

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.09.2019
PRONOUNCED ON : 18.10.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.827 of 2006

1.M.Natarajan (Deceased)

2.N.Murugasamy

3.N.Balane

4. N.Selvaraj

(Appellants 2 to 4 brought on record
as LR's of deceased sole appellant vide
order dated 22.08.2012 made in
M.P. No.1 to 3 of 2012 in A.S. 827/2006)

... Appellants

Vs.

1. Union of India, rep by Chief Secretary,
Govt of Union Territory of
Pondicherry.

2. Secretary, Works, Secretariat,
Public Works Department,
Pondicherry.

3. Superintending Engineer,
Circle I, Public Works Department,
Pondicherry.

4. Executive Engineer, National Highways Division,
Public Works Department,
Pondicherry.

...Respondents/Defendants

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code as against the judgment and decree of the Principal Sub Judge, Pondicherry, made in O.S. No.277 of 2001, dated 02.08.2006.

For Appellants : Radha Gopalan

For Respondents: G.Djearany
Government Advocate (Pondicherry)

JUDGMENT

Aggrieved over the judgment and decree dated 02.08.2006, passed in O.S. No.277 of 2001, on the file of the Principal Subordinate Court, Pondicherry, the plaintiff has preferred the First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of the sum of Rs.10,000/- towards the final bill, the sum of Rs.4,76,046/- towards the escalation costs, to refund the 10% of the security deposit amounting to Rs.23,702.30/- and for interest on the abovesaid amounts for various periods as claimed in the plaint.

4. The case of the plaintiff, in brief, is that he being the experienced Class-I contractor has been entrusted to complete the work of providing hard shoulders for the reach from Km.11/950 to 16/000 of N.H. 45A left unfinished by the deceased Kumar who had been originally entrusted the said work and it is stated that as per the work order dated 20.08.1998, the plaintiff should complete the work within six months. However, due to departmental delay and the failure of the department to supply the Bitumen, the plaintiff was unable to complete the work in time and the supply of Bitumen was delayed by the department and also not supplied in full and accordingly, it is put forth that for the non supply of the Bitumen, the plaintiff had to bear his own costs with reference to the same and accordingly, the value of the work has been enhanced to Rs.28,56,276/- and thereby, the plaintiff had to suffer the escalation costs of Rs.4,76,046/- and hence, the plaintiff is entitled to receive the escalation costs as well as the final bill cost and also the defendants are not liable to withhold the security deposit paid by the plaintiff and in all, according to the plaintiff, he is entitled to recover the various sums as prayed for with interest and inasmuch as the defendants have failed to comply with his demand despite legal notice and on the other hand, repudiated his claim on untenable allegations, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that the work order had been no doubt entrusted to the plaintiff

with reference to the providing of the hard shoulders left unfinished by the deceased Kumar and according to the defendants, specific time limit has been fixed for the completion of the work on the part of the plaintiff and however, the plaintiff has completed only 60% of the work within the stipulated period and further contended that the plaintiff had completed the work of WBM, grade III, only on 26.03.1999 and only after the said work, the question of supply of Bitumen would arise for consideration and accordingly, it is also contended that as per the agreement, the Bitumen was supplied in advance during the progress of the 60% of the work, however, the plaintiff had collected the Bitumen belatedly and accordingly, it is only due to the delay caused by the plaintiff the work was not completed in time and hence, the contention of the plaintiff that due to the departmental delay the work was not completed within the stipulated period is false and accordingly put forth the case that the plaintiff is not entitled to recover any sum from the defendants as prayed for and the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the plaintiff is entitled for Rs.10,000/- towards final bill?
2. Whether the plaintiff is entitled for escalation as prayed for?
3. Whether the plaintiff is entitled for relief of security deposit amount?
4. Whether the plaintiff is entitled for interest claimed?
5. Whether the plaintiff is entitled to get relief as prayed for?
6. To what relief is the plaintiff entitled?

7. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A8 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B10 were marked.

8. On the basis of the materials placed on record by the respective parties and the submissions made, the trial Court was pleased to determine that the plaintiff is entitled to the final bill of Rs.10,000/- and 10% of the security deposit amounting to Rs.23,702.30/- and further determined that the plaintiff is not entitled for the other reliefs prayed for and accordingly disposed of the plaintiff's suit with proportionate costs. Aggrieved over the judgment and decree of the trial Court, the present First Appeal has been preferred by the plaintiff.

9. The following points arise for determination in this First Appeal:

(i) Whether the plaintiff is entitled to recover the various sums from the defendants with interest as prayed for?

(ii) To what relief the plaintiff/appellant is entitled to?

