The Highways Department did not obtain permission from Forest Department for 2.8 km and from the Police Department as the road was passing through the police academy and hence, there was delay. Even after the contract period, further time of 3 months was given for completing the work, but the same could not be completed because above said permissions were not obtained by the Defendants. I deny the suggestion that the termination of the contract on 14.8.2008 is valid as per law. I deny the suggestion that since the work was not completed in time, I am not entitled to relief sought for against the Defendant.”

It is seen that the witness only reluctantly stated about the Forest Department and about the obstruction from the general public and police academy. He had not given any details about the same. The documents were not filed and he had also not filed the nature of obstruction by the general public. In fact, he never spoke about that in his evidence. Even during the cross examination of DW.1, the questions were not put with respect to obstruction from the general public. He was only cross examined to the acquisition of lands of the Forest Department. Even with respect to that, DW.1 has stated as follows:-

“Witness adds: They are concerned only about the forest area, the Plaintiff should have completed the rest of the road leaving forest area and the same was not carried out by the Plaintiff. In the beginning of the work, there was electricity post, temple encroachment and tenement encroachment. Subsequently electricity post was removed, since the temple is not hindrance for doing the work and the tenements was removed by us. I deny the contents contained in Ex.P8 as there was some obstruction like EB, temple, tenements and also police academy.”

16. There had been exchange of letters between the parties and as early as on 16.8.2007, the 3rd Defendant had issued a notice to the Plaintiff. It has to be pointed out that in the written statement, the Defendants had very specifically stated that among the letters issued by the Defendants to the Plaintiff, the Plaintiff had actually refused to receive the letter dated 2.5.2008, instructing the Plaintiff to speed up the progress

and complete the work before 31.7.2008, letter dated 2.6.2008, again seeking speeding up of the work, failing which, the work will be cancelled and letter dated 17.6.2008, in which again further opportunity was given and it was mentioned that if the work was not progressed within 7 days, again the work will be cancelled and also letter dated 23.7.2008, in which the final notice regarding cancellation of work was issued. All the above letters were refused to be received by the Plaintiff. To this specific allegation in the written statement, the Plaintiff had not filed any reply statement refuting this averment in the written statement. It is therefore clear that it is the fault of the Plaintiff in delaying the work and they had only attempted to shift the blame to the Defendants, projecting disputes with the Forest Department and general public. It has to be repeated that when they had voluntarily offered to do the work and submitted the tender, the Plaintiff must have been aware about the actual road which they are going to widen and the further fact that the road passes through the Forest Department area and that there were temples, electricity posts, which were to be removed and having known all these hurdles, further the Plaintiff had quoted and participated in the tender. It is for the Plaintiff to work out its remedies. After all the Plaintiff has been entrusted with the public duty with public money in public confidence and there is a duty cast upon the Plaintiff to complete the work within the stipulated period.

Widening of the work is essential for public welfare and for traffic management. Only the delay by the Plaintiff had caused loss to the Defendants.

17. The letters mentioned in the written statement have been produced by the Defendants. A perusal of the same shows that in Ex.D1 dated 16.8.2007, the Defendants had very clearly stated that if there is no progress in the work, then further steps will be taken. Again in Ex.D2, dated 8.2.2008, once again, the Plaintiff was requested to show progress in the work and complete the work in accordance with the time schedule. A similar request had been made in Ex.D3 dated 4.5.2008. Ex.D4 is yet another letter dated 2.6.2008 and it also contains a returned cover, in which there is an endorsement that the Plaintiff has 'refused' to receive the said notice. Ex.D5 is the show cause notice dated 17.6.2008 and it had been very clearly stated that the work will be terminated, if there is no progress shown by the Plaintiff. In Ex.D5, the copy of the cover sent to the Plaintiff has also been enclosed and again the said show cause notice has been returned as 'refused' by the Plaintiff. Ex.D6 is yet another show cause notice dated 17.6.2008 and even in this, copy of the cover showing it as returned as 'refused' is enclosed. Ex.D7 is yet another letter issued to the Plaintiff and the copy of the show cause notice issued by fax is Ex.D8. Ex.D9 is the copy of the show cause notice dated 17.6.2008, which also

