

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM

THE HONOURABLE MS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.558 of 2017 and
C.M.P.No.13864 of 2017

A.C.R.Mani

... Appellant/Plaintiff

...vs...

1. State of Tamil Nadu rep. by its District Collector Tiruvannamalai.
2. The Superintending Engineer, Highways & Rural Works, Tiruvannamalai District, Tiruvannamalai.
3. The Assistant Executive Engineer, Highways Department, Arni, Tiruvannamalai District. Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree of the learned Subordinate Judge, Arni, Tiruvannamalai District dated 24.09.2012 and passed in A.S.No.11 of 2000 confirming the Judgment and Decree of the learned Additional District Munsif, Arni, dated 28.11.1997 and passed in O.S.No.106 of 1994.

For Appellant : Mr.A.Jenasenan

J U D G M E N T

The unsuccessful Plaintiff having lost before the Courts below has preferred the above Second Appeal.

2. The case of the Plaintiff is that he is one of the registered contractors who had undertook several contract work for the Government. In the year 1986, in the tender floated by the second defendant for construction of bridge across Naganadhi at Kilometer 4/4 of Ayyampalayam to Kunnathur Road in Arni Taluk, the plaintiff was declared as a successful bidder and he was awarded the contract. As per the terms of the agreement

entered into between the plaintiff and the defendants on 26.11.1986 the Plaintiff had paid Rs.22,000/- representing the earned money deposit and another sum of Rs.19,200/- towards additional security deposit. Apart from the amounts mentioned above, a sum of Rs.16,350/- was also recovered from the Plaintiff's bill in the first three consecutive bills. According to the plaintiff, he had completed major portion of the work to the value of Rs.15,15,584/- and the amount was also paid to the plaintiff, leaving a small portion of the work unfinished which relates to the construction of a bridge across the river. According to the plaintiff, he had completed the main portion of the bridge except the hand rails and approach road from Kunnatur side. As per the original estimate, the cut of wells on both sides of the bridge to be constructed using R.R.Stones but they were not available in an approved quarry situated in and around Kunnathur Village hence, the plaintiff requested the second respondent to grant permission for executing this item or work with cement concrete blocks in 1:3:6 ratio, so as to enable him to complete the work in time. It is the specific contention of the plaintiff that he had sent several letters to defendants regarding his inability to complete the work since some third party individuals have objected for laying the approach road. The Plaintiff states that from December 1991, he had been continuously sending representations to the second defendant with regard to the dispute raised by the said persons to the laying of the approach road and for permission to construct the apron and cut of walls with concrete cement blocks. Finally, on 19.04.1993, the third defendant in a letter sent to the Plaintiff stated that the request of the Plaintiff has been rejected. Thereafter, the plaintiff made a specific request for payment of Rs.50,000/- and refund of Rs.16,000/- in the form of N.D.C. Bond to which he is eligible with an undertaking to remit Rs.16,500/- as additional deposit if necessary. In response, the third defendant sent to the letter dated 09.06.1993 only directing the Plaintiff to complete the work before 31.07.1993. The Plaintiff had sent the letter requesting payment of Rs.50,000/- for the work done by him and refund of the additional deposit of Rs.16,500/- in the shape of N.D.C Bond which carries interest so that he can remit additional deposit of Rs.16,500/- if necessary. The third defendant had sent a letter dated 03.08.1993, directing the Plaintiff to return the cement and steel rods to the third defendant and complete the work before 31.05.1993, failing which an order will be pasted cancelling the award of contract made in favour of the Plaintiff. Subsequently, the time for completing the work was extended by the third respondent upto 22.01.1994. After exchange of letters, as aforesaid, plaintiff has filed the suit before the trial court.

