IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.01.2020

Pronounced on : 23.02.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.583 of 2009

M/s.Technicaliya Consultants (P) Ltd.,
represented by its Director,
Mr.L.E.Girinath
Old No.25 / New No.41, Vasanth Avenue,
MRC Nagar, R.A.Puram, Chennai – 600 028. ... Plaintiff

Vs.

1.Sree Gokulam Chit and Finance Co. (P) Ltd.,
represented by its Managing Director,
No.356, Arcot Road, Kodambakkam,
Chennai - 600 024.

2.Mr.Gokulam Gopalan,
Chairman & Managing Director,
Sree Gokulam Chit and Finance Co. (P) Ltd.,
No.356, Arcot Road, Kodambakkam,
Chennai – 600 024.

3.Mr.Baiju
Executive Director,
Sree Gokulam Chit and Finance Co. (P) Ltd.,
No.356, Arcot Road, Kodambakkam,
Chennai – 600 024. ... Defendants

Prayer:- This suit filed under Order IV Rule 1 of O.S Rules R/w. Order VII Rule 1 of C.P.C., prayed for a Judgment and Decree against the defendant:

a. Directing the defendants jointly and severally to pay the plaintiff a sum of Rs.1,56,22,443/- together with further interest at 18% p.a. On the said amount from the date of filing of suit till date of realization.

b. Directing the defendants jointly and severally to pay the cost of the suit.

For Plaintiff : Mr.P.J.Sri Ganesh

For Defendants : Mr.L.Rajasekar

JUDGMENT

The suit had been filed by the plaintiff, M/s.Technicaliya Consultants (P) Ltd., a company registered under the provisions of the Companies Act, 1956, represented by its Director L.E.Girinath seeking a judgment and decree against the defendants, Sree Gokulam Chit and Finance Co. (P) Ltd., represented by its Managing Director and Mr.Gokulam Gopalan, Chairman and Managing Director, Sree Gokulam Chit and Finance Co. (P) Ltd., and Mr.Baiju, Executive Director, Sree Gokulam Chit and Finance Co. (P) Ltd., directing them to jointly and severally pay to the plaintiff a sum of Rs.1,56,22,443/- together with further interest at 18% per annum on the said amount from the date of filing of the suit till date of realization and also for costs.

2. It had been stated in the plaint that the plaintiff was approached by the 2nd defendant to take up Architectural / Consultancy work for the project of the 1st defendant at Venjaramoodu, Trivandrum in Kerala. The work was for the purpose of construction of a Medical College and Hospital. The plaintiff commenced work and proceeded with the work on mutual trust, good faith and understanding on a fixed fee of Rs.3,00,000/- per month, pending finalization of the total fees based on a percentage of the total value of the work. The plaintiff had raised a series of bills, which were also paid through cheques. However, there were some unpaid bills and the suit had been filed claiming the amount towards them.

3. After taking up the work, the plaintiff had forwarded an advance bill by letter dated 13.03.2003 for a sum of Rs.5,00,000/- and this was acknowledged by the defendants who also issued a cheque for Rs.2,50,000/- by covering letter dated 29.03.2003.

4.The plaintiff then raised Bill No.1 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.2 for a sum of Rs.3,24,000/- which was paid by cheque for a sum of Rs.3,08,250/- again after deducting the tax at source. The plaintiff raised Bill No.3 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.4 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.5 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.6 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.7 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.8 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.9 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised

Bill No.10 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.11 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.12 for a sum of Rs.3,24,000/- for which payment was effected by cheque for a sum of Rs.3,08,250/- after deducting tax at source. The plaintiff raised Bill No.13 for a sum of Rs.3,30,600/- which was paid by cheque for a sum of Rs.3,14,535/- after deducting the tax at source. The plaintiff raised Bill No.14 for a sum of Rs.3,30,600/- which was paid by cheque for a sum of Rs.3,13,770/- after deducting the tax at source. The plaintiff raised Bill No.15 for a sum of Rs.3,30,600/- which was paid by cheque for a sum of Rs.3,13,770/- after deducting the tax at source. The plaintiff also raised the Bill Nos.16 and 17 for a sum of Rs.3,30,600/- by covering letters dated 31.01.2005 and 02.03.2005. It is the claim of the plaintiff that the said bill amounts were not paid. They then sent a reminder by letter dated 02.03.2005 and the amounts were paid subsequently. The plaintiff then raised Bill Nos.18 and 19 seeking a sum of Rs.3,30,600/- by covering letters dated 25.03.2005 and 06.04.2005. Again it is the claim of the plaintiff that said amounts have not been paid. Again they sent a reminder by letter dated

18.04.2005. The plaintiff then raised Bill Nos.20 and 21 for a sum of Rs.3,30,600/- by covering letters dated 28.06.2005 and 26.07.2005. It is the claim of the plaintiff that the said bill amounts have not been paid.

