

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

APPEAL SUIT No.2931 OF 1999

JUDGMENT:

The plaintiff in O.S.No.8 of 1990 on the file of the Court of the Additional Senior Civil Judge, Anantapur, is the appellant herein. He filed the suit for recovery of an amount of Rs.3,95,603/- under various heads and when the suit was partly decreed for an amount of Rs.57,272/-, the present Appeal is filed for the balance amount claimed by him.

As per the plaint averments, the plaintiff is 'A' class contractor having vast experience in canal work and other allied works of the same nature. He has been doing the contract works with the second defendant for a long time. He became the lowest tenderer with reference to the work relating to the excavation of canal and formation of embankment from K.M. 2.250 + 0.105 to K.M. 2.230 + 0.420 of P.A.B.R., Right Canal. The period of contract was one year and the work site was to be handed over to the plaintiff on 02.09.1988. Since the site had to be handed over by 02.09.1988, he made all arrangements for starting the work by giving advances to the labour and machinery. When he commenced the work, he came to know that the land acquisition process was not completed and he received a legal notice from B.P.Sankara Gowd of Korakalla Village asking the plaintiff not to enter the land for the purpose of contract work. In fact, he filed a criminal complaint showing the plaintiff as the first accused and the Executive Engineer as the second accused. He could not complete the work within the time stipulated in the agreement due to the factors beyond his control and the criminal case filed by one of the land owners was numbered as C.C.No.18 of 1989 before the Additional Judicial First Class Magistrate, Anantapur, and it was pending as on the date of filing the suit. Since the labour and machinery remained idle, in view of non-handing of the site complete in all respects, he filed the suit for recovery of an amount of Rs.3,95,693/- under various heads.

The defendants filed the written statement admitting the acceptance of the tender of the plaintiff for the work "excavation of canal and formation of embankment from K.M. 2.250 + 0.105 to K.M. 2.230 + 0.420 of P.A.B.R., Right Canal under Agreement No.54 of 1988-89". It was stated that the site was handed over to the plaintiff with the consent of the land owners and when the process for payment of compensation was going on, one of the family members of the land owners filed a complaint and the C.C.No.18 of 1989 was pending. It was also stated that the rates quoted by the plaintiff for the work is inclusive of finished items of work and the payment of advance for labour and machinery is an internal matter of the plaintiff. The defendants also relied on clause 59 of Andhra Pradesh Standard Specifications (A.P.S.S.) and submitted that though any delay or hindrance occurs to the execution of the work due to the reasons of the defendants, the plaintiff is entitled only for extension of time, but not for any compensation. At the time of filing of the written statement on 19.04.1990, the possession of the land was taken over by the Department and the plaintiff was offered to complete the work as the land was free. The plaintiff was requested to resume the work vide letter of the Executive Engineer dated 12.04.1990 and it was also stated that if an appropriate application seeking extension of time was made by the plaintiff, they would grant such time, but in view of granting of time, no compensation would be paid to the plaintiff.

On the above pleadings, the trial Court framed the following issues:-

- 1) Whether the plaintiff has performed his part of contract?
- 2) Whether plaintiff is entitled for the suit amount with interest either by way of damages in any other manner?
- 3) Whether the site was handedover to the plaintiff for commencement of the work as contended by the defendant?
- 4) To what relief?

The plaintiff was examined as P.W.1 and marked Exs.A.1 to A.18 on his behalf, whereas the defendants examined D.Ws.1 and 2 and marked Exs.B.1 to B.9. Though in the plaint, the plaintiff stated that he filed a copy of the agreement, the same was not marked as a document, nor the defendants marked the original agreement as one of the documents.

On the basis of oral and documentary evidence, the trial Court held that in view of signing of clause 59 of A.P.S.S., by the plaintiff, the plaintiff is not entitled for any compensation for the delay in completing the contract work. The trial Court permitted the plaintiff to complete the contract work at the prevailing rates and the refund of the deposit amount to the plaintiff also does not arise, but it can be refunded as and when work was completed. Since the Court noticed that the plaintiff completed the work of the value of Rs.2,20,000/-, out of the total contract value, and a sum of Rs.1,62,728/- was already paid to the plaintiff as evidenced by Exs.A.6 and A.10, it was held that the plaintiff is entitled for the balance amount of Rs.57,272/- along with interest @ 18% per annum on the above amount from the date of the suit till the date of realization. Challenging the dismissal of the suit with regard to the balance amount, the present Appeal was filed.