3. The fourth defendant has filed the written statement denied the allegations made in the plaint. He states that the

work was allotted to the Plaintiff by virtue of the agreement dated 26.11.1986. The period allowed for completion of the work as per the agreement was 12 months. Since, time was the essence of contract as per the agreement, the work has to be completed on 22.12.1987, within a period of 12 months but by that time, the plaintiff had not completed even 40% of the work inspite of imposition of penalties for not attaining the target within the stipulated periods. The land was handed over to the Plaintiff on 23.12.2006 and as per the agreement, work should have been completed on 22.12.1987, with the result, the cost of construction has doubled as against the original estimate prepared by the department. The amount recovered from the plaintiff were as per the agreement and the plaintiff is fully aware of the deductions made by the department. The defendants are not liable to pay any amount to the plaintiff especially when the plaintiff failed and neglected to complete the work within the time stipulated in the agreement. Even otherwise, the amount will be refunded on successful completion of the work. In fact, the Plaintiff has taken away steel and cement worth more than Rs.2,00,000/- and they were not returned to the defendants till date, inspite of demands made. Even though several reminders were given, the Plaintiff did not care to return the goods to the defendants. The Plaintiff had adopted delaying tactics which caused revenue loss to the department. The warnings and show cause notices issued and fines imposed have had no effect at all on the Plaintiff. The cancellation order was issued due to the inaction on the part of the Plaintiff to complete the work inspite of repeated requests, warnings and show-cause notices. The cancellation order has become necessary so as to enable the defendants to complete the work through some other contractor who can complete the work without any further delay. As a senior class I contractor the Plaintiff must have been aware of all the rules and regulations which cannot be changed according to his whims and fancies. The order, which is impugned in the suit, was passed after giving enough opportunities for the Plaintiff to complete the work before date stipulated in the agreement. In such circumstances, the relief of interim injunction need not be granted in favour of the plaintiff. The plaintiff, who failed to complete the work in time, has no locus standi to make any allegations against the defendants. There is no cause of action for this suit and hence prays to dismiss the suit.

3. Before the Trial Court, the Plaintiff himself was examined as P.W.1 and Exs.1 to 14 were marked on his side. On the side of the defendants, one Witness was examined and Exs.1 to 39 were marked. The Trial Court on the above said pleading after consideration of the oral and documentary evidence dismissed the suit. Being aggrieved, the Plaintiff has filed the appeal before the Subordinate Court, Arni and the same was

dismissed. As against the the same, the above appeal has been filed.

4. The learned counsel appearing for the appellant would submit that the respondent had not supplied the construction materials in time and therefore the Courts below ought to have held that there is no delay on the part of the Appellant.

5. Ex.A1 is the copy of the contract, as per which the plaintiff/appellant was to complete the work within stipulated time of one year. Ex.A1 specifically and categorically mentioned that time shall be considered as a essence of contract and the construction has to commence as soon as agreement is accepted by the competent authority. However, there seem to an extension upto seven years at various stages. Despite several remainders and penalties to complete the work on time, the Plaintiff had not completed the same. Hence, the respondent issued Ex.A11 and cancelled the contract as per Ex.A12. As the contract itself is for completion of bridge which is entrusted to public, the completion of same in time bound manner is essential. As the appellant had not adhered to the terms and conditions of contract as per Ex.A1, the respondent was compelled to cancel the same, got it completed by another contractor. The prayer in the suit is to declare that Ex.A12 is arbitrary, illegal and for granting permanent injunction not to entrust the remaining work to any other contractor. It is seen from the facts that already project was completed and therefore the prayer sought for has become infructuous. As the Courts below concurrently upheld the cancellation of Ex.A12 is valid and as the project is also completed, nothing survives to be decided in this appeal.

6. In view of the above, there is no substantial question of law arising for consideration, in this appeal and there is no infirmity in the Judgments of the Courts below, warranting interference by this Court.

7. In the result, the Second Appeal is dismissed, confirming the Judgment and decree of the Courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Arni,
Tiruvannamalai District
2. The Additional District Munsif,
Arni.
3. The Section Officer,
VR Section,
High Court, Madras

+lcc to Mr.A.Jenasenan, Advocate, S.R.No.75939

S.A.No.558 of 2017

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