

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.11.2016

Pronounced on 07 .12.2016

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.452 of 2007

Sri Narayanamoorthy Travels
Rep.by its Managing Partner
Mr.M.C.Harikrishnan
No.11/7, Kennet Lane,
Egmore, Chennai - 600 088 ... Plaintiff

vs.

The Secretary
Sri Venkateswara Educatinal
and Health Turst,
Sri Venkateswara College of Engineering
at No.166, Mount Road, Chennai -600 015 ... Defendant

Civil Suit filed under Order IV Rule 1 of High
Court O.S. Rules 1956 read with Order VII Rule 1 CPC
praying a) to award the sum of Rs.27,73,040/- towards the
damages for the loss suffered due to the conduct of the
defendant b) to award the interest at the rate of 18% per
annum from the date of the plainti to till the date of the
realisation of the amount c) to award the cost of the
suit.

For plaintiffs :Mr. S.Thiruvankadam

For Defendant : Mr.V.Balasubramanian

J U D G M E N T

The suit is filed to award a sum of Rs.27,73,040/- towards damages for the loss suffered due to the conduct of the defendant and to award the interest at the rate of 18% per annum from the date of plaint till the date of the realisation of the amount.

2. The brief facts of the case of the plaintiff are as follows:

The plaintiff is running fleet and doing a transport business for several decades. Apart from running the buses for public transport, the plaintiff also running the buses on contract basis to various persons. The defendant, who is running a college had approached the plaintiff to render service to their students on contract basis. Accordingly, the agreement was entered into between them on 31.05.2005 initially for a period of one year and thereafter to continue for ensuing period depending on the rates to be agreed on ever year.

2.1. In view of the potential requirement of the defendant institution, the plaintiff procured 16 buses to meet the requirement of the defendant. The plaintiff spent several lakhs in setting up the exclusive arrangement to act in tandem to the institution functions. The plaintiff also obtained special permit from the Regional Transport Officer (in short "RTO") and such permit cannot be used to ply the buses for other purposes. After one year, when

the plaintiff sought renewal to continue the service, the defendant informed the plaintiff to wait for three months as they have to get approval of the trustees.

2.2. While so, without prior notice or intimation about the possible discontinuation of the service, one Sre Kannathal Travels, which is run by one of the close relative of the defendant, was given the contract on the higher rate of the plying charges with other perks. When the same was questioned by the plaintiff, the defendant made some unfounded blames against the plaintiff. As the plaintiff had invested huge money and established the back office cum maintenance, the act of the defendant caused heavy loss to the plaintiff.

2.3. Apart from that, the defendant withhold the payment due for the services already rendered to the tune of Rs.2,84,000/-, for which the plaintiff already raised the bill. On the said amount, the defendant has to pay the interest at the rate of 18% which comes to Rs.29,820/-. Hence, the defendant is liable to pay a sum of Rs.3,13,820/- in addition to the damages claimed.

2.4. Since the defendant caused huge loss and damages to the plaintiff by their conduct and implication, the plaintiff is entitled to claim the damages from the defendant. When the plaintiff made several attempt to contact the defendant to issue the application for surrender of permit and clearance certificates, due to the development created by them, there is no response from the

defendant. Therefore, the plaintiff sent a legal notice dated 17.11.2006 calling upon the defendant to answer. As there was no response from the defendant, the plaintiff has filed the present suit.

3. The case of the defendant, in nutshell, is as follows:

The suit is not maintainable in the eye of law and the same is liable to be dismissed in limine, as the plaintiff has not filed its Firm Registration Certificate to maintain the present suit. As the defendant Trust is running an educational institution, the plaintiff was engaged for the purpose for ferrying its student and staff to its college. An agreement was entered into between the plaintiff and the defendant on 31.5.2005 and as per the terms of the agreement, the period of contract was only for one year commencing from 01.6.2005 to 31.05.2006. There was no promise that the agreement shall continue till own arrangement come into existence or for another 5 years. Further, there is no extension / renewal clause in the agreement dated 31.5.2005.

3.1. Since the services rendered by the plaintiff were not up to the standard promised by it and the vehicles provided by the plaintiff were in dilapidated condition, as per the agreement, the defendant terminated the contract by extending the contract by another three months from the date of its expiry i.e. 31.5.2006 and handed over the buses to the plaintiff along with

connected papers. The defendant engaged the services to Sree Kannathal Travels, to provide quality service to them. The defendant withheld only a sum of Rs.2,77,160/- as the plaintiff had not settled the dues payable to the Government and, thereafter, the same has been paid to the plaintiff as per the direction of this Court. Therefore, the defendant has not caused any loss or damage in any manner to the plaintiff and it is not liable to pay any amount.