(iii) To what relief the defendants are entitled to?

Point No.1:

10. It is not in dispute that the plaintiff had been entrusted the work of providing the hard shoulders for the reach of Km.11/950 to 16/000 of N.H.45A left unfinished by the deceased contractor Kumar. The work order had been issued with reference to the same on 20.08.1998. The agreement entered into between the plaintiff and the defendants with reference to the abovesaid work has not been placed for consideration. However, the work order has been marked as Ex.A1. It is not in dispute that the plaintiff should complete the work entrusted to him within a period of six months i.e., on or before 28.02.1999. Even as per the case of the plaintiff, the work had not been completed by him within the stipulated period. For the delay, the plaintiff would blame the defendants and put forth the case that on account of the delayed supply of the Bitumen by the defendants, the work could not be completed in time and hence, according to the plaintiff, he could not be attributed with any liability for the delayed completion of the work and further, according to the plaintiff, the defendants had failed to supply the required Bitumen in full quantity as per the agreement and hence, it is put forth by the plaintiff that he has to bear his own costs for the value of the Bitumen not supplied by the defendants for the purpose of the completion of the work and hence, according to the plaintiff, he is entitled to recover the various sums from the defendants as prayed for and the need for the suit.

11. The defendants had put forth the case contending that the plaintiff had failed to complete the work within the stipulated period and contended that only 60% of the work had been finished by the plaintiff within the stipulated period and not even completed the work prior to the laying of Bitumen within the stipulated period and therefore, cannot attribute any delay on the part of the defendants in the supply of Bitumen and further, according to the defendants, the Bitumen had been supplied well in advance and inasmuch as the work which required to be completed prior to the Bitumen work had not been finished or completed by the plaintiff, the plaintiff had delayed the receipt of Bitumen and thereby, the delay had occurred and hence contended that the plaintiff cannot blame the defendants for the delayed completion of the work and hence put forth the case that

the plaintiff is not entitled to recover any sum from the defendants as prayed for.

12. As above pointed out, inasmuch as the plaintiff had put forth the blame on the part of the defendants for the delay in the completion of the work entrusted to him, the burden is only upon the plaintiff to establish the same. At the foremost, the plaintiff should have endeavoured to produce the agreement/contract entered into between him and the defendants with reference to the work entrusted to him. However, the plaintiff has failed to place the agreement entered into between the parties for consideration. No valid reason has been projected by the plaintiff with reference to the same. As rightly held by the trial Court, only if the agreement has been placed for consideration, we can understand and decide whether the plaintiff is entitled for the recovery of the various sums prayed for in the plaint.

13. The main contention put forth by the plaintiff for the delay in the completion of the work is that the defendants had not supplied the Bitumen in time. However, according to the defendants, the work upto WBM grade III itself was completed by the plaintiff only on 26.03.1999 and only thereafter, the work pertaining to Bitumen would arise for execution and therefore, the question of delayed supply of Bitumen does not arise for consideration as put forth by the plaintiff and it is further put forth by the defendants that they had supplied the Bitumen in advance and owing to the delayed execution of the work on the part of the plaintiff, the plaintiff had delayed the receipt of the Bitumen supplied and hence contended that the defendants cannot be held liable for the completion of the work on the part of the plaintiff belatedly.

14. In the light of the abovesaid factors, as rightly held by the trial Court, the plaintiff having been entrusted the work order in question, it is for him to establish as to at what point and level he had executed the work and the nature of the work executed by him during the various periods and whether he had executed the work in time and when with reference to all those abovesaid factors, there is no material placed on the part of the plaintiff and merely on the projection of the work order marked as Ex.A1, when we cannot conclude as to the progress of the work undertaken by the plaintiff at different spells and the other documents projected and marked by the plaintiff do not advance his case, as held by the trial Court, the plaintiff, in the absence of the acceptable materials, cannot be allowed to blame the defendants for the delay in the execution of the work entrusted to him.

15. When the materials placed on the part of the defendants are considered, it is found that various memos have been issued by the Assistant Engineer, marked as Exs.B1 to B8, complaining of the delay in the execution of the work on the part of the plaintiff and also complaining of the quality and the standard of the work performed by the plaintiff. Therefore, it is seen that right from the inception, the defendants had been directing and apprising the plaintiff qua the delay on his part in not executing the work in time as well as the quality and the standard of the work done by him. Therefore, it is found that inasmuch as the work entrusted to the plaintiff has not been done by him properly, as held by the trial Court, naturally the delay would have occasioned in the completion of the work and on that score, the trial Court is justified in holding that the delay had arisen only due to the plaintiff's inability to complete the work as per the agreement and the plaintiff cannot be allowed to blame the defendants for the said delay.