5. The plaintiff then sent letters seeking payment of the arrears by letters dated 25.11.2005 and 11.01.2006. The defendant then issued a cheque for Rs.4,71,950/- after deducting the tax at source by letter dated 28.04.2006 towards part payment of the dues. The plaintiff then sent a cumulative bill by letter dated 07.08.2006 demanding payment of the dues. This was addressed to the auditor of the 1st defendant. The plaintiff also issued a letter dated 05.10.2006 to the 2nd defendant enclosing the cumulative bills and demanding payment of all the arrears from the 1st defendant. The defendants then issued a cheque dated 02.11.2006 for a sum of Rs.4,71,950/- after deducting tax at source towards part payment of the dues.

6. The plaintiff issued a letter dated 21.11.2006 to the 3rd defendant requesting release of the amount due as they came to understand that he had taken over the operations. They sent a further reminder letter dated 22.01.2007. They sent a further letter to the 2nd defendant demanding payment by letter dated 06.02.2007 and indicated that they would withdraw their personnel from the site, if the pending payments are not released. There was no reply to the letters. A further reminder was sent demanding payment to the 1st defendant by letter dated 18.04.2007 for which again there was no reply. The plaintiff sent a third reminder letter on 07.05.2007 holding out that they would close down the office and clear the site by handing over the articles / things belonging to the 1st defendant. Though the letter was acknowledged, there was no reply.

7. The plaintiff then sought the TDS certificate dated 28.07.2007 for the deduction made towards tax and in response TDS certificate dated 28.07.2007 was issued acknowledging payments made on 28.04.2006 and 02.11.2006. The plaintiff claimed that the last payment was made on 02.11.2006 and thereafter no payment made by the defendant. The plaintiff then sent a 4th reminder by letter dated 21.11.2007, a 5th reminder by letter dated 24.12.2007, a 6th reminder by letter dated 23.01.2008, a 7th reminder by letter dated 22.02.2008, an 8th reminder by letter dated 11.04.2008, a 9th reminder by letter dated 30.04.2008 and a 10th reminder by letter dated 18.06.2008. It had been specifically stated that all these letters had been received and acknowledged by the 2nd and 3rd defendants, and also the Auditor of the 1st defendant. However, no replies were issued to the above letters. The plaintiff then issued a notice through their lawyer on 22.08.2008 claiming the balance amount including interest for a sum of Rs.2,14,26,362.62. The defendants then sent a reply on 14.10.2008 through their lawyer denying any kind of contractual relationship but admitting that the plaintiff was associated in the project of the defendants. The plaintiff sent a re-joinder on 25.11.2008 reiterating their claim. It is under these circumstances that the suit had been filed seeking a Judgment and Decree as stated above.

8. The defendants filed a written statement. They claimed that the 1st defendant was a Private Limited Company incorporated under the Companies Act, 1956 and engaged in Finance and Chit business. The 2nd defendant who stated that his name was actually A.M.Gopalan and not Gokulam Gopalan, acknowledged that he was the Managing Director of the 1st Defendant and that his son the 3rd defendant was the Executive Director of the 1st Defendant.

9. The defendants stated that Sree Gokulam Medical College and Hospital has nothing to do with the 1st defendant company. The defendant denied that an officer of the 1st defendant company had approached the plaintiff and the 2nd defendant had asked the plaintiff to take up the Architectural / Consultancy work for their project at Venjarammoodu, Trivandrum. They also denied that the plaintiff was entrusted the Architectural / Consultancy works for construction of the Medical College and Hospital at Venjaramood, Trivandrum. The defendants also denied that the plaintiff had commenced the work and proceeded with the work upon mutual trust, good faith and understanding on a fee of Rs.3,00,000/- per month pending finalization of the total fees. The defendants also denied the averments, that the plaintiff had raised a series of bills and that the same were paid through cheques and that they was still a balance left unpaid. The defendants further stated that the 2nd defendant, Managing Director of the 1st defendant was also the Managing Trustee of M/s.Foundation of Non Resident Indians, which Trust took up the project of construction of the Medical College and Hospital at Venjaramood, Trivandrum and which Medical College and Hospital later named as Sree Gokulam Medical College and Hospital.