4. On the above pleadings, originally, this Court, on 13.07.2011, has framed the following issues:

(1) Whether the defendant has committed breach of the terms of the agreement dated 31.5.2005?

(2) Whether the plaintiff is entitled to claim damages for the alleged breach of the terms of the agreement?

(3) Whether any amount is due from the defendant for the services rendered by he plaintiff in terms of the suit agreement?

(5) Whether the plaintiff is entitled to a decree for the recovery of a sum of Rs.27,73,040/- from the defendant as claimed in the plaint?

(7) To what other reliefs the parties are entitled?

5. On the side of the plaintiff, P.W.1 was examined and Exs.P1 to P13 were marked. On the side of the defendant, D.W.1 was examined and Exs.D1 to D18 were marked. The details of the documents are hereunder:

Exhibits produced on the side of the plaintiff:

S.No	Exhibits	Date	Description of documents
1.	P-1	29.06.2006	Letter by the defendant to the plaintiff
2.	P-2	25.07.2006	Letter by the plaintiff to the defendant
3.	P-3	31.07.2006	Letter by the defendant to the plaintiff
4.	P-4	16.08.2005	Letter by the plaintiff to the defendant
5.	P-5	07.11.2016	Copy of the notice on behalf of the plaintiff to the defendant
6.	P-6	30.11.2006	Letter by the plaintiff to the defendant
7.	P-7	05.12.2006	Copy of the notice on behalf of the plaintiff to the defendant
8.	P-8	05.12.2006	Notice by the defendant to the plaintiff
9.	P-9	31.05.2005	Photocopy of the agreement entered into between the parties
10.	P-10	19.08.2006	Photocopy of the order in MP.No.49193 of 2002 in WP.No.33165 &33166of 2002
11.	P-11	03.03.1987	Photocopy of the acknowledgment of Registration of Firms of the plaintiff
12.	P-12	28.05.2004	Original agreement executed between the plaintiff and the defendant

S.No	Exhibits	Date	Description of documents
13	P-13	31.05.2006	Original letter written by the defendant sent to the plaintiff for extending the period of 3 months.

Exhibits produced on the side of the defendant:

S.No	Exhibits	Date	Description of documents
1.	D-1	-	Copy of the Petition in MCOP 336 of 2007
2.	D-2	-	Copy of the Cancellation of Permit Vehicle No.TN 63 Z 5533
3.	D-3	12.11.2010	Original Tax amount Rs.80795 paid for vehicle No.TN 25 B 7475
4.	D-4	12.11.2010	Original Tax amount Rs.84630 paid for vehicle No.TN 32 Y 5656
5.	D-5	12.11.2010	Original Tax amount of Rs.97434 paid for vehicle No. TN 37K 7173
6.	D-6	12.11.2010	Original Tax amount of Rs.83992 paid for vehicle No. TN 25 Z 8196
7.	D-7	28.12.2010	Original Tax amount of Rs.82667 paid for vehicle No. TN 25 E 7575
8.	D-8	28.12.2010	Original Tax amount of Rs.29762 paid for vehicle No. TN 02 C 1627
9.	D-9	28.12.2010	Original Tax amount of Rs.78800 paid for vehicle No. TN 32 Z 4174
10.	D-10	28.12.2010	Original Tax amount of Rs.96600 paid for vehicle No. TN 63 Z 3222
11.	D-11	28.12.2010	Original Tax amount of Rs.72400 paid for vehicle No. TN 02 K 3929

S.No	Exhibits	Date	Description of documents
12.	D-12	14.03.2011	Original Tax amount of Rs.84000 paid for vehicle No.TN 60 A 4213
13.	D-13	14.03.2011	Original Tax amount of Rs.84000 paid for vehicle No.PY 01 F 7575
14.	D-14	14.03.2011	Original Tax amount of Rs.98400 paid for vehicle No.TN 32 N 590
15.	D-15	01.4.2011	Original Tax amount of Rs.87962 paid for vehicle No.TN 33 N 463
16.	D-16	21.04.2011	Original Tax amount of Rs.71400 paid for vehicle No. TN 55 N 261
17.	D-17	04.01.2008	Office copy of the letter sent to RTO
18.	D-18	12.11.2007	Office copy of the letter sent to the plaintiff

Witnesses examined on the side of the plaintiff:

P.W.1. - M.C.Harikrishnan

Witnesses examined on the side of the defendant

D.W.1 - M.Arunachalam

6.Heard, Mr.S.Thiruvengadam, learned counsel appearing for the plaintiff temple and Mr.V.Balasubramanian, learned counsel appearing for the defendant and perused the records.

