

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Appeal Suit No.933 of 2008

Between

Allam Subbarayudu

... Appellant/Petitioner

and

State of A.P.,
Rep. by its Prl. Secretary, I & CAD,
Secretariat Bldgs., Hyderabad;
and 2 others

... Respondents/Defendants

DATE OF JUDGMENT PRONOUNCED: 04-02-2016

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Appeal Suit No.933 of 2008

% 04-02-2016

Allam Subbarayudu

... Appellant/Plaintiff

Vs.

\$ State of A.P., Rep. by its Prl. Secretary,
I & CAD, Secretariat Bldgs., Hyderabad;

and 2 others

... Respondents/Defendants

! Counsel for the Appellant: Sri P.Vinayaka Swamy

Counsel for Respondents: Govt. Pleader for Appeals

< Gist:

> Head Note:

? Cases referred:

1. (2009) 6 SCC 414
2. 2009 (2) ALT 575 (D.B.)
3. 2010 (2) ALT 655 (D.B.)
4. AIR 2005 ORISSA 58

HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.933 of 2008

Judgment:

This appeal arises out of a judgment and decree dated 17-11-2008 in O.S.No.1 of 2005 passed by the

Court of II Additional District Judge, Proddatur, Kadapa district. The unsuccessful plaintiff is the appellant.

2. In this judgment, for the sake of convenience, the parties will be referred as the plaintiff and the defendants.

3. The plaintiff is a civil contractor. He entered into an agreement with the 1st defendant on 01-01-1996 in relation to the work of formation of Neelapuram distributory, Gudipadu distributory and Gollapalli distributory branching from Chennamukkapally regulator. It was stipulated in the agreement that the work should be completed by 30-6-1996. The work order was issued by the 2nd defendant on 31-01-1996.

The plaintiff undertook the work in Neelapuram distributory up to a length of one kilometre in the Government land. The work of the other distributories was not taken up due to non-availability of the site.

It is the version of the plaintiff that on the belief that the entire site would be provided by the defendants within a reasonable time, he mobilised men and machinery to commence the work. He could not complete the work within the stipulated time as the defendants failed to provide the site without any obstruction and there was obstruction from the persons in possession of the assigned lands through which the work has to be carried on. There was lot of correspondence between the plaintiff

and the defendants in this regard. The plaintiff executed the work to some extent in the allotted site and the defendants released the bill for an amount of Rs.10,87,398/-. The defendants recovered an amount of Rs.1,76,963/- towards the value of the cement. Under these circumstances, the plaintiff filed the suit before the trial Court praying for the following reliefs:

(a) directing the defendants to pay plaintiff the suit amount of Rs.22,94,499/- together with subsequent interest at 18% per annum on the principal amount of Rs.15,24,584/- from the date of the suit till payment.

(b) directing the defendants to pay plaintiff costs of the suit, and

(c) granting such other and further reliefs as may appear just and necessary in the circumstances of the case.

4. Before the trial Court, it was contended by the defendants in their written statement as follows:

(a) The plaintiff started the work knowing the consequences about the assurances of the department to the assigned land owners. Clause 58 of the Andhra Pradesh Standard Specifications enables the contractors to withdraw if the work is delayed for more than two months. But the plaintiff, who knew fully well about the difficulties in allotting the land and who was fully aware of the nature of the contract, did not withdraw from the work despite having recourse to Clause 58 of the

A.P. Standard Specifications. The fact that the land owners have obstructed the plaintiff is denied by the defendants. The plaintiff did not complete the work in the Government land also within the stipulated period. He completed the work to a tune of Rs.9,85,679/- only by July, 1996. The time of the contract was extended up to 30-9-1996 on the request of the plaintiff. An amount of Rs.1,000/- was forfeited as the plaintiff failed to maintain the progress of the work. Without even executing the work in the Government land which was allotted to him within the stipulated time, the plaintiff is not entitled to claim damages on the ground that the defendants committed breach of contract. The plaintiff lifted his camp and withdrew all his labour, he did not sustain any loss. The plaintiff was paid an amount of Rs.15,041/- after recovering the cost of the cement and taxes, but the plaintiff has not returned the unused cement. However, the defendants submitted that they are ready to make payment for return of the unused cement.

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

(1) Whether the plaintiff is entitled to suit amount as prayed for ?

(2) To what relief ?

6. On behalf of the plaintiff, he examined himself as P.W.1 and marked Exs.A-1 to A-11. On behalf of the

defendants, D.W.1 was examined and Exs.B-1 to B-9 were marked.

7. Having gone through the oral and documentary evidence adduced on either side, the trial Court held that the difficulties arose in relation to the execution of the work were beyond the control of either of the parties and therefore, the recoveries ought not to have been made by the defendants. Consequently, the trial Court held that the defendants are liable for refund of an amount of Rs.1,76,963/- covered by the heads (b) and (c) of para 12 of the plaint. The trial Court, however, took the view that the plaintiff is not entitled for any amount towards loss of profit on the ground that the defendants committed breach of contract. The trial Court did not accept the contention of the plaintiff that the defendants committed breach of contract and consequently rejected the claim of the plaintiff.

