

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

**CRP (PD) No.3540 and 3541 of 2011 and
M.P.No.1 + 1 of 2011.**

M/s Annam Steels,
rep.by its Managing Partner,
Mr.C.Vijayakumar, No.244,T.H.Road,
Tondiarpet, Chennai 600 081.

... Petitioner in both
revision petitions

Vs.

1. M/s Oil & Natural Gas Corporation Ltd.
Rep. by its Chairman & Managing Director,
Jeevan Barathi Tower-II,
No.124, Indira Chowk, New Delhi-4.

2. Deputy General Manager (MMD),
M/s Oil & Natural Gas Corporation Ltd.,
Neravi Complex, Karaikal - 609 605.

3. Metal Scrap Trading Corporation Ltd,
Rep by its Regional Manager (MMD),
Southern Regional Office, Leelavathy Building,
3rd Floor, No.69, Armenian Street,
Chennai 600 001.

... Respondents in both
revision petitions

PRAYER IN CRP (PD) No.3540 of 2011: Civil Revision Petition filed

under Article 227 of the Constitution of India against the orders dated

11.08.2011 passed in I.A.No.10378 of 2010 in O.S.No.8669 of 2006 by the III

Assistant Judge, City Civil Court, Chennai.

PRAYER IN CRP (PD) No.3541 of 2011: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 11.08.2011 passed in I.A.No.10379 of 2010 in O.S.No.8669 of 2006 by the III Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.N.Amarnath
For Respondents : Mr.Shanmuga Kani (For R1 and R2)
M/s Sarvabhauman Associates (For R3)

COMMON ORDER

These revision petitions are filed by the plaintiff in O.S.No.8669 of 2006 on the file of the III Assistant Judge, City Civil Court, Chennai. The plaintiff M/s Annam Steels, represented by its Managing Partner Mr.C.Vijayakumar has filed the suit for refund of Earnest Money Deposit of Rs.5,91,513/- together with interest at 9% p.a. on Rs.4,97,070/- from the defendants.

WEB COPY
2. The case of the plaintiff in nutshell is as follows:

The plaintiff is dealing in inferrous and non-ferrous materials and the third defendant issued a tender notification for sale and removal of "drill pipes assorted condemned scrap" covered under lot No.20 lying at ONGC, Karaikal Asset, Neravy Complex/KKL-11/TNWC. The materials

belonged to the defendants 1 and 2 and the third defendant conducted an auction as nodel agency. The plaintiff became a successful bidder, since he quoted a sum of Rs.10,47,54,149.91 and he also deposited a sum of Rs.4,97,070/- towards Earnest Money Deposit. The 2nd defendant issued a letter dated 27.12.2004 directing the plaintiff to pay 50% of the sale value within a week from the date of sale order and also stated that 1% penalty per week would be levied for the delayed payment. Due to Tsunami devastation, the bridges across the road in Karaikal region were damaged and the pipes covered under lot 20 stocked in the yard belonging to the defendants 1 & 2 were submerged due to Tsunami. The plaintiff sent a letter dated 03.01.2005 expressing their readiness to take delivery of the materials. As no reply was received from the defendants, another letter dated 12.02.2005 was sent by the plaintiff to the defendants seeking for extension of time. The request of the plaintiff was rejected by the defendants contending that there was no devastation due to Tsunami in their yards. The said contention of the 2nd defendant is false. Therefore, the plaintiff is entitled to recover Earnest Money Deposit from the defendants.

3. The defendants filed written statement denying all the allegations of the plaintiff and both the parties went for trial.

4. On the side of the plaintiff, three witnesses were examined and one Mr.Eswarapatham was examined as PW3. In his proof affidavit, PW3 has contended that he is driver by profession having a license for driving heavy motor vehicle (GHTV). During the course of cross examination of PW3, it was suggested to him that since he did not possess any valid driving license for driving heavy motor vehicles, he did not mark his license during his examination. Subsequently, the plaintiff filed petitions in I.A.No.10378/2010 and 10379 /2010 to recall PW3 for the purpose of marking a copy of his driving license. The III Assistant Judge, City Civil Court, Chennai dismissed those applications by contending that the court cannot permit a party to examine him to fill-up lacuna in his case.

5. At the outset, it may be observed that the suit is filed by the revision petitioner/plaintiff for getting back the Earnest Money Deposit paid by him. His specific contention in the plaint is that, though he is a successful bidder for clearing drill pipes assorted condemned scrap covered under lot No.20 lying at ONGC, Karaikal Asset, Neravy Complex/KKL-11/TNWC and paid a sum of Rs.4,97,070/- as Earnest Money Deposit, he could not clear the pipes, due to Tsunami. His another contention is that the yard, in which the pipes covered under lot 20 stocked, had been totally submerged due to floods in Tsunami and therefore, he could not remove the

same in time. It is also contended by him that his request seeking extension of time to remove the materials was not accepted by the defendants and therefore, he prayed for refund of Earnest Money Deposit paid by him.

6. The defendants in their written statement had stated that as per Clause 7(1) of the General Provisions of the Contract, in case of default in payment by the plaintiff, the Earnest Money Deposit paid by him would automatically stand forfeited. Their further contention is that the yard in which the materials were stocked was not affected by Tsunami.

7. Therefore, the only point that has to be decided in the case is whether the plaintiff is entitled for refund of Earnest Money Deposit or not.

8. PW3 in his chief examination stated that he is a driver by profession and he has been issued a license for driving heavy motor vehicles. Since he did not mark the same during his examination, the plaintiff filed two applications to recall the PW3 and mark his driving license. Though the driving license of PW3 is not an important document for the just decision of the case, the trial court had dismissed the application filed by the plaintiff on the ground that the plaintiff cannot be

allowed to fill-up lacuna in his case. As already observed, the relief sought for by the plaintiff for refund of Earnest Money Deposit from the defendants is mainly based on the contract between the plaintiff and the defendants and the driving license of PW3 may not be very much essential for the decision of the case. However, when the PW3 has stated that he is a driver by profession and he was issued a license for driving heavy motor vehicle, he should have been permitted to mark the said document. Merely because the PW3 did not mark the said document during his chief examination, he cannot be prevented from marking the same subsequently. By allowing the plaintiff to recall PW3 and mark his driving license as an exhibit, would not affect the case of the defendants. The trial court without considering the facts of the case, had dismissed the applications filed by the plaintiff and therefore, the present civil revision petitions are liable to be allowed.

9. In the result, सत्यमेव जयते

(i) The civil revision petition in CRP No.3540 of 2011 and CRP No.3541 of 2011 are allowed. No costs. The connected miscellaneous petitions are closed. The orders passed by the trial court is set aside.

(ii) The PW3 (Easwarapatham) is directed to appear before the III Assistant Judge, City Civil Court and mark his driving license as an exhibit.

(iii) Since the suit is of the year 2006, the III Assistant Judge, City Civil Court, Chennai is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

08.07.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

The III Assistant Judge, City Civil Court, Chennai.



WEB COPY

R.HEMALATHA,J.
mst



CRP (PD) No.3540, 3541 of 2011
M.P.No.1 + 1 of 2011

WEB COPY 08.07.2019