

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

A.S.No. 165 of 2006

JUDGMENT:

This appeal is filed by the defendants aggrieved by the judgment dated 20.4.2005 in O.S.No. 111 of 2003 passed by the learned Senior Civil Judge, Nuzvid, decreeing plaintiff's suit for Rs. 9,85,000/- with costs and subsequent interest at 12% per annum from the date of suit till the date of realization on principal amount of Rs. 7,51,581/-.

2. The respondent filed the suit on the averments that he is a registered civil contractor and he participated in the tender invited by the defendants for a work construction of Fire Station Building and Officer Quarters at Hanuman Junction. Plaintiff entered into an agreement with D-1 under agreement No. 177/99-2000 for sum of Rs. 7, 73,261/-. He started construction work and completed the same on 1.8.2001 under the guidance and supervision of D-1 as per the specifications and plan within the permitted time. The value of the work comes to Rs. 8, 23,261/-. He was paid part bill of Rs. 1, 07,780/- before the end of the financial year 2000-2001 and the remaining amount of Rs. 7,15,581/- was not paid in spite of repeated demands though he completed the work to the satisfaction of the defendant authorities. He made demand orally and also

through notice. Finally, the plaintiff got issued notice dated 7.11.2002 under Section 80 CPC. D1 sent reply with all false averments. Hence, the suit.

2. The defendants filed written statement *inter alia* contending that the plaintiff entered into an agreement for completing the work within six months but he failed to complete the work within the said period. The allegation in the plaint that the plaintiff completed the work to the value of Rs. 8, 23,261/- was not correct. As per the measurement recorded by the Assistant Executive Engineer, the plaintiff executed the value of work of Rs. 7, 80,831/- only. The allegation that the defendant paid part bill of Rs. 1,07,780/- to the plaintiff is absolutely false. The defendant paid Rs. 1, 25,000/- to the plaintiff including cost of the material and the plaintiff himself admitted the same in his registered notice dated 7.11.2002. The defendant has ultimately to pay a sum of Rs. 6, 06,234/- only to the plaintiff but not Rs. 7, 15,581/- as submitted by him.

a. The defendant further contended that the plaintiff did not complete the work within the stipulated period and due to the delay committed by the plaintiff, the defendant was unable to pay the balance amount payable to the plaintiff. The plaintiff failed to handover the building either to the first defendant or to the other defendants within the agreed period. The

interest claimed by the plaintiff is untenable and there is no agreement between plaintiff and first defendant relating to the interest to be paid on the unpaid amount. Without such an agreement, the plaintiff is not entitled to claim interest on the balance amount payable to the plaintiff. Finally the defendant submitted that the defendant requested the Government to release the funds for paying the balance amount payable to the plaintiff and after receiving the amount from the Government, the defendant would be ready to pay Rs. 6, 06,235/- which is payable to the plaintiff but not Rs. 7,15,581/-.

3. The trial Court framed the following issues and additional issues:

“(1) Whether there is any agreement between plaintiff and defendant No. 1 relating to interest to be paid on unpaid amount?

(2) Whether the contractor signed on the supplemental agreement for the excess items executed by the plaintiff on 19.2.2004?

(3) Whether the plaintiff is entitled to suit claim as prayed for?

(4) To what relief?

Additional Issues:

(1) Whether the suit is maintainable in view of Para 10 of agreement dt. 25.1.2000 between the parties?

(2) To what relief?”

4. During trial, plaintiff was examined as PW-1 and Exs. A1 to A8 were marked and on behalf of defendants DW-1 was examined and Ex. B1 was marked.

5. A perusal of the judgment of the trial Court would show, basing on the evidence on record, it has come to the conclusion that admittedly the plaintiff has completed the work as per the satisfaction of defendant authorities and there was no dispute with regard to the quality or quantity of the work that was executed by him and therefore, the defendants are liable to pay the suit amount to him. So far as the interest is concerned, the trial Court relying upon the decision of the Apex Court reported in **Adithya Mass Communications Pvt. Ltd vs. APSRTC**¹, observed that since the delay was caused by the Government in paying the amounts due to the plaintiff even after completion of work and therefore, the plaintiff was entitled to interest at 12% per annum from the date of the suit till the date of realization on the principal amount of Rs.7,15,581/-. It accordingly, decreed the suit for Rs. 9,83,000/- with costs and subsequent interest at 12% per annum from the date of suit till the date of realization on the principal amount of Rs. 7,15,581/-. Hence, the instant appeal.

¹ AIR 2003 SC 3411

6. Heard learned Government Pleader for Appeals for appellants/defendants and Sri A.V. Sivaiah, learned counsel for respondent/plaintiff.

7. Learned Government Pleader would vehemently contend that the trial Court having observed that the plaintiff is not entitled to claim interest on unpaid amount, ought not to have decreed the suit with interest as the suit amount includes interest at 18% per annum from 31.7.2001 to 30.8.2003.

8. I find force in the submission of the learned Government Pleader. While dealing with the issue Nos. 1 & 2, in paragraphs 11 & 12, the trial Court has observed as follows:

“11. x x x x x x x x it is true the Government paid the amounts to the contractor immediately after completion of work, the question of delay tactics does not arise. There is no specific clause in payment of amount by way of interest.

12. As per the admission portion of the Executive Engineer, R & B on behalf of D.1 department clearly discloses that the plaintiff contractor has completed the work as per the agreement entered under Ex. A1 and also supplementary proceedings. The contractor has handed over the building to the Government. The Government has to pay the amount to the contractor. There were no differences or disputes between Government and contractor in respect of the quality and quantity of the work entrusted to him. It is true that Government passed bill in respect of work entrusted to the plaintiff contractor. Therefore, the Issue No. 1 is answered accordingly against plaintiff claiming interest on unpaid amount.”

9. Therefore, the finding of the trial Court is that there is no contract with regard to payment of interest on unpaid amount and the Government paid the amount to the contractor immediately after completion of the work and the question of delay tactics does not arise. On these findings, so far as the Issue No. 1 is concerned, the trial Court held the Issue No. 1 against the plaintiff claiming interest on un-paid amount. That being so, the trial Court ought not to have decreed the suit for Rs. 9, 83,000/- but it ought to have decreed the suit for Rs. 7,15,581/- only. The reason is that the balance amount of Rs. 2, 67,419/- claimed by the plaintiff in the plaint is towards interest of 18% per annum from 31.7.2001 to 30.8.2003 on the principal amount. When in the opinion of the trial Court that the plaintiff cannot claim interest on unpaid amount as is held in Issue No. 1, it ought not to have approved the interest on Rs. 2,62,419/-. Therefore, in the considered view of this Court, the judgment and decree of the trial Court need to be suitably modified.

10. In the result, this appeal is partly allowed and the judgment and decree of the trial Court are modified and the suit is decreed for Rs. 7,15,581/- instead of Rs. 9,83,000/- with costs and subsequent interest at 12% per annum from the date of suit till the date of realization on the

principal amount of Rs. 7, 15,581/-. No costs. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 30.11.2017
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