

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.606 of 2011  
& M.P.No.1/2011 & M.P.No.1/2014

1.H.V.Equipments Pvt.Ltd.

Rep.by its Director Mr.Anil Verma  
804, Deepali Building,  
92, Nehru Place, New Delhi 110 019.

2.H.V.Equipments (P) Ltd.,

Rep.by its Director Mr.Anil Verma,  
A2, Sudharshan Garden,  
No.102, Velachery Road,  
Guindy, Chennai 600 032.

...Appellants

-Vs-

M/s.Macro Marvel Infrastructure Corporation Ltd.,

Rep.by Director M.Ravikumar,  
Golden Place, 813, Poonamalle High Road,  
Kilpauk,  
Chennai 600 010.

...Respondent

Prayer: This appeal is filed under Section 96 r/w Order 41 Rule 1 & 2 C.P.C. against the judgment and decree dated 18.09.2009 made in O.S.No.2424/2007 on the file of the learned IV Additional Judge City Civil Court, Madras.

For Appellants : Mr.Niranjana Rajagopalan

For Respondent : Mr.M.Raja Raman

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JUDGMENT

The defendants in O.S.No.2424/2007 who suffered a decree for payment of money are the appellants.

2. The suit in O.S.No.2444/2007 was filed by the respondent/plaintiff seeking recovery of a sum of Rs.4,04,819/- along with interest at 18% per annum from 09.04.2002 till the date of realisation. The plaintiff would contend that the 1<sup>st</sup>

defendant Company had got a contract for construction of Ennore Thermal Power Station from the Tamil Nadu Electricity Board. The defendants placed an order on 04.08.1999 and engaged the services of the plaintiff to execute certain civil works as per Annexures I to IV on turn key basis for a lump sum price. The works have to be carried out in accordance with the drawings that are furnished by the Tamil Nadu Electricity Board. The works that were entrusted with the plaintiff are 2 nos. of Elevated RCC Silos along with individual RCC constructed stair case upto the top of silo, silo support structure. Silo operating flooring, piles and pile caps. It also covers construction of compressor house complex which comprises of one compressor house building MCC/PLC rooms, one RCC underground water sump with all arrangements as per the specifications approved by the Tamil Nadu Electricity Board. It also includes one weigh bridge control room. The lump sum contract price of the total contract was fixed at Rs.49 lakhs and the payments were sought to be made in accordance with the schedule in the work order. As per Ex.A-2, the work is required to be completed on or before 31.12.1999, and it is also stated that time is the essence of the contract.

3. According to the plaintiff, there was delay on the part of the defendants as well as the Tamil Nadu Electricity Board at every stage of the contract and there was also default in payment of the running bills, which resulted in the completion of the contract being delayed. The plaintiff would further contend that with great difficulty, the plaintiff Company was able to complete the work on 09.04.2002, and it had submitted its final bill for a sum of Rs.4,04,819.80 on 09.04.2002 itself. Whenever the plaintiff requested the defendants to pay the dues, the defendants claimed that they were awaiting settlement of their final bill by the Tamil Nadu Electricity Board and they had requested the plaintiff to wait till the Tamil Nadu Electricity Board released the amount. Since no payment was forthcoming, the plaintiff by letter dated 10.03.2005, demanded payment of Rs.4,04,819/- along with interest at 24% per annum. But, the defendants for the first time, attempted to resist the claim of the plaintiff vide their letters dated 24.03.2005 and 01.04.2005 claiming that there was delay on part of the plaintiff on completion of the work. This forced the plaintiff to issue a notice dt.10.04.2006 calling upon the defendants to pay the plaintiff a sum of Rs.4,04,819.80 with interest of 24% per annum from 09.04.2002 till the date of realisation. The first defendant received the notice, but they have neither paid the amount nor issued any reply. Hence, the plaintiff had filed the above suit seeking a money decree for recovery of a sum of Rs.4,04,819/- together with interest at 18% per annum from 09.04.2002 till the date of realisation.