7. Mr.S. Thiruvengadam, learned counsel for the plaintiff contended that the plaintiff Firm is doing transport business and plying buses. At the request of the defendant, for transporting the students and staff

from various places, the plaintiff has entered into a contract with the defendant on 31.5.2005 for the period of one year. Based on the assurance, the plaintiff procured 16 buses and also appointed various staffs to cater to the needs of the defendant.

8. The learned counsel for the plaintiff further submitted that special permit was obtained from the RTO for the purpose of plying the vehicles and to carry the students and such permit endorsement cannot be used to ply the buses for other purpose. It is the submission of the learned counsel that though the defendant, initially, promised to extend the contract for five years, abruptly, terminated the contract, after three months from the date of expiry of the original contract period. It is contended by the learned counsel that, immediately, on the termination of the agreement, though the plaintiff has requested the defendant to submit No Objection Certificate for making an application for change of user, the defendant has not provided the same in time, which caused a huge loss to the plaintiff.

9. It is the submission of the learned counsel for the plaintiff that as per the contract, originally, the defendant has agreed to pay a sum of Rs.1,500/- per day for each of the 16 buses. Even after serving notice to the defendant to give No Objection Certificate, there was a delay of 65 days and during such period, the buses could not be plied and kept unused. Therefore, the plaintiff

has suffered huge loss. Accordingly, the plaintiff is entitled for damages for a sum of Rs.27,73,040/-. Hence, the learned counsel prays for decree as prayed for.

10. Per contra, Mr. V.Balasubramanian, the learned counsel appearing for the defendant submitted that since the service of the plaintiff has not up to the expectation, the contract was not extended. Further, all the buses were not belong to the plaintiff and one of the bus met with an accident, which resulted in the death of one person. Absolutely, there is no written agreement to give contract for the period of five years. No evidence what ever available on record to show that all the vehicles kept unused.

11. It is the submission of the learned counsel for the defendant that for seeking damages, the plaintiff has to prove that the vehicle has not been plied and as a result, he had suffered huge damages. No document, whatsoever, has been filed by the plaintiff. Onus is on the part of the plaintiff to prove the alleged loss sustained by him. Hence, the learned counsel submitted that the plaintiff has not discharged its burden on proving the loss sustained by it. Therefore, the damages claimed by the plaintiff is not maintainable. Hence, the learned counsel for the defendant prayed for dismissal of the suit.

Issue No.1 to 5

<https://hcservices.ecourts.gov.in/hcservices/>

12. The suit has been laid for claiming damages on

the ground that the defendant has not extended the agreement as promised by them for a period of five years and abruptly, they terminated the contract entered into between them and also failed to give No Objection Certificate so as to enable the plaintiff to change the permit and to ply the vehicle for other purposes.

13. It is the contention of the plaintiff that as the defendant agreed to pay a sum of Rs.1,500/- per day for each of the 16 vehicles, it is liable to make payment of Rs.24,000/- per day. Further, there was a huge delay on the part of the defendant for giving No Objection Certificate and as a result, the plaintiff could not use 16 buses for any other purpose and same was kept unused and thereby sustained heavy loss. The plaintiff has pleaded that a sum of Rs.2,84,000/- is due from the defendant for the services already rendered.

14. However, it is the argument of the learned counsel for the defendant that no amount is due to the plaintiff since a sum of Rs.2,77,160/- has already been deposited as per the order of this Court in the application filed for attachment of the schedule mentioned property therein. It appears from the record that the above amount has also withdrawn by the plaintiff.

15. In view of the above stated position, now the suit is confined only with respect to the alleged breach of contract and non furnishing of the No Objection Certificate by the defendant to change the permit for

running the buses for other purposes.

16. There is no dispute with regard to the period of contract entered into between the parties. On the side of the plaintiff one Harikrishnan was examined as P.W.1 and on the side of the defendant one M.Arunachalam was examined as D.W.1.

