

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.02.2020

Pronounced on: 21.02.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.S.No.646 of 2018

Mahindra Consulting Engineers Ltd.
Represented by its General Manager, Mr.S.Balaji,
Mahindra Towers, 17/18,
Pattulous Road,
Chennai – 600 002.

... Plaintiff

/versus/

1. Mr.Prabhash Kumar,
M/s.Prasambi Design & Construction Pvt Ltd.,
G-1, Prasambi's Saryug Vihar,
Gosai Tola, Patliputra Colony,
Patna – 800 013.
2. M/s.Prasambi Design & Constructions Pvt. Ltd.,
Represented by its Managing Director, Mr.Prabhash Kumar,
G-1, Prasambi's Saryug Vihar,
Gosai Tola, Patliputra Colony,
Patna – 800 013.

... Defendants

Prayer: Plaint is filed under Order VII Rule 1 of C.P.C., read with Order IV Rule 1 of Original Side Rules of the Madras High Court.

a. Directing the Defendants to pay the Plaintiff a sum of Rs.1,48,72,669/- being Rs.1,05,61,250/- towards principal and Rs.44,11,419/- towards interest from 15.12.2015 to 10.04.2018 at 18% per annum on the principal amount, along with interest at 12 % p.a on Rs.1,05,61,250/- from date of presentation of the plaint until date of realization.

b. To pay the plaintiff the costs of the suit.

c. And pass such further or other orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.Avinash Wadhwani

For Defendants : Set Exparte

J U D G M E N T

The plaintiff is a subsidiary of Mahindra & Mahindra Limited engaged in consultancy services. As part of its Corporate Social Responsibility (CSR), the plaintiff committed to build over 4500 toilets in rural schools, under the "Swachh Bharath Swachh Vidyalaya" (SBSV) or "Clean Indian Clean School" scheme launched by the Prime Minister of India on 14.08.2014. For the said purpose, to build 536 blocks of toilets each consist of 5 toilet units in various Government schools in Bihar, received quotation from the defendants on 17.01.2015. For construction of "Girls Toilet Block" at various schools located across Bihar. The defendants quoted Rs.5.80 crores for 250 toilet blocks (Rs.2,32,000/- per toilet block) inclusive of taxes, duties, transportation charges, insurance, etc. The defendants promised to complete the project with 60 days from the date of work order.

2. After negotiation, on 22.01.2015, the rate was fixed at Rs.5,12,50,000/- for 250 toilet blocks (Rs.2,05,000/- per toilet block). In order to ensure the completion of project by 30.04.2015, the plaintiff agreed to release 40% of the contract value without securing any bank guarantee. Letter of acceptance was issued by the plaintiff on 27.01.2015 for construction of 160 toilet blocks at the rate of Rs.2,05,000/- per block. The defendants accepted the terms and gave a letter on 28.01.2015. Consequently, the plaintiff issued work order on 02.02.2015 for construction of 160 toilet blocks in the schools across Bihar. Running Account Bills were raised by the defendants on multiple occasions and they were released by the plaintiff. By letter dated 12.03.2015, the plaintiff also notified the defendants for the requirement to construct another 140 toilet blocks, in addition to the earlier order of 160 toilet blocks.

3. Despite repeated impetus of the plaintiff on the completion of the project at the earliest, the construction was progressing at sluggish pace and by the end of 30.04.2015, the defendants completed the construction of only 143 toilet blocks, with 37 toilet blocks remained unfinished and work for 80 toilet blocks yet to commence. The defendants failed to complete the project within 30.04.2015, the date fixed for completion of the project. The defendants assured to deliver 260 of toilet blocks on or before 15.07.2015 and requested for mobilisation of more fund to complete the construction.

4. Believing the said representation, the plaintiff released Rs.82,00,000/- on 16.06.2015. In spite of total payment of Rs.4,37,20,000/- (Rs.4,28,45,600/- + TDS Rs.8,74,400/-), the defendants failed to complete the project within the time. The delay on the defendants part, forced the plaintiff to take several pro-active steps, including deployment of additional resources and involving multiple contractors. Due to that efforts and additional expenses, the project got completed on 15.08.2015.

