

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2018

PRONOUNCED ON:02.02.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1050 of 2003

The District Collector,
Salem.

... Appellant/Defendant

Vs.

K.S.Mathiyanandam

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 27.02.2002 made in A.S.No.177 of 2001 on the file of I Additional District Judge cum Chief Judicial Magistrate, Salem confirming the judgment and decree dated 29-09-2000 made in O.S.No.940 of 1994 on the file of the Second Additional Sub Court, Salem.

For Appellant : Ms.A.Madhumathi AGP (CS)

For Respondent : Mr.M.Santhana Mari
for M/s.E.J.Ayyappan

J U D G M E N T

This second appeal is directed against the judgment and decree dated 27.02.2002 passed in A.S.No.177 of 2001 on the file of I Additional District Judge cum Chief Judicial Magistrate Court, Salem, confirming the judgment and decree dated 29-09-2000 passed in O.S.No.940 of 1994 on the file of the Second Additional Sub Court, Salem.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of money.

4.The case of the plaintiff in brief is that the plaintiff is engaged in decoration of exhibition pavilions and the defendant called for tenders from qualified decorators for designing and decorating the Government stall for the Rural Development Department of Government of Tamilnadu in Salem exhibition ground, for the period commencing in August 1991 for 50 days and accordingly the plaintiff submitted the sealed tender containing the rates of various items in connection with the above said work and the plaintiff's tender was accepted. As per the directions, the plaintiff made the security deposit of Rs.3000/- and an agreement dated 07.08.1991 was entered into, containing the various details and accordingly, the plaintiff completed the work of designing, erecting and decorating the pavilion concerned and the Government has also given special award for the pavilion erected by the plaintiff for the best decoration and the plaintiff submitted the bills for the works completed including the cost of materials provided by him by way of purchase and the plaintiff had completed his work within the stipulated time and submitted the initial bill for Rs.34,000/- which was paid by cheque dated 03.09.1991, for the balance of work containing 22 items, the plaintiff submitted a bill dated 30.08.1991 for a sum of Rs.85,500/- and as directed, the plaintiff, bifurcated the above said bill into two, one for sum of Rs.45,000/- on 30.08.1991 in respect of 11 items and another for sum of Rs.40,500/- on 05.09.1991 concerning the remaining 11 items along with the necessary pre-stamped receipts and the defendant delayed the payment and the plaintiff sent a registered notice on 03.10.1991 to pay the amount immediately and on 10.01.1991, the Government had sent a cheque for Rs.52,500/- which covers the amount claimed under the bill dated 30.08.1991 and another sum of Rs.7,500/- as advance for the bill dated 05.09.1991 and the above said letter was silent about the payment of the balance amount and immediately the plaintiff sent a registered post dated 18.10.1991 demanding the payment of the balance sum of Rs.33,000/- and the defendant did not respond to the same and again the plaintiff wrote a letter on 31.12.1991 and despite the acknowledgment of the same, the defendant did not respond and a letter was received by the plaintiff dated 21.08.1992 directing him to get the return of the tender deposit of Rs.3000/- and the plaintiff has not received the said amount, but the defendant has not paid the sum of Rs.33,000/- due to the plaintiff being the claim made by the plaintiff under the bill dated 05.09.1991 and hence the plaintiff issued a notice to the defendant through his lawyer on 22.10.1992 and the same was also not responded and hence the necessity for laying of the suit for recovery of above said sum with interest.

5.The case of the defendant in brief is that the suit is not maintainable either in law or on facts and it is true that the plaintiff's tender for designing and decorating the

Government stall as stated in the plaint was accepted and the plaintiff has collected sum of Rs.34,000/- for the erection of the pavilion and the total cost of the tender was for a sum of Rs.85,500/- and the defendant had issued the cheque for a sum of Rs.34,000/- and directed the plaintiff to complete the work as per the tender conditions and the total cost of the tender is only Rs.85,500/- and the balance of Rs.52,500 was also paid to the plaintiff and infact the sum of Rs.1000/- was paid in excess and hence there is no amount due by the defendant to the plaintiff. It is false to state that the defendant had directed the plaintiff to bifurcate the bill for a sum of Rs.85,500/-. The two bills sent by the plaintiff was not based on any calculation and also not within the purview of the tender conditions as well as the agreement entered into between the parties and hence the plaintiff is not entitled to the suit amount and also the interest thereon as claimed in the plaint and the suit laid by the plaintiff is barred by limitation and the suit is bad for non joinder of necessary parties and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A13 were marked. On the side of the defendant, D.W.1 was examined. Ex.B1 was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly granted the necessary reliefs in favour of the plaintiff. Impugning the same, the present second appeal has been preferred by the defendant.

