

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Second Appeal No.495 of 2016

Ramesh

... Appellant

vs.

Nadipisai Pulavar
K.R.Ramasamy Co.operative
Sugar Mill, Thalaigayiru Village
Mayiladuthurai Taluk
Nagapattinam District

...Respondent

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 29.11.2006 passed in A.S.No.18 of 2006 on the file of the District Judge, Nagapattinam, reversing the Judgment and decree dated 17.03.2005 passed in O.S.No.66 of 2004 on the file of the Additional Subordinate Judge, Mayiladuthurai.

For Appellant	: Mr.T.Susindran
For Respondent	: No appearance

J U D G M E N T

The appellant, who is the defendant in the suit for recovery of money, has come forward with this Second Appeal.

2. The suit in O.S.No.66 of 2004 has been preferred by the respondent herein on the file of the Additional Subordinate

Judge, Mayiladuthurai, for recovery of money. The trial Court non suited the plaintiff by Judgment and decree dated 17.03.2005. Aggrieved over the said Judgment and decree, the plaintiff preferred an appeal in A.S.No.18 of 2006 before the District Judge, Nagapattinam, who has reversed the Judgment and decree of the trial Court by Judgment dated 29.11.2006. The defendant, being aggrieved over the said Judgment and decree of the lower Appellate Authority, has come forward with this Second Appeal.

3. The appellant/defendant is the contractor of the plaintiff. Ex.A1 is the document executed by the appellant, which contains a clause fixing the liability on the appellant. The trial Court, did not give credence to Ex.A.1 on the premise that the plaintiff has not signed it. However, the lower Appellate Court reversed the said reasoning of the trial Court by holding that Ex.A1 having been signed by the appellant and Ex.A10, which is a letter written by him acknowledging the contents of Ex.A.1, and thereby agreeing to comply with the same, it is not open to him to contend to the contrary and wriggle out of it.

4. The learned counsel appearing for the appellant tried to reiterate the findings of the trial Court to the effect that Ex.A.1 having

been not signed by the plaintiff, it cannot be termed as an agreement entered into between the parties. An agreement can be oral or in writing. Once, a party signed the agreement to the knowledge of the other, he cannot wriggle out of the same. In the case on hand, there is no dispute that the appellant has accepted Ex.A.1. Under Ex.A.2, the plaintiff has asked for the consent of the appellant. D.W.1 in his evidence, has also admitted the execution of Ex.A.1. Ex.A.10 is the letter written and signed by the appellant, once again accepting the terms and conditions imposed. It is not in dispute that the appellant is the principal employer of the workman, who suffered injuries. It is also not in dispute that the injuries were suffered by the employee during the course of his employment. Thus, as per Ex.A.1, the liability is solely fastened upon the appellant. Clause 9 of Ex.A.1 mandates the appellant to effect insurance coverage for his employees at his own cost apart from accepting the responsibility for the accident, if any, that would arise during the course of employment. Thus, this Court, does not find any merit in the appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

10.01.2017

Index:Yes/No
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M.M.SUNDRESH,J.

rg

To

1. The District Judge, Nagapattinam
2. The Additional Subordinate Judge, Mayiladuthurai.

Judgment made in
Second Appeal No.495 of 2016

10.01.2017

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