5. After exchange of notices, for the alleged breach of contract, the plaintiff and the defendants met at Patna to settle the dispute. As a result, a settlement agreement was entered on 19.09.2015. As per the terms, the defendants agreed to pay Rs.50,00,000/- as against the excess receipt of Rs.79,95,000/-. Cheques were issued by the 2nd defendants (signed by the 1st defendant) for Rs.50,00,000/- in favour of the plaintiff. It was agreed by the parties that, if any of the cheques bounces, then the claim of the plaintiff would revert back to Rs.79,95,000/-. After executing the settlement agreement and issuing cheques, the defendants sent e-mail on 10.10.2015 alleging that, the agreement and cheques were extracted from them under coercion. The allegations were denied and suitable replied by the plaintiff and the cheques were presented for collection. The cheques were dishonoured on account of payment stopped. The plaintiff has initiated criminal prosecution against the defendants under the Negotiable Instruments Act and same is pending before the XVIII Metropolitan Magistrate Court, (Fast Track Court-III), Saidapet.

6.Being a commercial transaction, the plaintiff has laid the suit for recovery of money with interest @ 18% per annum, the defendants were served with suit summons on 31.10.2018. However, they did not enter appearance. The defendants were called absent and set exparte. The exparte evidence was recorded by the Additional Master – I.

7.S.Balaji, the General Manager of the plaintiff company has filed proof affidavit and examined as P.W.1. Exs.P.1 to P.47 were marked as plaintiff side documents. Exs.P.1 to P.4 are the documents relating to quotation offered by the defendants and letter of acceptance after revised quotation which indicates that the defendants have accepted for construction of 160 toilet blocks under Swachh Bharat and Swachh Vidyalaya scheme at the cost of Rs.2,05,000/- per toilet block. The defendants vide Ex. P.8, dated 01.03.2015, has acknowledged receipt of Rs.1,28,57,600/- as net advance from the plaintiff. Following this, the defendants vide communication dated 01.03.2015, has raised R.A.Bill No.2 for a sum of Rs.2,85,97,500/-. While the earlier acknowledgment under Ex.P.8 indicates that 40% was advanced for the construction of 160 toilet units, Ex.P.9 indicates that it is bill for 279 remaining toilet blocks. Following this communication, the plaintiff has sent a letter to the first defendant amending the original work order and for construction of additional 140 numbers of toilet blocks. To prove payment made to the defendants as per the plaint paragraph No.11, the plaintiff has marked its bank statement marked as Exs.P.11, P.12 and P.14. Similar to Ex.P.9, the

defendants on 10.06.2015, have sought for advance payment of Rs.1,02,50,000/- wherein, the first defendant has stated that they have handed over more than 110 units and by 25th June 2015, 60 more units will be handed over and had promised to hand over total number of 260 units of toilet blocks by 15th July 2015. This is the candid admission by the defendants about their failure to complete the project within the time stipulated.

8. In the said circumstances, the plaintiff had been requesting the defendants to complete the work at the earliest and repeatedly sending mails. Those mails are marked as Exs.P.15, P.17, P.18 and P.19. The defendants have issued legal notice dated 07.08.2015 which was marked as Ex.P.21. In the said notice, the defendants admit that initially, there was an agreement to construct 160 units of toilet blocks @ Rs.2,05,000/- per toilet block and later, they agreed to construct additional 100 toilet blocks for the same price. They raised three running bills for a total sum of Rs.5,33,00,000/- whereas, the plaintiff has paid only Rs.4,46,00,000/-. Alleging that the plaintiff is under obligation to pay the remaining amount for completion of the work, the defendants have blamed the Engineers of the plaintiff company for the delay and had demanded to release the balance amount for completing the work. To the said notice, Ex.P.21 dated 07.08.2015, the plaintiff has replied through their Lawyer notice dated 19.08.2015 and 24.08.2015. In the second reply notice dated 24.08.2015, it is specifically stated that the defendants after receiving the

money has not constructed the toilet blocks in time and therefore, sought for refund of money advanced furnishing the detailed break-up as below:-