10. The defendants stated that there was no contract between the 1st defendant and the plaintiff for construction of the Medical College and Hospital. They stated that there was no privity of the contract between the plaintiff and the defendants. The defendants stated that the Medical College and Hospital was constructed by a different entity and the 1st defendant has nothing to do with the work executed by the plaintiff. The defendants further stated that the Medical College and Hospital was a unit of the Foundation of Non Resident Indians, a Trust formed with an intention of establishing educational Institutions in the State of Kerala for the education and general advancement of the society by a Trust Deed executed on 14.03.2001 and registered as Document No.309 of 2001 dated 14.03.2001 in the office of the Sub-Registrar, Chalai, Trivandrum.

11. The defendants further stated that the Trust had funded the construction of Medical College and Hospital. The Managing Committee of the Trust had taken a decision and had availed the service of the plaintiff company as an Architectural Consultant alone. The construction was entrusted to various contractors and the Hospital Management have their own Project Engineers and other supervisory staffs to manage the construction work in the site. It was stated that the payments had been made to the plaintiff for the work completed. It was further stated that the 1st defendant did not make any payment for the bills submitted by the plaintiff. The bills were settled by the Trust through cheques drawn on the Catholic Syrian Bank Limited, Kodambakkam Branch, Chennai, from the year 2013. It was stated that the averment that the 1st defendant company had issued the cheques was not correct. It was further stated that the Hospital Management had instructed the 1st defendant to release the 1st cheque for an amount of Rs.2,50,000/- which was drawn on Bank of Baroda, Travancore Branch. Thereafter the plaintiff had submitted the bills for the work completed by them every month commencing from October 2003 to August 2005 and the Trust had disbursed the amounts by cheques after deducting the tax at source.

12. The defendants denied the averments in the plaint regarding submission of Bill Nos.1 to 15 and the receipt of payment from the defendants. It was stated that the Trust had issued the cheques in favour of the plaintiff and settled the bills. The defendants also denied the averments regarding Bill Nos.16 to 21 and also denied that the plaintiff had forwarded reminders to the defendants for the payments. The defendants stated that the Trust had forwarded payments to the plaintiff during April 2006 and November 2006 by cheques drawing from the Trust account for the Bills approved by the Auditors of the trust. The defendants stated that they had issued a detailed reply denying the averments made in the legal notice dated 22.08.2008. The defendants claimed that the plaintiff was aware of the lack of privity of contract between the plaintiff and the 1st defendant company. The defendants further stated that the plaintiff failed to discharge their professional obligations to the Trust and that the Trust had incurred additional costs for the completion of the project. They further stated that the plaintiff had delayed the execution of the work and again the Trust had incurred loss. These details have also been given in the reply notice dated 14.10.2008 and it is claimed that to avoid any legal action being initiated by the defendants the plaintiff had filed the instant suit. The defendants claimed that the suit should be dismissed with costs.

13. On the basis of the pleadings, the following issues were framed for trial:-

"1.Whether the plaintiff has executed the work on behalf of the first defendant or as otherwise alleged by the first defendant in their written statement?

2.Whether the first defendant is liable to pay the unpaid *raised by the plaintiffs for the work done?*

3.Whether the first defendant by not paying the unpaid bills raised by the plaintiff has caused losses to the plaintiff?

4.Whether there is any delay on the part of the plaintiff in completing the project as alleged by the defendants?

5.Whether the plaintiff is entitled for the suit claim?

6.Whether there is privity of contract between the plaintiff and

the defendants?

7.Whether the suit is maintainable before this Court?

8.Whether the plaintiff is entitled for any other relief?"

14. The parties were then invited to adduce evidence. The plaintiff examined as PW-1, L.E.Girinath, Director of the plaintiff company. He marked Exs.P1 to P103. The plaintiff then examined as PW2, P.Ramachandran, Managing Director of M/s.G.R.Tech Services Pvt Ltd., on whom the 1st defendant represented by the 2nd defendant had placed work order for plumbing and sanitary works for Sree Gokulam Medical

College and Hospital at Trivandrum. The witness did not mark any documents but affirmed Ex.P81. The defendants examined DW-1, N.K.Shanmugam, Arrears Inspector of the 1st defendant company. He marked Ex.D1. They also examined on summons being issued DW-2, V.Ramasamy, Assistant Manager, Catholic Syrian Bank, Kodambakkam Branch. DW-2 marked Exs.D2 to D6 (series).