encloses the cover, stating that it has been refused by the Plaintiff. Ex.D10 dated 23.10.2008 is the copy of the final notice and there is an endorsement that it had been sent to the Plaintiff. Overwhelming evidence produced by the Defendants shows that the Defendants had been consistently attempting to serve notices to the Plaintiff. However, the Plaintiff had deliberately refused to receive the same. It was only thereafter, after the termination of the contract that the Plaintiff has chosen to communicate with the Defendants.

18. Ex.P8 is the letter dated 1.9.2008 . This is much later the final notice issued in Ex.D10 dated 23.10.2008 issued by the Defendants. In Ex.P8, the Plaintiff has stated that they had orally represented to the Defendants that this cannot be accepted. It had been stated that there had been surprising personal tragedy happened in the family of the Plaintiff. Further, it has to be stated that when the Plaintiff is involved with the discharge of public duty, involving public money, they should have executed the work in accordance with the terms of the agreement. Ex.P9 is dated 8.9.2008, which is also subsequent to the final notice issued by the Defendants. There is no explanation by the Plaintiff as to why he refused to receive those letters from the officials of the Defendant. They are official communications and the Plaintiff being a tenderer should have received them. By no stretch of imagination, can the official letters be

refused to be received. Ex.P11 is the copy of the advocate notice dated 12.11.2008. Ex.P10 is the reply given by the Defendants, in which, they had stated that for the work in the forest land, the Plaintiff had been paid and even the electricity board post has been shifted and the work had been completed and they had paid the amount. It had been specifically stated that the Plaintiff had not raised any issues in spite of several correspondences. All these documents very clearly show that it is the Plaintiff who had delayed in the execution of the work.

19. It had been further stated that in the plaint, the Plaintiff had claimed the amount towards the following heads:-

(a) "The rent for the total numbers of days (160 days) for the machinery stationed at the work place.

i. L&T vibrator Roller, Rs.9000x160: Rs.14,40,000.

ii. WET MIX Raver FINISHER MODAL W.M.6 (HES) Rs.7500 x 160 = Rs.12,00,000/-

iii. JCB Earth Mover Rs.6000x160 = Rs.9,60,000/-

(b) Security deposits/ EMD/ withheld amounts: Rs.13,75,000/-

(c) Cost for idling labour and staff for 8 months at the rate of Rs.18,000/- p.m. : Rs.1,44,000.

TOTAL Rs.51,19,000/-

In this, the details as to the actual rent for each item, as to how the amounts were arrived at, as to the number of days in which they were lying idle, were not given in the plaint and no specific details have been given. A blind statement cannot be accepted in a court of law. It must be

substantiated by oral and documentary evidence. The rent for each item had not been given by way of any document. Even PW.1 did not speak about it in specific terms. Such being the case, I hold that it is the Plaintiff who had caused the delay in execution of the work and the Plaintiff's excuse that there was a stretch of forest land and obstructions from the general public are only flimsy excuses which are not acceptable by this court.

20. In view of the discussions stated above, I hold that with respect to the first issue, the Plaintiff had actually completed the work in the forest area and had also received payment for the same and consequently, the claim of the Plaintiff that the Forest Department did not give clearance cannot be raised by the Plaintiff and accordingly, I hold this issue against the Plaintiff.

21. With respect to the second issue, again as there is no evidence let in by the Plaintiff and moreover, there being no cross examination of DW.1, I hold that it is the Plaintiff who had delayed in execution of the work and accordingly, hold this issue against the Plaintiff.

22. In respect of issue (4), here again it has to be mentioned that the Plaintiff had not produced any documentary evidence to substantiate the original price and escalation in the price and hence, I hold this issue against the Plaintiff.

23. With respect to issue (3), in view of the findings rendered in respect of the issues (1), (2) and (4), I hold that the Plaintiff had committed breach of contract in laying the road and accordingly, hold this issue against the Plaintiff.