Completed and handed over toilet blocks	143 x 2,05,000 x 95%	2,78,49,250/-	(A)
Work commenced but not handed over	37 x 2,05,000 x 70%	53,09,500/-	(B)
Total value of work done	(A+B)	3,31,58,750/-	(C)
Payment made so far by the plaintiff		4,37,20,000/-	(D)
Excess amount to be refunded	(D-C)	1,05,61,250/-	

9. In the said context, the parties have entered into an understanding/settlement on 19.09.2015 which is marked as Ex.P.24. The defendants have agreed to return Rs.50 lakhs as against the claim of Rs.79.95 lakhs. Five cheques were given to the plaintiff as under:-

S.No	Cheque No.	Date	Amount
1	247175	16/10/2015	Rs.5,00,000/-
2	247176	25/11/2015	Rs.12,00,000/-
3	247177	05/12/2015	Rs.8,00,000/-
4	247178	10/12/2015	Rs.10,00,000/-
5	247179	15/12/2015	Rs.15,00,000/-

10.The vital terms of understanding under this settlement (Ex.P.24) is as below:-

"It is agreed between the parties that PDCPS owe to MACE Rs.79.95 lakhs towards the pending works and where the works were not started against this contract. PDCPL expressed that the overheads expenses and efforts made in execution of this contract at various locations of Bihar needs to be considered for this settlement. It is specifically agreed that Rs.50 lakhs (Rupees fifty lakhs only) as settlement amount is a concession, though a sum of Rs.79.95 lakhs is due from PDCPL to MACE. If any one of the cheques bounces, then MACE claim reverts back to Rs.79.95 lakhs and PDCPL shall pay and agrees to pay Rs.79.95 lakhs without any dispute whatever."

11.The other documents namely Exs.P.27 to P.46 are the cheques and bank intimations regarding return of the cheques due to stop payment instruction and the criminal proceedings initiated by the plaintiff against the defendants after causing statutory notice.

12.Ex.P.24, the Memorandum of Settlement entered between the parties go to show that as against the excess amount of Rs.79.95 lakhs received by the defendants, they have agreed to return Rs.50 lakhs towards

full quit settlement and had also given five cheques for a total sum of Rs.50 lakhs. These cheques dates are between 16.10.2015 and 15.12.2015. None of the cheques were honoured by the defendants. Neither they have appeared before this Court to explain why they instructed the Bank for stop payment despite the agreement entered by them. Even the denial notice issued by the defendants immediately after entering into agreement, Ex.P.24, alleging coercion and force not been substantiated by them by contesting the suit.

13.This Court had taking note of the statement made in the plaint regarding the cause of action and jurisdiction, has granted leave to sue the defendants vide order dated 16.08.2014 and has also determined the dispute falling within the jurisdiction of Commercial Division. Under Ex.P.24, the defendants have agreed that they have received excess payment of Rs.79.95 lakhs and has also further agreed that if any of the cheque given towards full satisfaction, gets bounced, the plaintiff is entitled to revert back for collecting the 79.95 lakhs. The documents furnished by the plaintiff proves that all the five cheques issued by the defendants towards full satisfaction were bounced. Therefore, the plaintiff is entitled to revert back for collecting the entire amount of Rs.79.95 lakhs.

14.This Court finds that on 19.09.2015, when the plaintiff and the defendants sat together and reconciled their account and decided to settle the issue by receiving Rs.50 lakhs as against due of Rs.79.5 lakhs. The parties

have further accepted that in case of failure to honour the cheques, the plaintiff is entitled to revert back to the claim of Rs.79.95 lakhs. Therefore, the plaintiff is entitled only for the said sum of Rs.79.95 lakhs and not Rs.1,05,61,250/- as sought in the plaint.

15.That apart, the agreement is silent about the interest. Though the plaintiff is a corporate company and the fund has been given from out of their corporate social responsibility fund, contract cannot be construed as a commercial contract in true sense, as the plaintiff himself has stated in para No.18 of the plaint that they have undertaken the project on a charitable basis and they had no intention of profit. So, under such circumstances, the plaintiff is entitled for a sum of Rs.79.95 lakhs as per the terms of the agreement entered between the parties vide Ex.P.24 dated 19.09.2015 with interest @ 6% per annum from the date of filing of the suit till the date of realisation. Accordingly, the suit is decreed with costs.