4. The defendants would resist the claim of the plaintiff contending that time is the essence of the contract and that the project was delayed due to the conduct of the plaintiff in not completing the contract within the specified period. The defendants were entitled to levy liquidated damages as per the contract. It is also claimed in the written statement that they have reserved their right to file a counter claim. It is stated in the written statement that the total period of the contract was about 12 months and the period for completion of the work entrusted with the plaintiff was fixed at 150 days. In view of the fact that the plaintiff had not completed the work within the said 150 days, the plaintiff is not entitled to the suit amount. It is also contended that time is being the essence of the contract, the plaintiff failed to comply with the requirements of the contract and no suit will lie for payment of money against the defendants. It is also contended that the Tamil Nadu Electricity Board has stopped the claim against the defendants for non completion of the contract within the time stipulated. Therefore, the plaintiff will have to wait for the resolution of the dispute between the Tamil Nadu Electricity Board and the defendants.

5. On the above pleadings, the learned trial Judge, framed the following issues:

1. Whether the plaintiff is entitled for a sum of Rs.7,70,971/-?
2. Whether the plaintiff is entitled for interest at the rate of 18%? and
3. To what relief?

6. During trial, P.W-1 was examined on the side of the plaintiff, and Ex.A-1 to A-34 were marked. One Anil Varma Director of the defendants Company was examined as DW-1, and Ex.B-1 to B-33 were marked.

7. The learned trial Judge examined the evidence on record in the light of the above facts. Upon such examination, the learned trial Judge came to the conclusion that the delay in completion of the work was attributed by the conduct of the Tamil Nadu Electricity Board as well as the defendants. The trial Court had pointed out that even though, the construction contract should have been completed by 31.12.1999, as per the work order dated 04.08.1999 marked as Ex.A.2, the same could not be completed in time, because the drawings were approved by the Tamil Nadu Electricity Board only in the month of April 2000. The final drawings of work was made ready only in June/April 2000 in respect of the Silos and on 24.06.2000 in respect of the Compressors.

8. The trial Court also found that DW-1 in his cross examination had in fact admitted that the location of the Compressor, Silos, Staircase as well as the Compressor room was changed on at least 3 occasions. It is also concluded that the defendants had not made the payments, in time, for the running bills which led the work being delayed. Upon such finding, the trial Court concluded that the defendants cannot take shelter under the delay that was occasioned due to their own conduct. Thus, the trial Court decreed the suit as prayed for. Aggrieved, the defendants are on appeal.

9. I have heard Mr.Niranjana Rajagopalan, learned counsel appearing for the appellants. He would draw the attention of this Court to various correspondence which had taken place in the years 2000-2001 between the parties, and pointed out that the defendants had in fact complained about the delay on the part of the plaintiff. Relying upon the said correspondence, the learned counsel would contend that the trial Court erred in concluding that the delay was caused by the conduct of the defendants. The learned counsel would also invite my attention to Ex.B-26, which is the fax message sent by the defendants to Tamil Nadu Electricity Board, wherein, the reasons for the delay had been explained.

10. The learned counsel would further contend that even assuming that there was a delay on the part of the defendants, and the Tamil Nadu Electricity Board in providing the drawings, the plaintiff should have completed the work at least in 150 days from the date on which the drawings were furnished. According to him, the drawings were furnished on 24.06.2000 for the compressor house and on 24.03.2000 for silos. Therefore, unless the plaintiff shows that the work was completed within 150 days, the plaintiff would not be entitled to the suit claim.

11. Per contra, Mr.M.Raja Raman, learned counsel appearing for the respondent/plaintiff would contend the fact that there was delay at every stage and the same is attributable to the defendants or the Tamil Nadu Electricity Board as evidenced by Ex.B-26, the fax message sent by the defendants to the Tamil Nadu Electricity Board. Learned counsel would point out that the drawings were furnished only in April and June 2000. The learned counsel would also point out that Ex.B-26 would clearly show that there was a delay due to interruptions caused by rain and the absence of power for quite some period. It is also claimed that further delay occurred due to the presence of water pipe lines which interfered with the piling work and plaintiff was forced to stop the piling work in the Silo No.1 and shift the piling work to Silo No.2 for certain period. This also had attributed to the

delay.

