

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 25th DAY OF FEBRUARY 2020

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

A. No.165 of 2020
in
C.S. No.455 of 2013

V.N.Vardharajan,
Managing Director,
V.N.VBuilders (P) Ltd.,
No.149, Kalaramani, Mudachur,
Gobichettipalayam,
Erode District,
Tamil Nadu-638 476

...Applicant/ Plaintiff

-Versus-

Government of Tamil Nadu,
Highways Department,
Represented by
The Superintending Engineer,
Highways, Construction & Maintenance,
Chennai Circle,
299, Anna Salai,
Chennai-600 006.

..Respondent/Defendant

Application praying that this Hon'ble Court be pleased to permit the petitioner amend/include the following in the prayer column “to declare that the order of Termination of Letter in the notice No.1800/2010-11/A2 dated 20/04/2012 issued by the Defendant is illegal and invalid” in the above suit C.S.No.455 of 2013.

This Application coming on this day before this court for hearing, the Court made the following order:

Heard the learned counsel for the plaintiff.

2. This application to amend the prayer is taken out by the applicant/plaintiff under the premise that while filing the suit, he was not aware of the termination of the contract, which is the basis for laying the suit on the ground of breach of contract.

3. According to the applicant/plaintiff, he is a successful bidder for the tender floated by the 1st respondent. However, without termination of the contract, the respondent floated the second tender in the month of May 2012. which has given cause for action of the present suit for damages arising from breach of contract in the present application, the plaintiff wants to amend the plaint by including the prayer for declaration that the termination of contract vide letter dated 20.04.2012 issued by the defendant is illegal and invalid and therefore, prays that the same has to be incorporated by way of amendment.

4. The learned counsel appearing for the applicant would submit that

If the said amendment is not allowed, he will be greatly prejudiced,

contrarily, amending the plaint and including the relief of declaration would no way prejudice the defendant.

5. In the counter filed by the defendant/respondent, it is submitted that under Order VI Rule 17 of CPC, no application shall be entertained to amend the pleadings after the trial commenced, unless the Court concludes that in spite of due diligence, the parties could not conduct the manner in which, before commencing of the trial. In this case, the suit was presented in the year 2012 and examination of witnesses commenced as early as August 2015 and had been protracted for one reason or another. After the advent of the Commercial Courts Act, the jurisdiction was determined by this Court on 09.07.2019 and time frame was fixed for examination of witness. By that time, examination of DW.1 was pending.

6. At this juncture, the present application is filed to amend the plaint and include the relief of declaration. This relief not only hopelessly barred by limitation but also such prayer is unnecessary in view of issue framed by this Court regarding the termination of contract.

7. The learned counsel appearing for the respondent would submit that when the Court after perusing the pleadings have already framed issue

“whether the termination of the contract is valid”, relief of declaring the termination of the contract as void and illegal is only a superfluous prayer for which no amendment is required.

8. Heard the learned counsels and pleadings perused. This Court is unable to entertain the present application for amendment for the following reasons:-

(a) The applicant/plaintiff had the knowledge of the letter terminating the contract in the month of September 2012, but not taken any steps to amend the prayer in the suit. After a lapse of more than 7 years, the present application is filed after commencement of the trial. Order VI Rule 17 bars for entertaining application for amendment of pleadings after commencement of trial, unless extraordinary circumstances to entertain the application. This application which has without any specific reason to entertain. Hence, liable to be dismissed.

(b) This Court has already framed an issue regarding the validity of the termination of the contract, therefore no amendment in this regard is required.

9. Hence this application is dismissed with costs of Rs.10,000/- payable to the 1st defendant on or before 10.03.2020. If the plaintiff fails to pay the cost till 10.03.2020, the plaintiff shall forfeit his right to pursue further.

10. Post the suit for arguments on 13.03.2020.

Sd./-G.J.J.
25/02/2020

//Certified to be true copy//
Dated at Madras this the day of 2020.

JJ 05/03/2020

COURT OFFICER(O.S.)

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