THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

CIVIL REVISION PETITION NOS.5505 AND 5073 OF 2018

COMMON ORDER
(*Per Hon'ble Sri Justice Sanjay Kumar*)

NCC Limited, Hyderabad, the petitioner in these two revision petitions filed under Article 227 of the Constitution, is the plaintiff in Commercial O.S.No.128 of 2016 on the file of the learned Principal District Judge, Karimnagar. Its prayer therein was to direct Singareni Collieries Company Limited (SCCL), the defendant, to release the sum of Rs.26,73,01,834/-, being the difference between the order rate under Clause 5 and the amount arrived at as per the rates given in the letter dated 05.12.2011, along with interest thereon at 18% per annum. A further declaration was sought that the plaintiff company was entitled to excavation quantities as per the bench-wise rates as per order dated 06.01.2009 in respect of the quantity dumped in Dump No.2 as per the instructions of the defendant company pending finalisation of the new rate, as Dump No.2 was outside the scope of the work order. A permanent injunction was also sought by the plaintiff company restraining the defendant company from terminating the contract awarded to it *vide* order dated 06.01.2009 and from taking over the work site which was handed over to it, *vide* letter dated 09.03.2009.

The plaintiff company filed I.A.No.712 of 2018 in the suit under Section 151 CPC to reopen the matter to enable further examination of P.W.1. I.A.No.713 of 2018 was filed by it under Order 18 Rule 17 CPC to recall P.W.1 for the purpose of marking the 'Statement of outstanding amount payable by SCCL based on the rates as per the order dated 06.01.2009 as on the date of filing of the suit', which was filed along with a Memo in the suit. By common order dated 07.08.2018, the trial Court dismissed both the I.As. Aggrieved thereby, the plaintiff company is before this Court.

Heard Sri Avinash Desai, learned counsel for the petitioner-plaintiff company and Sri J.Sreenivasa Rao, learned counsel for the respondent-defendant company.

Parties shall hereinafter be referred to as arrayed in the suit.

It is an admitted fact that O.S.No.15 of 2013 (renumbered as C.O.S.No.128 of 2016 upon transfer to the file of the learned Principal District Judge, Karimnagar) was instituted before the learned VI Additional District Judge, Karimnagar, with the following prayers:

1. 'To declare that the Plaintiff is entitled for the excavation quantities as per bench-wise rates along with eligible diesel, actual consumption of explosives as indicated in the Work Order No: 7600001590 dated 06-01-2009, for Dump No: 1, 3 and Internal Dump and holds good as issued by the defendant in respect of the work already executed and balance work to be executed by the Plaintiff.
2. To declare that the Plaintiff is entitled for the bench wise rates as per the Work Order No: 7600001590 dated 06-01-2009 in respect of the quantity dumped in the Dump No:2 as per the instructions of defendant, pending finalization of new rate as the dump is out of the scope of the Work Order.
3. Restraining the defendant from terminating the contract awarded to the Plaintiff vide. Work Order No: 7600001590 dated 06-01-2009 by means of permanent injunction.
4. Restraining the defendant from taking over of the work site which was handed over to the Plaintiff vide Letter dated 09-03-2009 either fully or partly by means of permanent injunction.
5. Costs of the suit to be awarded.
6. Any other relief to which the plaintiff is found to be entitled may also be awarded.'