15. Heard arguments advanced by Mr.P.J.Sri Ganesh, learned counsel for the plaintiff and Mr.L.Rajasekar, learned counsel for the defendants.

Issue No.7:-

16. This issue is with respect to the maintainability of the suit before this Court. The issue had primarily arisen since the project for which the plaintiff had acted as Architectural / Consultancy work was situated in Venjaramood, Trivandrum. The suit is not based on the property. The suit is based on the bills raised by the plaintiff to the 1st defendant, in which the 2nd and 3rd defendants are the Chairman and Managing Director and Executive Director respectively. The plaintiff has office at Chennai. The 1st defendant has office at Chennai. The 2nd and 3rd defendants have office at Chennai. It is purely a money claim as against the defendants. Bills were raised and cheques were issued in a bank located at Chennai. Therefore, I hold that the suit is maintainable before this Court and this Court has jurisdiction to examine the issues raised.

<u>Issue Nos.1 and 6:-</u>

17. Issue No.1 was whether the plaintiff had executed the work on behalf of the 1st defendant or not, as alleged by the 1st defendant and issue No.6 was whether there was privity of contract between the plaintiff and the defendants. In effect it has to be examined whether there was an agreement to be enforced between the plaintiff and the defendants.

18. The plaintiff M/s.Technicaliya Consultants (P) Ltd., claim to have extended their service towards Architectural / Consultancy work for the construction of a Medical College and Hospital, Venjaramoodu, Trivandrum. The suit had been laid for payment of the unpaid bills raised towards extension of such consultancy work. It is the case of the plaintiff that they were approached by an 'officer' of the 1st defendant, namely the 2nd defendant and was asked to take up the Architectural / Consultancy work.

19. In the plaint in paragraph 3, it had been stated as follows:

"The plaintiff states that they were approached by the officer of the 1st defendant, i.e., by the 2nd defendant and was asked to take up the Architectural / Consultancy work for their project at Venjaramoodu, Trivandrum."

20. In his proof affidavit, PW-1 L.E.Girinath, Director of the plaintiff company, had stated as follows:-

"I state that the plaintiff was approached by the officer of the 1st defendant, i.e., by the 2nd defendant and was asked to take up the Architectural / Consultancy work for their project at Venjaramoodu, Trivandrum."

21. The stand of the defendant in their written statement with respect to this particular averment in the plaint is as follows:

> *"5. …… The averment in paragraph No.3 of the plaint that the officer of the 1st defendant company had approached the plaintiff and the 2nd defendant had asked the plaintiff to take up the Architectural/Consultancy Work for their project at Venjarammoodu, Trivandrum is not correct."*

22. It is the stand of the defendants that there was no contract entered into between the 1st defendant and the plaintiff for extending Architectural/Conultancy work for the construction of Medical College and Hospital. However, this fact and assertion in the plaint that the 2nd defendant had approached the plaintiff requesting them to take up the work was not specifically put to PW-1 during his cross examination. There is a general denial in the written statement, but a specific question was not put to PW-1 with respect to the veracity of the said statement. The 2nd defendant also did not graze the witness box to deny this particular statement. On the other hand, a total stranger, N.K.Shanmugam, working as Arrears Inspector had adduced evidence on behalf of the defendants. There is no doubt he is an incompetent witness.

23. The main defense is that there was no privity of contract between the 1st defendant and the plaintiff. The documents however speak otherwise. Ex.P2 dated 13.03.2003 is a letter addressed to the 2nd defendant in his capacity as Chairman / Managing Director of the 1st defendant. The entire letter is extracted below:

> "*Dear Sir,*
>
> *Sub: **Proposed Gokulam Medical College and Hospital Complex at Trivandrum – Regs**.*
>
> *We have to establish a Site Office & Staff Housing for your Project. We would request you to kindly release an advance amount of Rs.5,00,000/- towards our Consultancy fees.*
>
> *Thanking you and assuring you of our best services at all times.*
>
> *Yours truly,*
> *For **TECHNICALIYA CONSULTANTS PVT. LTD.,***
> *Sd/-*
> *(N.Gopalakrishnan)*
> *Director."*

24. This was replied by Ex.P3 by the 1st defendant represented by its Divisional Manager. By this a cheque for Rs.2,50,000/- had been forwarded to the plaintiff. If the project had been executed by a stranger entity as claimed by the defendants, then the letter addressed by the plaintiff should have been returned back to the plaintiff. There was no necessity for either the 1st or 2nd defendant to take further action on Ex.P2 and issue Ex.P3 which is the payment of a sum of Rs.2,50,000/- towards an advance claimed for Rs.5,00,000/-.