17. Ex.P1 is the letter sent by the defendant requesting the plaintiff to continue the services for further period of three months as a temporary measure. In the said letter it was clearly mentioned that the agreement stands cancelled on 31.7.2006. Ex.P2, is the requisition letter sent by the plaintiff requesting the defendant to extend the contract for further period of twelve months. Ex.P3 is the letter sent by the defendant, wherein it was mentioned that only because of the unsatisfactory services of the plaintiff, they are not in a position to continue the contract and three months time was extended only with the consent of the plaintiff. Therefore, in view of the termination of the contract, on 16.8.2005, under Ex.P.4, the plaintiff requested the college authorities to give them clearance letter for all buses for replacing the permit, which was followed by a legal notice under EX.P5 dated 07.11.2006. Under Ex.P4 and P5, the plaintiff has also requested the defendant to give a sum of Rs.1,500/- per day for each of the 16 buses till the issuance of No Objection Certificate. ExP6 is the photocopy of the letter sent by the plaintiff to the

defendant requesting them to give cancellation permit, TDS letter and cheque for Rs.2,85,000/-. Ex.P7 and P8 are the legal notices issued for claiming damages.

18. Ex. P12 is the original agreement entered into between the parties on 28.5.2004. On a careful perusal of Ex.P12 contract, it is seen that the parties had entered into agreement for one year which was commencing from 01.6.2004 to 31.06.2005. It was agreed between the parties that a sum of Rs.1,625/- per day each for 8 buses for 300 days and Rs.1,625 /- per day each for 12 buses for 200 days would be paid.

19. Ex.P.9 is the photocopy of the second agreement dated 31.5.2005 entered into between the plaintiff and the defendant. On a careful perusal of Ex.P.9 agreement dated 31.05.2005, it is clear that the contract was for one year commencing from 01.06.2005 to 31.05.2006. This contract was expired on 31.05.2006. However, original agreement has not been produced.

20. But the fact remains that both parties have agreed that there was a contract for the period of one year i.e., 01.06.2005 to 31.06.2006. Even in the cross examination by P.W.1 the defendant has not disputed the same. Ex.P13 is the letter dated 31.5.2006 addressed by the defendant to the plaintiff informing about the extension of contract for three months with effect from

21. D.2 is the photocopy of cancellation of permit vehicle No.TN 63 Z 5533, and the original has not been filed. Ex.D3 to D16 are the letters addressed by the defendant to the RTO along with Demand Draft for payment of Rs.80795, 84630, 97434, 83992, 82667, 29762, 78800, 96600, 72400, 84000, 84000, 98400, 87962 and 71400 respectively, towards tax for the vehicle bearing registration Nos.TN 25 B 7575, TN32-Y-5656, TN 37-K-7173, 25-Z-8196, TN-25-E-7575; TN-02-C-1627, TN-32-Z-4174, TN 63 Z 3222, TN 02 K 3929, TN 60 A-4213, PY 01 F 7575, TN 32 N 590 and TN 33 N 463 respectively. Ex.P17, is the office copy of the letter addressed by the defendant to the RTO, which shows that the vehicle bearing Registration No.TN 09 F 7575 was taken by the original owner, i.e., Shri Narayanmurthy Travels, the plaintiff herein, on 12.8.2006 itself. Ex.D18 is also the office copy of the letter sent by the defendant to the plaintiff, which shows that the defendant has forwarded a letter received from the RTO along with RC Book and permit copies in respect of four vehicles and requested the plaintiff to clear the dues as per the letter dated 30.11.2006 sent by RTO.

22. Ex.P6, letter dated 30.11.2016, is not disputed by the defendant. In fact, in Ex.D18 it is specifically mentioned about the letter dated 30.11.2016. In Ex.P6, letter, the plaintiff himself admitted with regard to the arrears of payment of tax to the RTO. Furthermore,

Exs.D3 to D16, the letters addressed to the RTO by the defendant, clearly indicate the fact that the plaintiff has not paid taxes to the buses ranging for the period from 2003 to 2011 and the same has been paid by the defendant.

23. In this context, it is useful to extract Clause 8 of the agreement, which reads as follows:

- 8.The contractor undertakes that he shall
- a) Pay promptly and without fail all the taxes on the vehicles.
 - b) Insure the vehicle under the comprehensive policy of insurance which shall be always kept alive;
 - c) Keep the vehicle, at his own expenses, in a fit, running and roadworthy conditions always; and
 - d) Be further responsible to pay full damage for injuries/ losses of life suffered by the Trust/College personnel while in transit or on board at the assembly point or at Institution.