16. The plaintiff has not placed any material to hold as to at what point of time he had completed the work prior to the execution of the work where Bitumen should be utilised. In such view of the matter, when according to the defendants, the plaintiff had not even completed the work prior to the utilisation of the Bitumen in time, the resultant position would be that the delayed supply of Bitumen would not arise for consideration on the part of the defendants. Moreover, when it is found that the Bitumen had been supplied by the defendants well in time and owing to the delayed completion of the prior work on the part of the plaintiff, it is found that the plaintiff is unable to procure the Bitumen supplied by the defendants and continue with the work entrusted to him. According to the defendants, they had supplied the required quantity of Bitumen to the plaintiff in time. Per contra, according to the plaintiff, the full quantity of Bitumen had not been supplied and therefore, put forth the case that qua the non supply of Bitumen in full shape, the plaintiff has to bear the expenses in a sum of Rs.4,76,046/-. However, the plaintiff has not placed any material worth acceptance to hold that he had been necessitated to bear any expenses for the procurement of the Bitumen said to have been not supplied by the defendants as put forth by him. In such view of the matter, when with reference to the alleged escalation costs said to have been incurred by the plaintiff, there is no proof pointing to the same, the trial Court is found to be justified in not accepting the plaintiff's claim of recovery of alleged escalation costs said to have been incurred by him. With reference to the inadequate supply of the Bitumen on the part of the defendants, there is no reliable and convincing material on the part of the plaintiff. It is found that during the course of trial, the

defendants had conceded that they are liable to make the final bill cost submitted by the plaintiff amounting to Rs.10,000/- and also liable to pay the 10% of the security deposit amounting to Rs.23,702.30/-. According to the defendants, inasmuch as the approval has to be obtained from the higher authorities with reference to the said payment, they are unable to honour the abovesaid claims made by the plaintiff in time.

17. As above pointed out, when the delay in the execution of the work is not established to be attributable on the part of the defendants as contended by the plaintiff and on the other hand, when it is found that the plaintiff had been delaying the execution of the work right from inception despite several memos issued by the defendants and the plaintiff has also not placed the agreement entered into between the parties for his entitlement to claim interest on the delayed payments and when as held by the trial Court, the delay attributed by the plaintiff is not due to the defendants and on the other hand, the same had occurred only due to the acts of the plaintiff, in such view of the matter, as held by the trial Court, the question of awarding interest on the various sums claimed by the plaintiff does not arise for consideration.

18. In the light of the above factors, the decision relied upon by the plaintiff's counsel reported in (2011) 5 SCC 758 (J.G.Engineers Private Limited Vs. Union of India and another) as contended by the defendants' counsel would not apply to the case at hand. In the abovesaid decision, the contractor was held not responsible for the delay and accordingly, the contractor was held entitled for the sums due to him with interest. Insofar as the case at hand, as above pointed out, the plaintiff has failed to establish that the delay had occasioned in the execution of the work due to the acts of the defendants and on the other hand, the delay is found to have occurred only due to the lethargic and inefficient execution of the work on the part of the plaintiff and furthermore, when the agreement entered into between the parties has not been placed before the trial Court for consideration to determine the claim of interest from the defendants for the various sums prayed for and as above noted, when the plaintiff has failed to establish that he has incurred any additional costs in the procurement of Bitumen as alleged by him, in all, it is found that the trial Court is justified in determining that the plaintiff is entitled to only receive the final bill costs of Rs.10,000/- and the 10% of the security deposit and in declining the other reliefs prayed for by the plaintiff. No reason is warranted to interfere with the abovesaid determination of the trial Court. Accordingly, the point No.1 is answered in favour of the defendants and against the plaintiff.
Point Nos.2 & 3:

19. For the reasons aforestated, the judgment and decree dated 02.08.2006, passed in O.S. No.277 of 2001, on the file of the Principal Subordinate Court, Pondicherry are confirmed and resultantly, the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To:

1. The Principal Subordinate Court, Pondicherry.
2. The Chief Secretary,
Union of India,
Govt of Union Territory of Pondicherry.
3. The Secretary, Works, Secretariat,
Public Works Department,
Pondicherry.
4. The Superintending Engineer,
Circle I, Public Works Department,
Pondicherry.
5. The Executive Engineer, National Highways Division,
Public Works Department,
Pondicherry.

Copy to:

The Section Officer,
V.R. Section,
High Court, Madras.

+1 CC to Mr.S.Radha Gopalan, Advocate sr 87909.

+1 CC to The Govt. Pleader sr 87577

A.S.No.827 of 2006

NMI (CO)
SP(24/01/2020)