25. The explanation given by DW-1 that the 1st defendant was acting as a 'postman' is rejected by me. There was no obligation on the part of the 2nd defendant to act as a 'postman'. If in the opinion of their own Arrear Inspector, the 2nd defendant is to be considered as a 'postman', then it is a personal opinion of DW-1, their own witness. A personal opinion has no place in a serious and responsible discharge in the assistance of judicial function namely, tendering evidence on oath.

26. By the same argument which the defendants rely, stating that they are a different entity and the Trust namely “M/s. Foundation of Non Resident Indians” is a different entity, then to uphold such separate identity, the 2^{nd} defendant should not have even accepted to receive the bills raised by the plaintiff. Having received the bills and ensured payments in the bills raised, the 2^{nd} defendant is directly by Sub-Silentio agreement contact responsible towards payment of the further unpaid bills raised by the plaintiff. The dishonest intentions of the defendants stood exposed by the very fact that they have introduced this defense only when a legal notice had been issued by the plaintiff. Taking shield behind alleged ignorance and claim that there was no privity of contract may sound good in a debate but that stands exposed in a court of law.

27. The trend of the plaintiff addressing and raising bills to the 2^{nd} defendant in his capacity as Chairman and Managing Director of the 1^{st} defendant continued right through the project. In the words of DW-1, the 2^{nd} defendant continued to act as a 'postman'. The 2^{nd} defendant alone is privy to such a decision to act as a 'postman'. He did not come to the witness box to explain. He had sent an individual with the designation

Arrears Inspector to depose on his behalf. As stated DW-1 is neither competent nor reliable.

28. Ex.P4 is the letter enclosing Bill No.1 dated 09.10.2003. This has also been addressed to the 2nd defendant in his capacity as Chairman / Managing Director of the 1st defendant. Ex.P5 is the reply dated 16.10.2003 forwarding a cheque. There was no necessity for the 2nd defendant to even issue a reply to Ex.P4 or rather to even accept receiving Ex.P4. Ex.P6 is a letter dated 12.11.2003 issued by the plaintiff enclosing Bill No.2. This was also addressed to the 2nd defendant in his capacity as Chairman/ Managing Director of the 1st defendant. Very interestingly this had been replied by Ex.P7 in the letter head of the 1st defendant. A cheque had also been forwarded. The reply is dated 27.11.2003. The claim of the defendants that since the cheque had been issued by Trust, there was privity of contract only between the Trust and the plaintiff has to be rejected, in view of the fallacy on the face of such a contention.

29. The plaintiff never raised any bills with the Trust. The plaintiff raised bills only with the 1st defendant. The 1st defendant replied to the bills raised. They enclosed cheques towards payment. They claimed that the signatory to the cheques alone had a privity of contract with the plaintiff. However, issuance of the cheques from whichever account is a matter of internal arrangement the defendants had with a third party. The defendants had an option to either pay the bill themselves or pay the bill through any other entity. They paid the bill through the Trust. But they received the bills. They ensured that the bills were honoured. This is not the work of the mere 'postman'. This was discharge of an obligation arising out of an agreement. This is sub silentio agreement.

30. The plaintiff, who had rendered Technical and Architectural Consultancy, raised the bills with the 2nd defendant in his capacity as Chairman / Managing Director of the 1st defendant. The 1st defendant replied by enclosing cheques for the bill raised. It is immaterial who had signed the cheques. Every bill could be honoured by different entities. Not all of them can be termed to have entered into a contract with the plaintiff.

31. It is the party who accepts the bill and ensures its compliance who is responsible when non-compliance is complained. That is the fulcrum of the case of the plaintiff. It is the case of the plaintiff that they have raised the bills with the 2nd defendant in his capacity as Chairman/ Managing Director of the 1st defendant. The bills were honoured. Then the payments stopped when further bills were raised. The plaintiff seeks answers. The answers are sought against the defendants who had earlier ensured payments. The stand of the defendants is rejected as not just malafide but also as dishonest.