12. Mr.M.Raja Raman, learned counsel would further contend that Ex.B-26 coupled with the admissions of D.W-1 in his cross examination would show that the delay occurred due to the above factors mentioned in Ex.B-26 and due to the non payment of the running bills by the defendants in time. In this connection, the learned counsel would draw my attention to the admissions of D.W-1 in his cross examination, wherein he has admitted that the running bills which have to be paid in 30 days, were not paid in time. Mr.M.Raja Raman, learned counsel would submit that the contents of Ex.B-26 read with the oral evidence of D.W-1 as also the contents of Ex.A-17 & Ex.A-18 and other similar letters, would show that the defendants have not kept up their promise regarding the payment of amounts due under the running bills which have affected the speed of the work, thereby causing delay. Therefore, according to the learned counsel, the trial Court was right in rejecting the claim of the defendants that the delay was caused only due to the inaction on the part of the defendants.

13. Mr.M.Raja Raman, learned counsel would further contend that the work order provided for liquidated damages in case of delay. The very fact that the defendants have not chosen to file any counter claim seeking liquidated damages as per Clause 17 of the work order dated 04.08.1999, would show that they were aware that the delay occurred due to their own fault. He would also point out the reservation made in the written statement, regarding the filing counter claim, which was not filed. The learned counsel would further point out that PW-1 in his proof affidavit has stated so many reasons for the work being delayed and there was no cross examination on any of these aspects, and he would also contend that none of the documents said to be filed by the defendants at the time of cross examination of D.W-1, were even put to PW-1.

On the above arguments, the following points arises for determination:

1)Whether the delay caused in completion of the work is attributable to the defendants?

2)Whether in the absence of counter claim, the defendants would be entitled to retain the monies payable to the plaintiff under the contract?

POINT NO.1:-

14. Admittedly, the contract was completed only on 09.04.2002 though the original date for completion of the contract was 31.12.1999. But from the records, it is seen that the drawings for the works were approved only after the

original period of contract had expired. There is unimpeachable evidence through in Ex.B-12, that the drawings were approved only in April/June 2000. Ex.B-26 would also show that there was delay at every stage of the contract. It is also admitted that the location of the Silos, staircase of the Silos as well the compressor house were changed at least 3 times during the contract period. Ex.B-26 also refers to delay due to a pipeline which was found underneath which prevented the piling work being continued at Silo No.1 and the piling work was shifted to Silo No.2, which again delayed the work. It is also stated that there were some delay on the part of the defendants due to local problems with sub agency. However, in Ex.B-26, the defendants have not chosen to attribute the delay on the side of the plaintiff. The entire delay has been attributed to absence of power, shifting of locations, delay in drawings, pipe line work etc., and the work had to be shifted mid way from Silo No.1 to Silo No.2. This apart, DW-1 in his evidence admitted in his cross examination that there was delay in payment of the running bills. It is also admitted by him that drawings were handed over belatedly. There was a delay of 83 days in approving the Silo foundation drawing by the Tamil Nadu Electricity Board. He would also admit that the existence of the pipe line beneath the surface in the place earmarked for Silo No.1 forced the plaintiff to stop work at Silo No.1. He would also claim that he does not remember whether the work was shifted from Silo No.1 to Silo No.2 due to the said pipe line. Ex.B-26 would prove the said fact and show that the work was actually shifted from Silo No.1 to Silo No. 2 due to the delay in removing or re-routing the pipe line. DW-1 would further admit that the running bills will have to be paid within 30 days, but there was delay in paying the running bills to the plaintiff, and the delay was caused due to the delay by the Tamil Nadu Electricity Board in payment of the monies due to the defendants. He would also admit that there was no condition in the work order that payment has to be made to the plaintiff only after the same is received by the defendants from the Tamil Nadu Electricity Board. Even on the date when he gave evidence dt.07.07.2009, D.W-1 would state that in the project was not commissioned due to non completion of civil work. Therefore, the defendants cannot now blame the plaintiff for the delay. The total value of the work is about Rs.94 lakhs, of which, the value of the civil work is about Rs.73 lakhs. Out of the said work, the plaintiff was entrusted with the civil works for the value of Rs.49 lakhs, which the plaintiff has admittedly completed on 09.04.2002 itself. If the defendants have not completed remaining work till 2009 it is the defendants who have to be blamed for the delay and not the plaintiff. Therefore, I do not see any reason to interfere with the judgment of the trial Court regarding the cause for the delay.

POINT NO.2:-

15. No doubt, Ex.A-2 work order provides for payment of liquidated damages in case of delay. But, it is for the defendants to prove to the said claim. As already stated, though a reservation was made in the written statement regarding filing of the counter claim, no such counter claim was filed. Therefore, both the points were answered against the defendants.