सत्यमेव जयते

21.02.2020

Index :Yes/No.

Speaking order/Non-speaking order.

jbm

WEB COPY

List of Witness examined on the side of the Plaintiff:-

1. S.Balaji

List of Witness examined on the side of the Defendants :-

Nil

List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Exhibits	Description of documents	Dates
1.	Ex.P.1	Quotation issued by the Defendants	17.01.2015
2.	Ex.P.2	Revised Quotation issued by the Defendants	22.01.2015
3.	Ex.P.3	Letter of Acceptance issued by the Plaintiffs	27.01.2018
4.	Ex.P.4	Letter of Acceptance issued by the Defendants	28.01.2015
5.	Ex.P.5	R.A. Bill No.1 amounting to Rs.1,64,00,000/- raised by the defendants	28.01.2015
6.	Ex.P.6	Work order issued by the plaintiff	02.02.2015
7.	Ex.P.7	Account Statement of the plaintiff showing payments made to the Defendants	09.02.2015
8.	Ex.P.8	Quotation issued by the Defendants	01.03.2015
9.	Ex.P.9	R.A. Bill No.2 amounting to Rs.2,85,97,500/- raised by the defendants	01.03.2015
10.	Ex.P.10	Work order for construction 140 additional blocks issued by the plaintiff	12.03.2015
11.	Ex.P.11	Account Statement of the plaintiff showing payments made to the Defendants	23.03.2015
12.	Ex.P.12	Account Statement of the plaintiff showing payments made to the Defendants	13.04.2015
13.	Ex.P.13	R.A. Bill No.3 amounting to Rs.1,02,50,000/- raised by the defendants	10.06.2015
14.	Ex.P.14	Account Statement of the plaintiff showing payments made to the Defendants	16.06.2015
15.	Ex.P.15	E-mail sent by the plaintiff	08.07.2015
16.	Ex.P.16	Reply received from the 1 st defendant	09.07.2015
17.	Ex.P.17	Rejoinder mail sent by the plaintiff	09.07.2015

18.	Ex.P.18	E-mail sent by the plaintiff calling upon the Defendants to hand over the project by 17.07.2015	13.07.2015
19.	Ex.P.19	E-mail sent by the plaintiff	16.07.2015
20.	Ex.P.20	Reply received from the Defendants	16.07.2015
21.	Ex.P.21	Legal notice issued by the Defendants	07.08.2015
22.	Ex.P.22	Reply issued by the plaintiff	19.08.2015
23.	Ex.P.23	Reply issued by the plaintiff	24.08.2015
24.	Ex.P.24	Memorandum/Understanding of Settlement	19.09.2015
25.	Ex.P.25	Letter sent by the Defendant	10.10.2015
26.	Ex.P.26	Reply issued by the plaintiff	14.10.2015
27.	Ex.P.27	Cheque No.247175 issued by the Defendants	16.10.2015
28.	Ex.P.28	Intimation as to dishonor of cheque No.247175 issued SBI, T.Nagar	16.10.2015
29.	Ex.P.29	Notice issued under Section 138 of the Negotiable Instruments Act for dishonour of Cheque No.247175	31.10.2015
30.	Ex.P.30	Cheque No.247176 issued by the Defendant	25.11.2015
31.	Ex.P.31	Intimation as to dishonor of Cheque 247176 issued by SBI, T.Nagar	25.11.2015
32.	Ex.P.32	Cheque No.247177 issued by the Defendant	05.12.2015
33.	Ex.P.33	Intimation as to dishonour of cheque No.247177 issued by SBI, T.Nagar	05.12.2015
34.	Ex.P.34	Cheque No.247178 issued by the Defendant	10.12.2015
35.	Ex.P.35	Intimation as to dishonor of Cheque No.247178 issued by SBI, T.Nagar	10.12.2015
36.	Ex.P.36	Cheque No.247179 issued by the Defendant	15.12.2015
37.	Ex.P.37	Intimation as to dishonor of Cheque No.247179 issued by SBI, T.Nagar	15.12.2015
38.	Ex.P.38	Intimation as to dishonor of Cheque No.247175	02.01.2016