32. The exhibits filed show that continuously bills were raised on the defendants. Payments were made. Cheques were issued. The cheques were issued under the covering letter of the 1st defendant. In this manner, the plaintiff raised Bill No.3 on 24.12.2003, Ex.P9, which was honoured by letter dated 09.01.2004 under Ex.P10. The plaintiff raised Bill No.4 under Ex.P11 and the 1st defendant promptly replied by enclsoing cheque under covering letter dated 03.02.2004 marked as Ex.P12. Bill No.5 was issued under Ex.P13 and Bill No.6 was raised under Ex.P14. These were replied by Ex.P15. Ex.P16 was a request to the 2nd defendant to forward the certificates relating to tax deducted at source. Ex.P17 was the letter for Bill No.7 which was replied by Ex.P18. Ex.P19 was the covering letter for Bill No.8 and again the 1st defendant replied by Ex.P20. The plaintiff raised Bill No.9 under Ex.P21 which was replied by Ex.P22. The procedure continued with the plaintiff raising bills and the 1st defendant issuing letters enclosing the cheques for the payment.

33. Then the payments stopped.

34. The plaintiff addressed the 3rd defendant by Exs.P55, P56, P58, P60, P62, P64 and P66 to mention a few of the documents filed. The 2nd or 3rd defendants did not address the plaintiff that they are not responsible for effecting payment. Such a stand was taken for the first time only in the reply notice. It is clear it was the brain wave of a legal mind.

35. At this juncture, it would be appropriate to refer to the following observation of the Hon'ble Supreme Court in ***Arivandandam Vs. T.V.Satyapal and Anr.,*** reported in ***1977 4 SCC 467.*** The Hon'ble

Supreme Court held as follows:

> *"7.* **.....** *It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to colloborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the cooperation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of....."*

36. There can be only one conclusion reached namely that the defendants are liable for the claims of the plaintiff. This conclusion is reached on the conduct of the defendants themselves. Neither the 2nd defendant nor the 3rd defendant addressed even a single letter to the plaintiff denying liability or stating that a third party Foundation Trust was responsible for effecting payment. They also did not have the courage to graze the witness box to subject themselves for cross examination. They examined DW-1, N.K.Shanmugam their Arrears Inspector who with much pleasure described them, particularly the second defendant, as a 'postman'. The said description and the stand taken by the defendants are rejected by me.

37. In ***Bharat Petroleum Corportion Ltd., Vs. Great Eastern Shipping Co. Ltd.,*** reported in ***(2008) 1 SCC 503***, the Hon'ble Supreme Court had examined a "Sub silentio agreement". Paragraph 19 is as follows:

> *"It is, no doubt, true that the general rule is that an offer is not accepted by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offeree's silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance-an agreement sub silentio. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their*

conduct."

Thus a contract between the parties can be proved not only by their words but also by their conduct.

38. In the instant case, the conduct of the 2nd defendant in receiving letters under which the bills were raised by the plaintiff and by authorizing letters to be issued enclosing cheques to the plaintiff is a very significant conduct. The Chairman and the Managing Director of the 1st defendant, namely the second defendant had permitted the letter head of the 1st defendant to be used for issuing letters enclosing the cheques towards the bills raised by the plaintiff. Similarly, the 3rd defendant whom the plaintiff had addressed several letters as stated above had chosen to remain silent but as Executive Director of the 1st defendant had not protested that the letter heads of the 1st defendant were used to issue letters enclosing cheques to honour the bills raised by the plaintiff. The further conduct which exposes the 2nd and 3rd defendants is that they did not come to the witness box to assert that they had no agreement with the plaintiff either in their individual capacity or as Directors of the first defendant and subject themselves for cross-examination. They hide themselves from the Court. They cannot hid in the darkness behind a screen of falsity forever. Their stand is exposed by their own conduct.

39. The learned counsel for the defendants pointed out the cross-examination of PW-1 who stated that there has been no agreement for the Architectural/Consultancy work rendered by the plaintiff. The witness also stated that it was normal procedure to have an agreement. But in the instant case, there was no such agreement. The witness also stated that the cheques had been drawn on Catholic Syrian Bank Limited, Kodambakkam Branch, Chennai, in the name of the Trust, but that however, the said entity had not been made as a party to the suit. The learned counsel therefore stated that even the witness had admitted that there was no direct privity between the plaintiff and the defendants herein.

40. The statements of the witness is correct. But the interpretation given thereto by the learned counsel is not correct.

41. The conduct of the defendants clearly attract ratio laid down by the Hon'ble Supreme in the judgment sited above with respect to Sub silentio agreement and would clearly establish that there was a contract between the plaintiff and the defendants.