24. On a careful reading of the above clause, it appears that the plaintiff itself has agreed to pay all the dues to the concerned RTO. Therefore, now he cannot

contend that because of non furnishing of No Objection Certificate, he could not ply the vehicle. Furthermore, differential tax has been paid by the defendants. But the fact remains that the defendant, having extended the contract for three months, ought to have issued No Objection Certificate immediately after the expiry of the contract period, but they did not do so, even after receipt of legal notice issued under Exs.P5, P7 and P8.

25. Since the plaintiff has agreed to clear all the taxes in Contract, it is for them to pay the taxes to RTO concerned in time. The defendant, on that score could not have caused any delay. Though the contract was expired on 31.6.2005, it was further extended for three months under Ex.P9 and Ex.P1. As the defendant had agreed to extend the contract for specified time before the expiry of the contract, they ought to have issued No Objection Certificate to the plaintiff so that he could ply the vehicles for some other purposes.

26. It is the admitted case of both sides that special permit has been endorsed by the transport authorities for carrying the students. The defendant having terminated the contract, ought to have given No Objection Certificate for change of permit. Of course, the suit for damages would lie only when the breach of contract occurs by any one of the parties. In the present case, the defendant extended the contract for three months. Even though there is no written contract for the

extended period of three months, the existence of contract for a period of three months from 01.7.2006, can easily be inferred in view of the letter and correspondence occurred between the parties. Therefore, it is clear that the defendant had committed breach in non furnishing No Objection Certificate, immediately after the termination of contract.

27. It is admitted case that originally 16 buses were engaged by the plaintiff at the rate of Rs.1,625 per day. Now the plaintiff has claimed damages only on the ground of delay caused by the defendant in non-furnishing the No Objection Certificate. The plaintiff himself admitted that only 5 buses belong to them and rest of the buses were hired from somebody. P.W.1 in his cross examination, could not give any explanation, whatsoever, as to the ownership and from whom, the above buses were hired. Further, there is no evidence whatsoever, produced by the plaintiff to show that other buses hired by him were also kept ideal. Further none of the other owners, from whom the buses were hired, were examined to prove that those buses could not be plied because of non-furnishing of No Objection Certificate from the College authorities.

28. In the absence of convincing and cogent evidence for proving the actual damages suffered by the plaintiff, he cannot claim damages for entire buses merely on the ground that No Objection Certificate has not been given by

the defendant. If really the other buses were kept unused, no prudent man would keep quite without taking action against the defendant. Further, the plaintiff has not produced any document to show that other owners were also sustained loss and that they were claiming damages from the plaintiff. In the absence of any evidence to show that the plaintiff had sustained loss due to termination of contract in respect of other buses, it cannot claim damages from the defendant.

29. Though Exs.D4 to D18 show that the defendant made payment towards tax, they failed to establish whether those buses were actually engaged by the plaintiff. In Ex.P9 Contract entered into between the parties, particulars of the buses were not found place. Therefore, merely on the basis of the payment made by the defendant under ExS.D4 to D16, it cannot be concluded that it was made only in respect of all the buses. In Ex.D18, the defendant has referred only four buses. Therefore, the receipts relied on by the defendant are not at all sufficient to conclude that all the payments were made towards the plaintiff's bus.

30. From the above discussion, it is clear that the plaintiff is the owner of only five buses and rest of the owners have not made any complaint so far. Therefore, this Court is inclined to award damages to the plaintiff for five buses only, since, the defendant has not given No

Objection Certificate immediately, after the contract was terminated. Accordingly, the plaintiff is entitled to damages for five buses at the rate of Rs.1,500/- per day for 65 days. (1500 X 5= Rs.7,500) (Rs.7500x 65 days=Rs.4,87,500/-). As far as the other amount claimed by the plaintiff in the plaint is concerned, it appears from the record that the same has already been paid, pursuant to the order of this Court in the Application filed by the plaintiff for attachment of the schedule mentioned property therein. The issues are answered accordingly.

31. Thus, the plaintiff is entitled for Rs.4,87,500/- towards damages for 65 days of delay in furnishing "No Objection" certificate with interest at the rate of 6% from the date of suit till realisation of amount.

The suit is decreed in above terms with costs.

sd/.N.S.K.J

07.12.2016

//Certified to be a true copy//

Dated this the day of 2017

P.M/17.04.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format