There is no dispute that the plaintiff was the successful tenderer in respect of execution of the contract relating to excavation of canal and formation of embankment from K.M. 2.250 + 0.105 to K.M. 2.230 + 0.420 of P.A.B.R., Right Canal under agreement No.54 of 1988-89. As per the evidence of P.W.1, he has completed 35% of the suit contract work by the date he received the notice from one of the land owners. Thereafter, he stopped the work. Ex.A.1 was the legal notice issued by the plaintiff stating that he has completed 35% of the work and the value of the said work was Rs.2,20,000/-. As per Ex.A.6 and in view of entries made at page 17 in M Book, it was noticed that an amount of Rs.1,62,728/- was paid on 15.11.1988. After the said measurements, another measurement was taken on 08.12.1988, and an endorsement was made under Ex.B.3 in M Book by the plaintiff. Though the plaintiff submitted that he has incurred an amount of Rs.4,85,050/-, no evidence was let in, in support of his claim.

The claims made by the plaintiff are as follows:-

Sl.No.	Details of the claims	Amount Rs.
1	Advances to labour 50 for completion of the work within 5 months at the rate of Rs.20/- per day	1,00,000-00
2	Advance payment to compressor for 25 days at Rs.182-00 per hour for 8 hours a day	36,400-00
3	Advance payment of D.R.Roller for consolidation for 5 months @ Rs.9000/- per month	45,000-00
4	Advance payment to tractor for 5 months at Rs.4000/- per month	20,000-00
5	Advance payment to excavator for loading earth into tippers for required 4370 trips for 15950 cubic meters at Rs.20/- per trip of 3.5 c.m. per trip	87,000-00
6	Labour camps and transportation charges	21,850-00
7	Advance payment to self-dumping tippers for required 4370 trips at Rs.40/- per day (15280 c.m at Rs.3.5 c.m., per trip)	1,74,800-00
	TOTAL	4,85,050-00
	Less: Payment made by the Department	1,62,728-00
	BALANCE	3,22,322-00
8	Earnest Money Deposit + F.S.D earnest money deposit further SD	19,040-00
9	Withheld amount as FSD 7 ½	13,486-00
10	Withheld quantities amount	18,755-00
11	Work done but amount not paid	22,000-00
	TOTAL AMOUNT	3,95,603-00

A perusal of the above claims would show that the claims at Sl.Nos.1 to 7 related to the advance payments to the labour and machinery and claims at Sl.Nos.8 and 9 related to the deposit amounts. It was admitted in the said statement that an amount of Rs.1,62,728/- was received by the plaintiff and still an amount of Rs.3,95,603/- was due from the defendants. In the absence of

any oral or documentary evidence in support of the claims made at Sl.Nos.1 to 7, the trial Court held as follows:-

“Therefore, in the above circumstances, plaintiff can be permitted to complete the suit contract work if it is not already completed, at the prevailing rates, in such case the question of refunding the deposit amount of the plaintiff would not arise. If the suit contract work is already completed, then the plaintiff is entitled to the refund of the deposit amounts from the defendants. As discussed already above by me, in Ex.A.1, notice, dated 09.03.1989, plaintiff valued the said 35% suit contract work done by him upto 07.02.1989 i.e., till the date of filing C.C.No.18/1989 by the land owner, at Rs.2,20,000/-, out of which admittedly a sum of Rs.1,62,728/- was paid to the plaintiff which is evident by certificates under Exs.A.6 or A.10. Thus, the balance of Rs.57,272/- (i.e., Rs.2,20,000/- (-) Rs.1,62,728/- = Rs.57,272/-) which remained unpaid to the plaintiff for the work done by him by the defendants in spite of issuance of legal notice dated 09.03.1989 under Ex.A.1 and also subsequent notices. Therefore, In view of my above discussions, I am of the opinion that plaintiff is entitled to recover only the said amount of Rs.57,272/- with interest at the rate of 18% p.a., from the defendants. Thus, the issues 1 to 3 are answered accordingly as above.”

It is true that clause 59 of A.P.S.S., only enables the defendants to extend the time to complete the work but the plaintiff is not entitled for any compensation or damages for the delay caused in the contract work. At the time of disposal of the suit, the defendants were willing to consider the case of the plaintiff for extension of time for completion of the work and the plaintiff was given liberty to complete the work at the prevailing rates. In view of the said findings recorded by the trial Court, in the absence of any contrary evidence, this Court is not inclined to interfere with the said findings and the Judgment and decree, dated 03.09.1998, passed in O.S.No.8 of 1990 by the Court of the Additional Senior Civil Judge, Ananthapur, is upheld.

The Appeal Suit is accordingly dismissed. Consequently, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J