42. The contract was invited by the 2nd defendant. It was for the 2nd defendant to establish that there was no contract between the plaintiff and the defendants and that there was a contract between the plaintiff and another entity. No witness had been examined on behalf of the defendants either from the 1st defendant or from the said Trust to deny that there was no juridical relationship between the plaintiff and the 1st defendant and that there was relationship only between the plaintiff and the Trust.

43. I therefore answer Issue Nos.1 and 6 in favour of the plaintiff and hold that there was an existing privity of contract between the plaintiff and the defendants.

Issue Nos.2, 3 and 4:-

44. The plaintiff had produced more than sufficient documents to show that they raised bills for work done, that the initial bills were honoured by issuance of cheques and later, the payments stopped for the subsequent bills raised. Bill Nos.16,17,18,19,20 and 21 remain unpaid.

Thereafter, the defendants without referring to any of the bills had sent a cheque for Rs.4,71,950/- by letter dated 28.04.2006 which had been marked as Ex.P49.

45. A perusal of the documents marked show that the plaintiff has filed as documents every letter correspondence with the defendants. Either the defendants had not replied or more significantly had not replied denying liability or when they have replied they have issued cheques towards the bills raised. It is to be repeated that the 2nd and 3rd defendants had not entered the witness box to speak about the facts to their knowledge that they and the 1st defendant in which they are the Chairman and Managing Director and Executive Director respectively are not responsible for the claims of the plaintiff but that it is a third party Trust which is responsible. It is also to be noted that the 2nd and 3rd defendants are also the Trustees of the said third party Trust. They had not entered the witness box even in their capacities as Trustees of the third party. Trust to state that, it was the Trust which had built the Medical College and Hospital. Deception is writ large on the face of the defendants, particularly, the 2nd and 3rd defendants. This Court is not prepared to grant any leverage when a party approaches legal proceedings with malafide intentions as their foundation.

46. The issues relate to unpaid bills for the work done by the plaintiff and whether there was a delay on the part of the plaintiff in completing the project. That the bills remain unpaid had been established by bills simply not being paid by the defendants.

47. The defendants have not come forward with reliable evidence to speak about the delay in execution of the work. Their witness DW-1, M.K.Shanmugam was working as an Arrears Inspector. The nature of his duty has not been stated by him in his proof affidavit. He can be actually termed as a 'postman' of the defendants to speak whatever the defendants have instructed him to say and adduce evidence without sanctity and respect to the oath which he had taken.

48. In the absence of any reliable evidence by the defendants regarding any alleged delay in the work executed by the plaintiff, I hold that the said assertion by the defendants in their written statement is only a moon shine defence.

49. Additionally, if the defendants disclaim any liability to pay the bills raised by the plaintiff, then it does not lie in their mouth to speak about the delay in execution of the project. If they were to enter into a defense of delay, then it would imply that they were interested in the execution of the project but that they have a right to deny payment owing to delay in execution. If they were interested in execution of the project, then they are directly involved with the project. Therefore, in view of this contradictory stand taken by the defendants namely, that the defendants do not have privity of contract, but at the same time, questioning the delay in execution when there is no privity, leads to a strong inference that the defendants actually have a privity with the plaintiff, but that they had put up a false defense before the Court.

50. In view of all these reasons, I hold that the defendants are liable for the unpaid bills raised by the plaintiff. I further hold that the defendants cannot question or cannot raise any issue with respect to alleged delay in the execution of the project. Either they are interested in the execution of the project or not. They will have to make a categorical statement. They have not done so.

51. I therefore hold with respect to issues No.2 & 3 that the 1st defendant is liable to pay the unpaid bills raised by the plaintiff and the issues are answered in favour of the plaintiff. With respect to issue No.4, I hold that the defendants have not established that there was a delay on execution of the project and therefore hold that there was no delay on the part of the plaintiff in completing the project as alleged by the defendants. Issue Nos. 2, 3 & 4 are answered in favour of the plaintiff.

Issue Nos.5 and 8:-

52. In view of the discussion above, I hold that the plaintiff is entitled for the suit claim. The plaintiff is entitled not only because of they had established their claim by filing necessary documents namely, the correspondences and the bills raised, but also because the defendants have come to Court with dishonest intention to defeat the legitimate claim of the plaintiff. In view of this reason, I hold that the plaintiff is entitled for a decree with costs. Costs would be determined under the amended Section 35 of the Code of Civil Procedure. The issues are answered accordingly, in favour of the plaintiff.

