

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.981 of 2007

E.R.Palanisamy. ...Appellant/Plaintiff

vs.

- 1.Pykara Ultimate Storage Hydro
Electricity Project,
Masionagudi,
The Nilgiris,
Rep.by its Chief Engineer.
- 2.The Executive Engineer/Civil,
Division-I, PUSHEP,
Masingudi,
The Nilgiris.
- 3.Member Generation,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-600 001. ... Respondents/Defendants

PRAYER: First Appeal filed against the Judgment and Decree passed in O.S.No.4 of 2006 dated 23.03.2007 on the file of District Court, Nilgiris at Uthagamandalam.

For Petitioner : Mr.J.Dhanasekaran

For Respondents : Mr.V.Viswanathan

JUDGMENT

The first appeal on hand is directed against the judgment and decree dated 23.03.2007 passed in O.S.No.4 of 2006, on the file of District Court, Nilgiris at Uthagamandalam.

2. The plaintiff is the appellant in the first appeal. The suit is filed for recovery of money mainly on the ground that the work of contract had been taken by the plaintiff and an agreement was entered into between the plaintiff/appellant and the respondent/defendant. As per the terms of the agreement, the works are to be completed within a period of four months. However, there was a delay in completion of work

which resulted imposition of damages by the defendant/Electricity Board and consequently, the plaintiff was constrained to move a civil suit claiming recovery of money.

3. The learned counsel for the appellant mainly contended that the delay occurred on account of the lapses committed by the respondent/Board, and therefore, the plaintiff is entitled to recover the money as he incurred additional cost and the works were also executed to the satisfaction of the respondent/Board. It is further contended that certain additional works were directed to be carried out and the plaintiff had completed additional work also. Thus, the delay for non-completion of work was at the instance of the Board and not on the part of the plaintiff. The Trial Court has not considered the factual aspects as pleaded by the plaintiff in the plaint. The plaintiff, in clear terms, averred that the delay occurred on account of the fact that certain infrastructure facilities were not provided by the Board, as agreed upon and therefore, he cannot be held as responsible for such delay.

4. The learned counsel appearing on behalf of the respondent disputed the said contention by stating that there was no such protest nor Board received any notice from the plaintiff regarding such lapses, if any, committed by the Board. There was no such lapses on the part of the Board. The land was handed over on time and the delay occurred on account of belated execution of works by the plaintiff and not at the instance of the defendant/respondent. Therefore, pleadings in this regard are false and incorrect. It is further contended that all such pleadings are not established before the Trial Court by way of a document or through evidence. Mere statement in the plaint is insufficient to accept the case and the Trial Court rightly came to a conclusion that the plaintiff is not entitled for the relief as such sought for in the suit.

5. Soliciting the attention of this Court, the learned counsel for the respondent/Board reiterated that the period for completion of work was agreed as four months and admittedly, the appellant had not completed within the time limit. There is no such protest or information received by the Board regarding non-providing of any facility or other aspects. In the absence of establishing any lapses on the part of the Board, the plaintiff is not entitled for the relief. This apart, the plaintiff, at no point of time, made any request for grant of extension of time, and therefore, the Trial Court was right in dismissing the suit.

6. Considering the facts and circumstances, this Court has to consider the findings made by the Trial Court. Seven issues were framed. With reference to issue Nos.1 and 2, i.e., whether the duration for completion of work mentioned as six months in the award letter dated 29.05.2002 is a typographical

error? and whether the plaintiff having signed the agreement and detailed the programme chart in regard to time and completion of work, is entitled to question the duration for completion of work?, the trial Court considered the documents as well as the evidences.