16. Lastly Mr.Niranjan Rajagopalan, learned counsel appearing for the appellant would contend that the trial Court has awarded interest at the rate of 18% from the date of completion namely; 09.04.2002 till the date of realisation. This, according to the learned counsel, is highly excessive. Mr.M.Raja Raman, learned counsel appearing for the respondent would contend that the contract being a commercial contract, interest at 18% per annum is reasonable.

17. Admittedly, there was no agreement for payment of interest in the work order dated 04.08.1999. In the absence of a contract, the Court has discretion to award interest based on the bank rates. The trial Court has awarded interest at 18%. Though an issue has been framed regarding the interest, the trial Court as just observed that the contract being a commercial one, the plaintiff would be entitled to interest at 18% per annum. The trial Court has not awarded interest based on bank interest on the date of the transactions. Therefore, I find that the award of interest at 18% per annum is on the higher side. The contract period was between 1999 and 2002. Taking into account the contract period, I am of the considered view that the interest at 12% per annum will be just and proper. Therefore, the interest granted by the trial Court is reduced to 12% instead of 18% per annum from 09.04.2002 till the date of realisation, on the suit amount of Rs.4,04819.80.

18. In the result, the appeal is partly allowed. The judgment and decree of the Trial Court are modified only with reference to the interest reducing the same from 18% to 12% per annum. In other aspects, the judgment and decree of the trial Court are confirmed. There shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KP

To

1.The IVth Additional Judge,  
City Civil Court,  
Chennai.

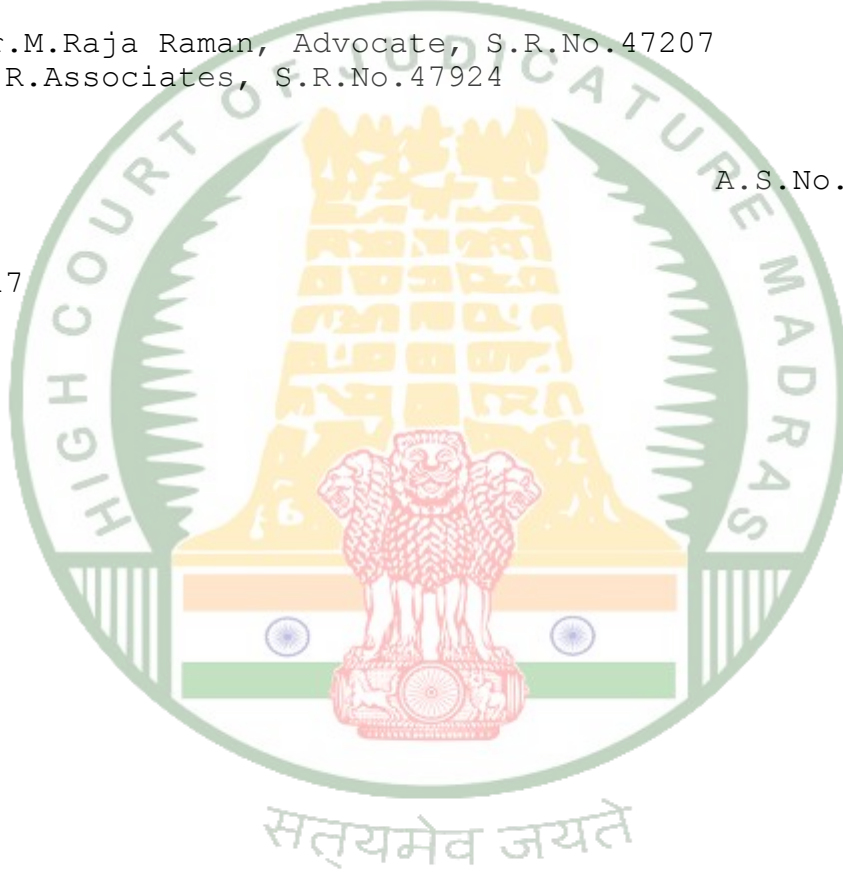
2.The Section Officer,  
V.R.Section,  
High Court,  
Madras.

+1cc to Mr.M.Raja Raman, Advocate, S.R.No.47207

+1cc to G.R.Associates, S.R.No.47924

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