8. Thus, aggrieved by the judgment and decree which went against the plaintiff, he preferred the present appeal.

9. The only point that arises for consideration in the present appeal is whether the plaintiff is entitled for any amount towards loss of profit on the ground that the defendants without allotting the entire site terminated the contract by Ex.A-8 letter dated 01-9-2001.

10. I have heard Sri P.Vinayaka Swamy, learned counsel appearing for the appellant/plaintiff and the learned Government Pleader for Appeals for the respondents/defendants.

11. The learned counsel appearing for the appellants would submit that as admittedly the defendants did not allot the entire site to the plaintiff on the date of termination of contract, they committed breach of contract which enables the plaintiff to claim damages towards loss of profit.

12. On the other hand, the learned Government Pleader for Appeals would contend that as per Clause 58 of the A.P. Standard Specifications, the plaintiff has an option to withdraw from the work, he has not availed the said option, he did not even complete the work in the Government site and therefore, he is not entitled to claim any damages towards loss of profit.

13. There is no dispute about the fact that the appellant has a right to withdraw from the work as envisaged under Clause 58 of the A.P. Standard Specifications which govern the works contract. On the date of entering into agreement with the defendants, the plaintiff was well aware that the entire land was not handed over to him. Having regard to the nature of the

work, he must have visualised the difficulties relating to allotment of the site by taking out land acquisition proceedings by the Revenue Department.

14. The crucial aspect in this case is that the correspondence would clearly indicate that the plaintiff was slow in executing the work even in the site which was allotted to him by the defendants. He did not place any evidence showing that the obstruction was caused by the persons in the possession of assigned lands. Except his oral testimony, there is no material in proof of the fact that in the land which was initially handed over to him, there was any obstruction for executing the work. Despite the said fact, he did not even complete the work in the land which was handed over to him. Therefore, the period of contract was extended up to 30-9-1996.

15. As the entire land was not handed over to the plaintiff on the date of entering into agreement, he very well knew about the fact that the remaining land would be allotted by taking out land acquisition proceedings which would normally result in some delays. The mere fact that the defendants recommended for revision of rates on account of lapse of time, does not by itself enable the plaintiff to obtain damages from the defendants.

16. In support of his contention, the learned counsel appearing for the appellants relied on

**G.RAMACHANDRA REDDY v. UNION OF INDIA^[1],
State of Andhra Pradesh v. T.V. Krishna Reddy (died)
Per LRs^[2] and G.V. Malla Reddy and Co. v. A.P. State
Trading Corporation Limited^[3].** In all these judgments,
it was held that in the event of breach of contract
committed by the defendants in relation to a works
contract, the plaintiff contractor is entitled to claim
damages towards loss of profit.

17. The facts of the cases relied on by the learned
counsel appearing for the appellant/plaintiff are altogether
different from the facts of the present case. The nature of
the contract in the instant case is altogether different. As
already said, the plaintiff was well aware of the fact on the
date of entering into agreement that some delay would
occasion in handing over the remaining land to him. If the
land was not handed over to him within a reasonable time,
he had an option to withdraw from the contract as
provided under Clause 58 of the A.P. Standard
Specifications.

18. In this context, it would be relevant to refer to the
judgment of the **Orissa High Court in State of Orissa v.
Pratibha Prakash Bhawan^[4]**, wherein it was held that
the person claiming damages has to specifically plead the
manner in which he suffered loss to justify the damages in

the manner which is claimed. In the absence of any such pleadings in the plaint, damages cannot be awarded basing on the mere deposition of the plaintiff in the Court.

19. In the present case also, the plaintiff did not specifically plead as to how and to what extent, he suffered loss on account of the termination of contract by the defendants. He did not mention the names of the persons who obstructed him while executing the work in the Government site allotted to him. He merely stated that some persons in the possession of assigned lands caused obstruction. In the reply by the defendants, in the course of the correspondence, they have specifically stated that there was no such obstruction. In that event, it is obligatory on the part of the plaintiff to adduce evidence as to who caused the obstruction and in which manner.

20. As regards dumping the men and material also, there is no specific evidence except a stray sentence in the plaint. On the mere ground that the entire site was not handed over to the plaintiff, in the absence of any evidence justifying the award of damages, it is not possible to pass any such decree in favour of the plaintiff towards loss of profit. Moreover, the fact that the plaintiff did not even complete the work in the Government land which was allotted to him, disentitles him from claiming any damages. He had an option to withdraw from the contract as provided under Clause 58 of the A.P.

Standard Specifications. But inspite of visualising the fact that the site would not be handed over to him within a reasonable time, he did not avail the option to withdraw from the contract and filed the suit claiming damages towards loss of profit in a speculative manner.

21. In the considered view of this Court, the trial Court did not commit any mistake in rejecting the claim of the plaintiff towards loss of profit. The appeal, therefore, is dismissed. The miscellaneous petitions, if any, pending in this appeal shall stand closed.

No costs.

R.KANTHA RAO, J.

04th February, 2016.

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Note:-

L.R. Copy to be marked.

(B/o)

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HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.933 of 2008

04th February, 2016.
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[\[1\]](#) (2009) 6 SCC 414

[\[2\]](#) 2009 (2) ALT 575 (D.B.)

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