

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM:

The HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No. 127 of 2014

The Additional Director General (E)(SZ)

All India Radio & Doordarshan

Swamy Sivananda Salai,

Chepauk, Chennai – 600 005.

.. Plaintiff

Vs

M/s.Rishi Engineering Enterprises

(Represented by its Proprietor Shri Sathish Janga)

403, Tirumala Residency,

14-7, M.S.Nagar, Malkajgiri,

Secunderabad – 500 047.

.. Defendant

Prayer : Complaint under Order IV Rule 1 of the OS rules read with Order VII Rule 1 of the Code of Civil Procedure, prays for decree and judgment:

a) directing the defendant to pay to the plaintiff a sum of Rs.1,58,39,000/-,

b) directing the defendant to pay the interest at the rate of 24% for Rs.1,58,39,000/- from the date of complaint till the date of realization,

c) directing the defendant to pay the cost of the suit.

For Plaintiff : Mr.Venkataswamy Babu

For Defendant : set ex-parte

J U D G M E N T

Prayer

The suit has been filed by the plaintiff for directing the defendant to pay to the plaintiff a sum of Rs.1,58,39,000/-, directing the defendant to pay the interest at the rate of 24% for Rs.1,58,39,000/- from the date of plaint till the date of realization and directing the defendant to pay the cost of the suit.

2. The plaintiff is the Additional Director General, All India Radio and Doordarshan, Swamy Sivananda Salai, Chepauk, Chennai – 600 005 and defendant is M/s.Rishi Engineering Enterprises, having office at 403, Tirumala Residency, 14-7, M.S.Nagar, Malkajgiri, Secunderabad – 500 047.

a) Facts of the case :-

i) The plaintiff is an Organization functioning under the Government of India and part of Prasar Bharathi. In the course of awarding of work contract, the work pertaining to the Supply, Installation, Testing and Commissioning of Strengthening of active mast at 100 Kilo watt medium Transmitter, All Indian Radio, Port Blair was floated by the plaintiff from

Chennai in reference No. CE/SZ/SMT/41-E/METP/2008/5047-5050 dated 25/28-11-2008. The defendant was the lowest bidder and hence the contract was awarded to the defendant. The work order was issued to the defendant vide ref.No.CESZ/SMT/PRG/METP/2008-2009 on 23-01-2009. The time period for completion of the contract was fixed as 6 months and it expired on 22.07.2009. The defendant had not completed the work on time and sought for extension of time and time was also extended by the plaintiff till 30.09.2009. Even after several reminders, the defendant had not commenced the work at the site. Finally, on 23.03.2010, the defendant had issued a letter saying that they have procured the materials and placed it in the worksite. After commencing the work during the process of Tower work defendant had damaged active mast/ resulted in breakdown of All India Radio and its network at Andaman and Nicobar Islands.

ii) The defendant had accepted the damage caused to the Tower and agreed to re-erect within five months vide letter dated 22.04.2010. The plaintiff had appointed Mr.Jayakumar/Director Engineering for inspection of the damage caused to the Tower and to submit report. The inspection report was submitted to the plaintiff on 27.04.2010. The defendant accepted

liability and assured to re-erect the tower at their cost vide letter dated 29.06.2010. But the defendant failed to fulfill the undertaking given by them. On 19.11.2010, the plaintiff had issued letter claiming damages for the loss caused by the defendant, which were followed by many reminders.

iii) Though the defendant had admitted his liability but sought time for re-erection. In the meanwhile, the Director General of AIR at New Delhi gave an opinion that the defendant shall re-erect but the already damaged mast was two level guy system and the one proposed to erect was four level guy system, and hence, the additional expenditure has to be borne by the plaintiff. The plaintiff gave time extension and directed the defendant to re-erect within six months vide letter dated 07.06.2011. The defendant had issued a letter dated 15.06.2011 agreeing to re-erect within four months. But thereafter, the defendant had not shown any progress in the work and also did not reply to the plaintiff's letter, questioning the status of the work.

iv) On 24.10.2011, the defendant had finally replied to the plaintiff, assuring that he will complete the work and also regretted for the delay

caused in completion of work. But thereafter the defendant had not kept up his words and the work was not commenced. Hence, the plaintiff had convened a meeting on 09.12.2011 and resolved that the contract with the defendant shall be terminated and also to take action against the defendant legally for the failure on the part of the defendant to fulfill his contractual obligations. The same was communicated to the defendant. The plaintiff had issued a legal notice to the defendant on 20.04.2012 seeking the defendant to pay a sum of Rs.1,58,39,000/- as damages. The defendant had not replied the same. Hence the present suit is filed and the relief was restricted only to the damage caused by the defendant to the active Mast.