8.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

1.Whether the suit is not barred by limitation in view of the fact that the final payment has been made on 10.10.1994 and the suit had been made on 10.10.1994 and the suit had been filed only on 22.11.1994?

2.Whether the notice issued under section 80 of the Code of Civil Procedure under Exs.B28 and B29 dated 17.09.1994 could extend the time of limitation which had expired on 10.10.1994?

9. The second appeal has been admitted on the point of limitation. As regards the entitlement of the plaintiff to the suit amount from the defendant in respect of the work completed by him following the agreement entered into between the parties concerned, following the acceptance of tender submitted by the

plaintiff, in connection with the erection of the pavilion for the Rural Works Department of the Government in the exhibition, it is found that the plaintiff had submitted the initial bill for a sum of Rs.34,000/- which has come to be honoured by the defendant. Subsequently, it is found that the plaintiff had submitted two bills totaling for a sum of Rs.85,500/- and it is seen that, only a sum of Rs.52,500/- had been paid by the defendant and inasmuch as the defendant did not pay the balance amount of Rs.33,000/- according to the plaintiff, despite several letters reminding the defendant about the said non-payment and also after the issuance of statutory notice as the defendant had not responded to his request, according to the plaintiff, he has been necessitated to lay the suit for recovery of the same.

10. It is the case of the defendant that the tender amount was only for a sum of Rs.85,500/- and as the same had been paid in installments, that is, initial payment made for a sum of Rs.34,000/- and the second payment for a sum of Rs.52,500/-, according to the defendant no further amount is due to be paid to the plaintiff and therefore the plaintiff is not entitled to maintain the suit as such. Further, the defendant had also raised the plea of limitation to stifle the plaintiff's case.

11. As regards the entitlement of the plaintiff to the suit amount as rightly found by the Courts below, when it is found that, in connection with the tender work undertaken by the plaintiff, he has submitted three bills, one for a sum of Rs.34,000/- and another for a sum of Rs.45,000/- and the third bill for a sum of Rs.40,500/- and when it is found that the payments claimed under the above said bills are only in connection with the works done by the plaintiff, for the erection of the pavilion and the decoration thereof, pursuant to the tender submitted by the plaintiff and accepted by the defendant, it is found that, accordingly, the plaintiff has made a claim of the above said amount from the defendant. In this connection, as rightly found by the Courts below, the plaintiff had been directed to do additional works by the defendant, in connection with the erection of the pavilion and other allied works and accordingly, it is seen that three bills had been raised by the plaintiff for the above said sums and from the documents placed by the plaintiff marked as Exs.A3, A6, A8 and A9, it is seen that the plaintiff had claimed the said amount only in connection with the work undertaken and completed by him. However, the defendant, as rightly found by the Courts below, had not placed the file in connection with the work done by the plaintiff as above stated and however projected a plea as if, the said file had been destroyed. However, when even before the time limit, before which the defendant would be entitled to destroy the file in question, it is found that the plaintiff had made the claim for the work undertaken by him, in such view

of the matter, to say that pending the above said requests of the plaintiff to make the payment to him in connection with the work done by him, following the acceptance of his tender, the contention raised by the defendant that the file in question has come to be destroyed as such cannot be readily accepted. Therefore, it is found that, without any basis, the defendant had made the claim that the work had been accepted only for a sum of Rs.85,500/- and on the other hand, when it has been admitted that the additional works had been directed to be completed by the plaintiff and when it is further seen that for the pavilion erected by the plaintiff, the best award had been awarded in the exhibition and when it is further found that the plaintiff has explained the additional work done by him by way Ex.A8 and A9 and also spoken about the same during course and his evidence, the Courts below had rightly disbelieved the defence version and accordingly held that the plaintiff had established that, beyond any doubt, he is entitled to the suit amount as claimed in the plaint. Accordingly, it is seen that this Court also, at the time of admission of second appeal, did not entertain the same on the above said entitlement of the plaintiff to obtain the suit amount as put forth in the plaint. Accordingly, it is found that during the course of the second appeal, no valid point has been projected by the defendant's counsel as such, to warrant of any interference in the determination of the Courts below holding that the plaintiff is entitled to secure the suit amount with interest as prayed for.

12.The main point that is raised for consideration is on the point of limitation. It is found that the plaintiff has submitted the bills marked as Ex.A8 and A9 and in respect of the above said bills, on 10.10.1991 under Ex.A13, a sum of Rs.52,500/- alone has been paid by the defendant, by way of a cheque and as the said communication did not refer to the non-payment of the balance sum of Rs.33,000/- to which the plaintiff is entitled to, as rightly put forth, it is seen that the cause of action for the plaintiff to lay the suit would arise only from the said date i.e., on 10.10.1991 and accordingly, it is found that, rightly also found by the Courts below, the plaintiff has been put on notice that in respect of the bills submitted by him marked as Exs.A8 and A9, he has been only paid a sum of Rs.52,500/- by way of Ex.A13 and accordingly, thereafter the plaintiff had made several requests to the defendant, to pay the balance sum of Rs.33,000/- therefore, the Courts below had rightly determined that the cause of action for the plaintiff's suit arose only on 10.10.1991.