It may be noted that there was no mention of the sum allegedly due from the defendant company to the plaintiff company, be it in the suit prayer or in the body of the plaint. The amended plaint however brought in the figure of Rs.26,73,01,834/- but significantly, no additional pleading was included in the body of the plaint in relation to computation of this figure. It was mentioned in the passing in Para 37(a) of the amended plaint that the amount payable to the plaintiff company towards the difference between the order rate under Clause 5 and the amount arrived at as per the rates given in the letter dated 05.12.2011 was Rs.26,73,01,834/-. A further statement was made to the effect that the plaintiff company was entitled to release of the said amount from the defendant company. Para 44 dealing with the cause of action also mentioned the said figure in the context of the defendant company withholding/recovering/reducing the same from the work-done bills of the plaintiff company. Para 47 of the amended plaint, dealing with the Court fee, also mentioned the figure in the context of computation of the Court fee payable upon the amended prayer. The suit prayer merely mentioned this figure as the amount allegedly due and payable by the defendant company to the plaintiff company. It is in this context that the subject I.A.s were filed by the plaintiff company. The plaintiff company wanted to mark the 'Statement of outstanding amount payable by SCCL based on the rates as per the order dated 06.01.2009 as on the date of filing of the suit', which was allegedly filed along with a Memo at the time of payment of the Court fee. According to the plaintiff company, it was only upon completion of the trial when the suit was posted for filing of written arguments that it noticed that the Memo filed in the suit along with the statement was not marked in evidence and as the said statement was the basis for payment of the Court fee in the context of the suit sum of Rs.26,73,01,834/-, the subject I.A.s were filed to reopen the matter and to permit P.W.1 to mark the said statement in evidence.

It appears that deficit Court fee was paid on 17.11.2015 pursuant to the order passed by the trial Court in I.A.No.322 of 2013 in the suit, in relation to the monetary advantage gained by the plaintiff company. It was at this stage that the plaintiff company calculated the Court fee payable and filed a Memo along with the subject statement and thereupon paid the Court fee. However, as rightly pointed out by the trial Court in the common order under revision, this statement is only a self-serving document which has no authentication, as it is not signed or stamped as a document prepared by and on behalf of the plaintiff company. The filing of the subject I.A.s at a belated stage is also beyond doubt, as the case was coming up for filing of written arguments when these I.A.s were instituted. This being the factual position, the trial Court rightly opined that as the subject statement did not have any evidentiary value, being without authentication, it would be futile to allow the marking of the said document by recalling P.W.1.

Further, this Court is of the opinion that when the plaintiff company amended its plaint and included a prayer therein quantifying the amount allegedly due and payable to it by the defendant company, it ought to have also included the necessary pleading in support of how it calculated the said figure. Having failed to do so, despite filing a statement along with a Memo while calculating the Court fee payable, the plaintiff is now trying to make good its lapse by marking the said statement without having any foundational pleading in support thereof in the amended plaint. The said statement is not even authenticated, as it bears neither signature nor stamp as a document prepared by and on behalf of the plaintiff company, and it has no evidentiary value. The case would therefore have to be reopened to enable the defendant company to contest the calculation contained in the said statement. Having allowed the matter to progress to the stage of filing of written arguments, it is too late in the day for the plaintiff company to now wake up to its shortfalls in prosecuting the suit and make good the same. The trial Court also took note of this aspect when it pointed out that P.W.1 in his cross-examination was specifically posed a question and pleaded ignorance as to the calculation of the amount allegedly due. Be it viewed from any angle, this Court finds no error having been committed by the trial Court warranting interference with the common order under revision.

Reliance placed by Sri Avinash Desai, learned counsel, on JODHPUR GUMS & CHEMICALS PVT. LTD. V/s. PUNJAB NATIONAL BANK[1] is of no avail as the said decision turned upon the individual facts of that case to the effect that eight documents which were already on record but were not exhibited were sought to be marked in evidence thereafter. In such circumstances, the Court held that the lapse on the part of the Advocate should not result in the party suffering. The case on hand stands on a completely different footing as the lapse cannot be attributed to the Advocate alone and the plaintiff company is very much to blame for not taking measures at the appropriate time, be it by amending its pleadings properly or by adducing evidence at the right stage.

The civil revision petitions are therefore devoid of merit and are accordingly dismissed. Pending miscellaneous petitions in both CRPs shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

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M.GANGA RAO, J

5th OCTOBER, 2018
Svv

[1] AIR 1999 RAJ 38