24. With respect to issues (5) and (6), this court finds no oral and documentary evidence to determine whether the Plaintiff had suffered loss. It is the Defendant, who had actually suffered loss because of floating the tender again to yet another person. Accordingly, these issues are answered against the Plaintiff. For all these reasons, I hold ultimately that the Plaintiff has not made out any case to decree the suit as prayed for.

25. With respect to the additional issue framed as above relating to non-joinder of necessary party, namely, the State Government, Section 79 of CPC relating to suit against the State Government is extracted as below:-

“79. Suits by or against Government:- In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—

(a)

(b) in the case of a suit by or against a State Government, the State.”

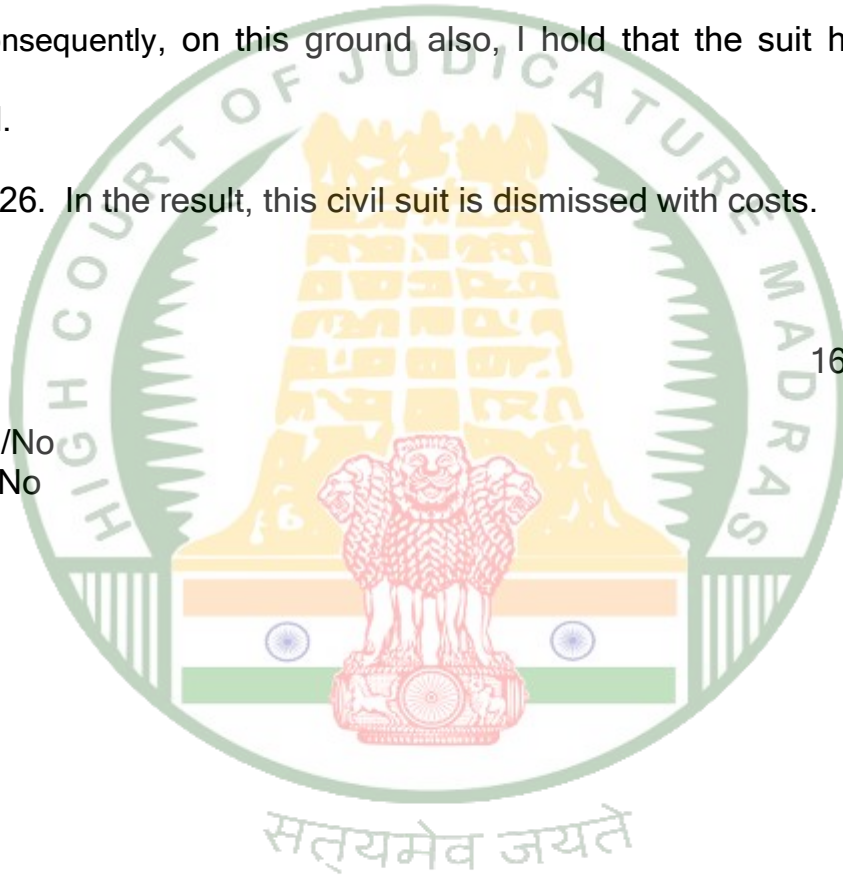
It is seen that in the present suit, the State Government is not a party Defendant. The learned counsel for the Plaintiff had stated that the Plaintiff had impleaded the actual Officials, who had signed the agreement

with the Plaintiff. However, when compensation is claimed against the State Government, it is only necessary that the State Government, as stipulated under Section 79 of CPC, is shown as a party Defendant. Non joinder of necessary is fatal to any case and more particularly, in this case. Consequently, on this ground also, I hold that the suit has to be dismissed.

26. In the result, this civil suit is dismissed with costs.

16.12.2016

Index:Yes/No
Web:Yes/No
Srcm



WEB COPY

C.V.KARTHIKEYAN. J.

Srcm

To:

The Record Keeper, VR Section, High Court, Madras



Pre-Delivery Judgement in
CS.No.415 of 2009

WEB COPY

16.12.2016