b) Defence:

The the suit summons against the sold defendant was served as early as on 28.08.2017. However, the defendant failed to enter appearance either in person or through counsel. Hence, the defendant was set ex parte by this Court on 12.12.2017. and the suit was placed before the master for recording exparte evidence. On behalf of the plaintiff, PW1 was examined and Exs.P1 to P29 were marked.

c) Correlation of facts and evidence :-

i. Allotment of contract to the defendant:

Ex-P3 is the work order issued to the defendant by which the contract was awarded to the defendant. The time period was also clearly mentioned as six months. But the defendant had not commenced the contract in time and sought for extension of time through **Ex-P4**. The plaintiff had issued **Ex-P5** letter extending the time till 30.09.2009. Subsequently, the plaintiff had also issued a letter indicating Penalty Clause **vide Exs.P6, and P7, P8 and P9** are the reminder letters sent by the Plaintiff to the defendant. **Ex-P10** is the letter sent by the defendant saying that they have procured the materials and placed it in the worksite.

ii. Liability of the defendant for the damage caused to the active mast:

On 19.04.2010, after commencing the work during the process of Tower work defendant had damaged active mast/ resulted in breakdown of All India Radio and its network at Andaman and Nicobar Islands. **Ex-P11** is the letter sent by the defendant accepting the damage caused to the Tower and agreeing to re-erect the mast within five months. **Ex-P13** is the

letter again sent by the defendant admitting his liability and assured to re-erect the mast at the cost of the defendant. **Ex.P14** is the letter sent by the plaintiff indicating **clause 8.2** of the “**Technical Specification for strengthening the active mast at 100 KW MW Transmitter AIR, Port Blair**” the defendant is liable to bear the cost for the damages/loses occurred while execution of the work by the defendant. **Ex.P15 and P16** are the reminder letters sent to the defendant claiming the damages. **Ex.P17** is the letter sent by the defendant admitting the liability and sought for extension of time to re-erect the Fallen Mast. **Ex.P18** is the opinion sent by the Director General, All India Radio, New Delhi, asking the plaintiff to bare with the additional expenditure for the installation of 4 level guyed system, as the already damaged one was 2 level guyed system. **Ex.P19** is the letter sent by the plaintiff to the defendants to complete the re-erection within six months. **Ex.P20** is the letter sent by the defendant assuring to complete the re-erection at their cost within four months. **Ex-P21, 22 & 23** are the reminder letters sent by the plaintiff, to inform the status of the work. **Ex-P24** is the final reply sent by the plaintiff assuring to complete the work and regretting the delay. **Ex.P-25** is the letter sent by the plaintiff seeking immediate action in re-erecting the fallen Mast. **Ex-26** is the minutes of the

meeting of the plaintiff deciding to terminate the contract awarded to the defendant and to take appropriate legal action against the defendant. **Ex-27** is the letter sent by the plaintiff intimating the termination of the contract to the defendant. **Ex-P28** is the legal notice sent by the plaintiff to the defendant claiming a sum of Rs, 1,58,39,000/- as damages from the defendant.

d) Submission of the Plaintiff:

It is submitted that the defendant had failed to perform his contractual obligations under the work order issued to him vide Ex-P3. The plaintiff had restricted this suit with regard to the loss caused by the defendant by damaging the Tower. The Ex-P14 is the demand made by the plaintiff to compensate the loss. Ex-P11, 13 are the documents wherein the defendant had clearly admitted the liability on the part of the defendant. It is an admitted case where the defendant had clearly issued letters confirming his liability, and hence, he has not come before this Hon'ble Court to contest the matter. The plaintiff had suffered loss because of the defendant due to his non-performance of his contractual obligations under the work order Ex-P3. Due to the fault on the part of the defendant, fresh tender has been invited from third parties and work has to be completed. In spite of several

reminders, the defendant miserably failed to fulfill its obligations as per the terms and conditions of the work order. Therefore, the plaintiff submits that they are entitled for a claim of Rs.1,04,39,000/- towards erection of the mast with interest at 24% p.a. from the date of 06.12.2011 and a sum of Rs.54,00,000/- loss suffered by the plaintiff due to the service affected and revenue loss. Apart from that, the defendant had caused huge loss to the plaintiff by damaging the Tower (Active Mast). The defendant is a person repeatedly participating in the Tender of the Central Government on various new company names and cheats by not performing his contractual obligations. Hence, prayed for decreeing the suit.

3. This Court heard submissions of the learned counsel appearing for the plaintiff and gone through averments in the plaint, proof affidavit and also Exs.P1 to P29.