7. The case of the plaintiff is that the period of completion of work i.e., six months, which was unilaterally reduced to four months, was considered by the Trial Court. The contention of the defendant before the Trial Court that in Ex.A.1, the period was mistakenly stated as six months and this mistake was subsequently corrected by the defendants, vide amendment issued under Ex.A2. The parties entered into an agreement dated 20.06.2002. Ex.A3 is the photo copy of the agreement. In Ex.A1 itself, the plaintiff was asked to produce non-judicial stamp paper for preparing necessary agreement. The plaintiff as P.W.1 admitted the execution of Ex.A3 agreement. He has also admitted that he did not raise any objections, after the receipt of Ex.A2 amendment. In clause A.24.1 of Ex.A3 agreement, it has been clearly mentioned that the period of completion of work is "four" months. The plaintiff has initialled near the word 'four months'. As per Ex.B.3, the site was handed over on 28.06.2002 and the same was admitted by the plaintiff in Ex.B4, which is the programme chart prepared by the plaintiff themselves. As per Ex.B4 programme chart also, the plaintiff themselves have mentioned the date of completion as 27.10.2002.

8. Considering the above said facts and findings arrived at by the Trial Court, this Court is of the opinion that there is no ambiguity in respect of the terms of the agreement entered into between the parties. Pursuant to the terms and conditions of the agreement, the period of contract was four months and the said period was admitted by the plaintiff himself in clear terms as found in the above findings. Therefore, the Trial Court rightly arrived at a conclusion that the issues 1 and 2 go in favour of the defendants.

9. With reference to issues 3 to 6, which reads as follows:

3. Whether there was any requisition from the plaintiff for issue of materials from the stores of the defendants, and if so, whether there was any delay in issue of materials?

4. Whether the delay in completion of work was due to latches and negligence on the part of the plaintiff in not engaging sufficient labours and not carrying out the work as per the specification in the programme chart?

5. Whether the plaintiff has executed works other than the one specified and if so, whether the defendants are liable to make payment for such work?

6. Whether the plaintiff is entitled to the suit claim and interest?

7. To what relief?

10. The Trial Court gave a finding that admittedly, the plaintiff had completed work and handed over the site to the defendants on 20.12.2002. As per the programme chart (Ex.A4) and as per the agreement(Ex.A3), the work ought to have been completed on 27.10.2002 as referred in the documents. Under these circumstances, the respondent/Electricity Board invoked clause A.40.1 of Ex.A3 agreement and deducted Rs.96,235/- as pre-estimated damages from the amount payable to the plaintiff. The Trial Court recorded a finding regarding the payments received by the plaintiff and all those payments were admitted by the plaintiff. The only question would be whether the pre-estimated damages recovered by the Board is in consonance with the terms and conditions of the agreement or not.

11. On perusal of the entire findings of the Trial Court, the fact remains that the plaintiff himself agreed upon the terms and conditions as well as the time limit prescribed for execution of the works. Further, it is an admitted fact that the works were executed, after the expiry of the period as agreed upon. When these basic facts are admitted by the parties and there is a clause to recover the damages, and then, there is no lapses on the part of the Board in recovering the damages, as per the conditions stipulated in the agreement. The pre-estimated damages Rs.96,235/- was recovered from the plaintiff on account of the delay occurred in completion of works allotted. The Trial Court also considered all the documents including the agreement and the amendment issued as well as the payment receipts and all other relevant documents.

12. Under these circumstances, this Court has no hesitation in arriving at a conclusion that the Trial Court has not committed any error or perversity in respect of appreciation of evidences as well as documents in consonance with the terms and conditions stipulated in the agreement entered into between the plaintiff and the defendant. Thus, the appellant has not established any acceptable grounds either factually or legally so as to interfere with the findings of the Trial Court and consequently, the judgment and decree passed in O.S.No.4 of 2006 dated 21.03.2007 is confirmed and the first appeal stands dismissed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssb

To

1. The Chief Engineer
Pykara Ultimate Storage Hydro
Electricity Project,
Masionagudi,
The Nilgiris,

2.The Executive Engineer/Civil,
Division-I, PUSHEP,
Masingudi,
The Nilgiris.

3.Member Generation,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-600 001.

4. The District Court, Nilgiris,
Uthagamandalam.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.J.Dhanasekaran, Advocate SR.No.101609

+1cc to Mr.V.Viswanathan, Advocate SR.No.100874

A.S.No.981 of 2007

SVI (CO)
GMY (28/08/2020)

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