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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

A.S. No.705 of 2005

M/s. Lub Systems,
rep. by its Partners, K.N.Ramani and
R.Mahadevan.

... Appellant/Plaintiff

Vs

S.A.Shanmugham,
Proprietor, Gopi Industries,
Manali, Express Road, Killa Bros (Near),
Eranavoor, Chennai - 600 057.

... Respondent/Defendant

Appeal suit filed under Section 96 of Code of Civil Procedure against the judgment and decree in O.S. No.7710 of 1996 on the file of the Third Additional Judge, City Civil Court, Madras, dated 29.12.2003

For Appellant : Mrs. Ramya Rangarajan

For Respondent : No Appearance

JUDGMENT

The plaintiff and the defendant in the suit in O.S. No.7710 of 1996 on the file of III Additional Judge, City Civil Court, Madras are the appellant and the respondent respectively in this appeal.

2. The appellant filed a suit for recovery of a sum of Rs.4,59,538.14/- along with the interest at 24% per annum against the defendant. The appellant is a partnership firm represented by its partners. The case of the plaintiff is that the plaintiff was awarded a works contract by a Government company and that the plaintiff in turn entered into a sub-contract with the defendant. After completion of works, the plaintiff found that the plaintiff was put to huge loss to the tune of Rs.3,85,364/- due to breach of the terms of the contract committed by the defendant. The plaintiff further claimed a sum of Rs.73,912.38/- towards excess payment that was made to the defendant. The defendant contested the suit by setting up



various defence. The lower Court found that the plaintiff is not entitled to recover any money from defendant. Aggrieved by the same, the plaintiff has preferred the above appeal before this Court.

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3. Heard the learned counsel appearing for the appellant.

4. The lower Court considered the dispute with reference to each item. A sum of Rs.1,21,253.39/- was claimed by the plaintiff as the amount paid by the plaintiff to an Engineer as salary for performing certain works. It is stated by the plaintiff that as per the contract between the plaintiff and defendant, the defendant has to engage his own Engineer at the site but, the defendant failed to appoint an Engineer at the site. Since, the plaintiff was forced to appoint an Engineer, it is stated that the plaintiff is entitled to get back the amount that was paid to the Engineer as salary.

5. It may be true that the defendant has to appoint his own Engineer at the site. But, there is no Clause in the agreement to the effect that the plaintiff can appoint their own Engineer and recover the amount incurred by them for engaging an Engineer. It is also to be noted that the plaintiff and defendant have entered into a contract for executing certain works and the total value of work is around Rs.8,00,000/-. The defendant received only a part payment even as per the plaintiff's version in the plaint. This Court is unable to sustain the plaintiff's claim for a sum of Rs.1,21,253.39/- which is paid by the plaintiff to a site Engineer. In other words, the amount paid by the plaintiff to a site Engineer represents the salary paid for supervising the total work. Therefore, it is unreasonable and the claim is not supported by express terms of the contract. The balance amount is claimed towards non performance of certain works. Though the plaintiff figures that they spent a sum of Rs.2,64,371.37/- to complete the work which was entrusted to the defendant, the plaintiff must prove that they spend this money in excess for execution of the work. Only if the plaintiff has spent this amount in excess of the amount that is payable to the defendant for execution of the work as per the contract, the plaintiff may be entitled to. In this case, the evidence let in by the plaintiff does not indicate that the plaintiff has incurred an additional expenditure of a sum of Rs.2,64,371.37/- for completing the contract and that the loss would not have occurred to the plaintiff if the defendant executed the work in terms of the contract. The further claim is an account of excess amount alleged to have been paid by plaintiff in excess of the amount payable. It is stated in the plaint that the value of accepted bills of defendant was only Rs.4,03,624/- and that the plaintiff had paid a sum of Rs.4,77,536/-. The plaintiff



after making payments as per bills dispute the amount probably on the ground that certain amounts as per the bills raised by defendant were not accepted. Neither before the trial Court, nor before this Court, the plaintiff made an attempt to demonstrate how the amount paid as per bill has to be returned.

6. The lower Court has considered the pleadings, evidences and materials produced by the plaintiff and rightly dismissed the suit filed by the plaintiff. This Court does not find any error or irregularity in the judgment and decree passed in O.S. No.7710 of 1996 on the file of the Third Additional Judge, City Civil Court, Madras.

7. This Court do not find any merits in this appeal and hence, the Appeal Suit is dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

Dt 24/03/2021

//True Copy//

Sub Assistant Registrar

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To

1. The Third Additional Judge,
City Civil Court, Madras.

2. The Section Officer,
V.R Section,
High Court, Chennai.

+1cc to Mr.T.V.Krishnamachari, Advocate, S.R.No.33742

A.S. No.705 of 2005

CNR(CO)
HS(11/08/2021)