Result

4. From a perusal of the documents, it is seen that the defendant was awarded with a work order by the plaintiff, vide ref.No.CESZ/SMT/PRG/METP/2008-2009 on 23-01-2009. The time period

for completion of the contract was fixed as 6 months. But the defendant was not able to complete the work within the prescribed time, as per the work order and sought for extension of time. Even after extension, till 30.09.2009 the defendant was not able to complete the work. Further, during the process of Tower work, defendant had damaged active mast/ resulted in breakdown of All India Radio and its network at Andaman and Nicobar Islands. The plaintiff, in order to ascertain the loss, had appointed Mr. Jayakumar/Director Engineering for inspection of the damage caused to the Tower and to submit report. Based on the inspection report, the plaintiff made a claim for the damage occurred. The defendant initially accepted liability and assured to re-erect the tower at their cost vide letter dated 29.06.2010. But the defendant failed to fulfill the undertaking given by them. Despite the fact that the plaintiff sent letter, on 19.11.2010, followed by several reminders, claiming damages for the loss caused by the defendant, under the pretext of re-erecting the mast, sought for extension of time. However, failed to fulfill the same. Hence, the plaintiff had convened a meeting on 09.12.2011 and resolved that the contract with the defendant shall be terminated and also to take action against the defendant legally for the failure on the part of the defendant to fulfill his contractual

obligations. Despite the said resolution was communicated to the defendant, no response was forthcoming from the defendant.

4.1. Therefore, the plaintiff justified the cause in calling for fresh tender from the third party for the completion of the work. In this regard, the plaintiff also proved his claim towards a sum of Rs.1,04,39,000/- towards erection of the mast, and therefore, the plaintiff is entitled for interest for the said sum at the rate of 24% p.a from the date of 06.12.2011. Further, the plaintiff also proved his case for the loss to an extent of Rs.54,00,000/- suffered by him towards service affected. Hence, the plaintiff is entitled for the said revenue loss. Therefore, the plaintiff is entitled for a sum of Rs.1,58,39,000/- along with interest as prayed for in the suit.

5. In the result, the suit is decreed as prayed for with a cost of Rs.50,000/-.

26.06.2019

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Index : YES/NO

Internet: YES/NO

Speaking Order/Non Speaking Order

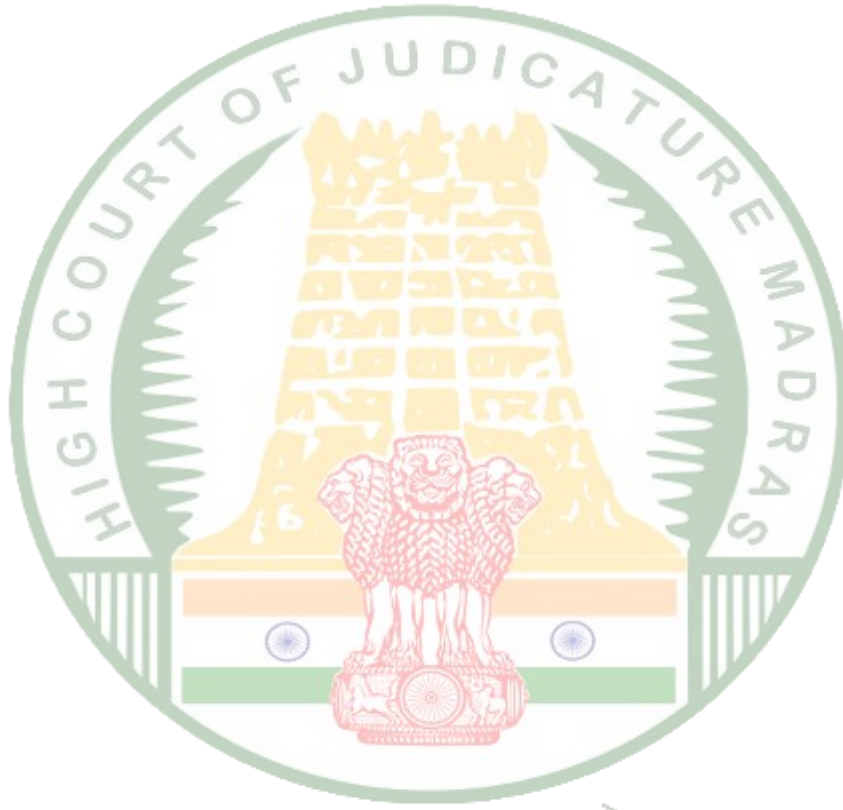


KRISHNAN RAMASAMY, J.

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