39.	Ex.P.39	Intimation as to dishonor of Cheque No.247176	02.01.2016
40.	Ex.P.40	Intimation as to dishonor of Cheque No.247177	02.01.2016
41.	Ex.P.41	Intimation as to dishonor of Cheque No.247178	02.01.2016
42.	Ex.P.42	Intimation as to dishonor of Cheque No.247179	02.01.2016
43.	Ex.P.43	Legal Notice issued by the plaintiff	18.01.2016
44.	Ex.P.44	Reply notice by the Defendants	05.02.2016
45.	Ex.P.45	Complaint copy in C.C.No.3572 of 2016 on the file of the XVII Metropolitan Magistrate, Saidapet	15.03.2016
46.	Ex.P.46	Complaint copy in C.C.No.3580 of 2016 on the file of XVII Metropolitan Magistrate, Saidapet	15.03.2016
47.	Ex.P.47	Letter of Authorization in favour of Mr.S.Balaji, General Manager, to represent the plaintiff in these proceedings	06.04.2018

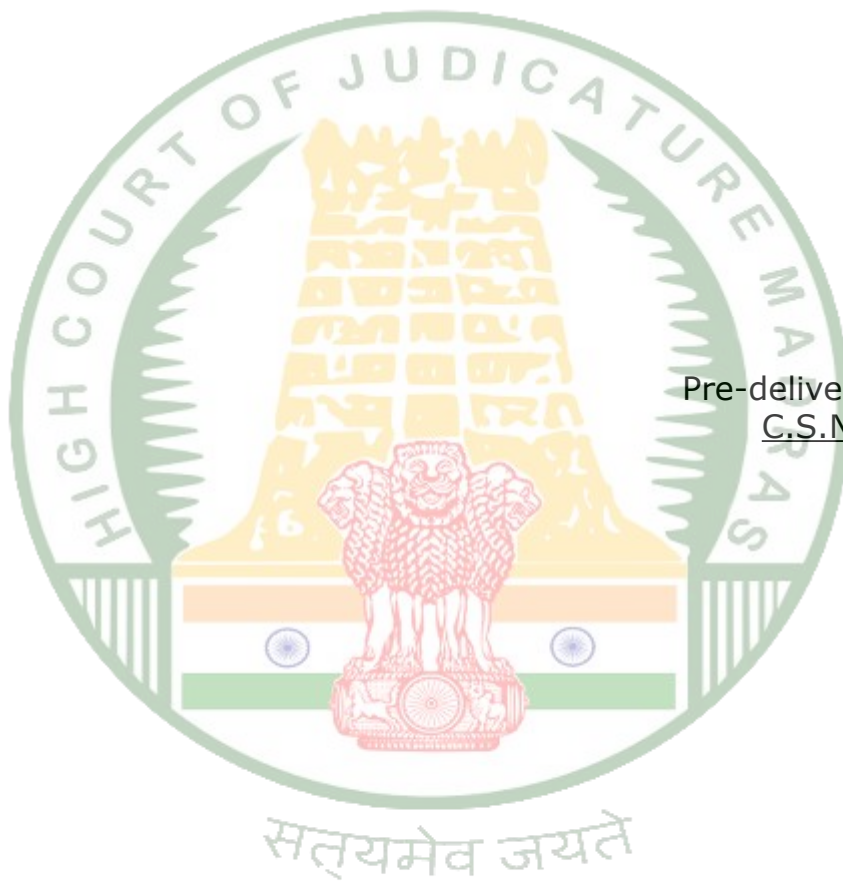
List of the Exhibits marked on the side of the Defendants:-

Nil

WEB COPY

Dr.G.Jayachandran,J.

jbm



Pre-delivery judgment in
C.S.No.646 of 2018

WEB COPY

21.02.2020