13.As per section 15(2) of the Limitation Act in computing the period of limitation for any suit of which notice has been given or for which previous consent or sanction of the Government or any other authority is required, in accordance

with requirements on any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Accordingly, it is found that after the issuance of several letters to the defendant, requesting for the payment of the balance sum of Rs.33,000/- as the defendant did not respond to the same favorably, it is found that the plaintiff had sent the statutory notice on 17.09.1994 marked as Ex.A28 and it is found that the same had been acknowledged by the defendant on 20.09.1994. The acknowledgment card being marked as Ex.A29. It is further found that the statutory notice has come to be issued by the plaintiff well within the period of three years from the date of the cause of action i.e., on 10.10.1991 and accordingly, it is found that excluding two months period to which the plaintiff is entitled to as per section 15(2) of the Limitation Act, the suit laid by the plaintiff on 22.11.1994 is within the time allowed by law and not it by the law of limitation. Accordingly, it is seen that the Courts below had rightly assessed the above said aspects of the matter in the correct perceptive as per the legal position and accordingly held that the suit laid by the plaintiff is not barred by time.

14.In the light of the above position, inasmuch as the suit had been laid by the plaintiff within three years period of time from the date of cause of action coupled with the time taken for the issuance of the statutory notice under Ex.A28 dated 17.09.1994, it is found that the suit laid by the plaintiff on 22.11.1994 is well within the time allowed by law and the plaintiff is entitled to invoke the benefit of section 15(2) of the Limitation Act for including the time taken by him for sending the statutory notice as contemplated under law. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff.

15.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-ii)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge cum Chief Judicial
Magistrate,
Salem.

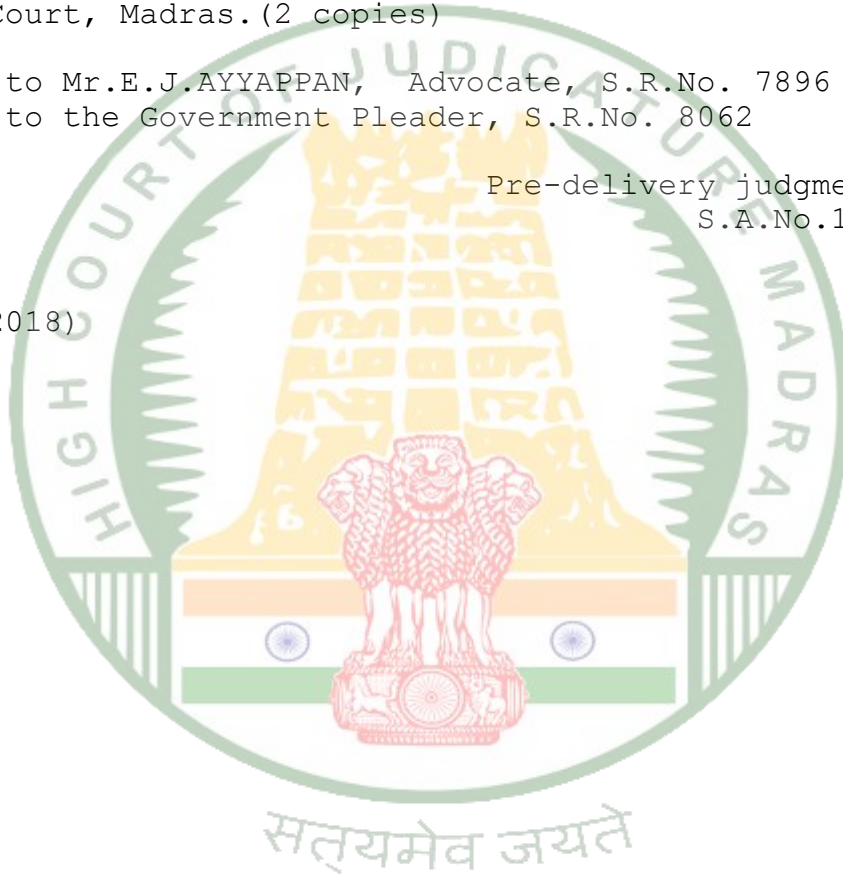
2.The Second Additional Sub Judge,
Salem.

3. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.E.J.AYYAPPAN, Advocate, S.R.No. 7896
+1cc to the Government Pleader, S.R.No. 8062

Pre-delivery judgment made in
S.A.No.1050 of 2003

BR(CO)
TR(05/04/2018)



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