53. In the result,

1. The suit is decreed with costs.

2. Insofar the costs of the plaintiff is concerned, the Registry is directed and delegated by the Court to determine the costs as per the Bill/memo of Costs submitted by the plaintiff in accordance with Section 35 of C.P.C., as amended by the Commercial Courts Act, 2015. The plaintiff is specifically entitled to the fees and expenses of the witness, the legal fees and expenses incurred and for any other expenses incurred in connection with the judicial proceedings and also for recovery of the actual Court fees paid into Court.

23.02.2021

smv/vsg

Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

List of Witnesses Examined on the side of the Plaintiff:-

P.W.1 – L.E.Girinath

P.W.2 – P.Ramachandran

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

1. Ex.P1 : Certified copy of the board resolution dated 24.04.2009.

2. Ex.P2 : Office copy of the letter written by the plaintiff to the defendant dated 13.03.2003.

3. Ex.P3 : Covering letter written by the defendant to the plaintiff dated 29.03.2003.

4. Ex.P4 : Photocopy of the letter by the plaintiff to the defendant dated 09.10.2003.

5. Ex.P5 : The reply sent by the defendant to the plaintiff dated 16.10.2003.

6. Ex.P6 : Copy of the covering letter addressed by the plaintiff to the defendant dated 12.11.2003.

7. Ex.P7 : The covering letter written by the defendant to the plaintiff dated 27.11.2003.

8. Ex.P8 : E-mail communication addressed to the plaintiff dated 12.12.2003.

9. Ex.P9 : Copy of the covering letter along with bill by the plaintiff to the defendant dated 24.12.2003.

10. Ex.P10 : The defendant sent a letter to the plaintiff dated 09.01.2004.

11. Ex.P11 : Covering letter addressed to the defendant by the plaintiff dated 21.01.2004.

12. Ex.P12 : Letter sent by the defendant to the plaintiff dated 03.02.2004.

13. Ex.P13 : Photocopy of the letter sent by the plaintiff to the defendant dated 20.02.2004.

14. Ex.P14 : Photocopy of the letter by the plaintiff to the defendant dated 23.03.2004.

15. Ex.P15 : Letter sent by the defendant to the plaintiff dated 07.04.2004.

16. Ex.P16 : Office copy of the letter sent by the plaintiff to the defendant dated 23.04.2004.

17. Ex.P17 : Office copy of the letter sent by the plaintiff to the defendant dated 23.04.2004.

18. Ex.P18 : Letter sent from the defendant to the plaintiff dated 07.05.2004.

19. Ex.P19 : Photocopy of the letter sent from the plaintiff to the defendant.

20. Ex.P20 : Letter sent from the 1st defendant to the plaintiff dated 31.05.2004.

21. Ex.P21 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 23.06.2004.

22. Ex.P22 : Letter sent by the defendant to the plaintiff dated 10.07.2004.

23. Ex.P23 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 22.07.2004.

24. Ex.P24 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 20.08.2004.

25. Ex.P25 : Letter sent by the 1st defendant to the plaintiff dated 13.08.2004.

26. Ex.P26 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 08.09.2004.

27. Ex.P27 : Letter sent by the defendant to the plaintiff dated 24.09.2004.

28. Ex.P28 : Letter sent by the defendant to the plaintiff dated 14.10.2004.

29. Ex.P29 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 27.10.2004.

30. Ex.P30 : Letter sent by the defendant to the plaintiff dated 09.11.2004.

31. Ex.P31 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 24.11.2004.

32. Ex.P32 : Letter sent by the defendant to the plaintiff dated 03.12.2004.

33. Ex.P33 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 27.12.2004.

34. Ex.P34 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 31.01.2005.

35. Ex.P35 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 02.03.2005.

36. Ex.P36 : Photocopy of the remainder letter sent by the plaintiff to the 2nd defendant dated 02.03.2005.

37. Ex.P37 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 25.03.2005.

38. Ex.P38 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 06.04.2005.

39. Ex.P39 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 18.04.2005.

40. Ex.P40 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 09.05.2005.

41. Ex.P41 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 02.06.2005.

42. Ex.P42 : Photocopy of the remainder letter sent by the plaintiff to the 2nd defendant dated 28.06.2005.

43. Ex.P43 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 26.07.2005.

44. Ex.P44 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 25.11.2005.

45. Ex.P45 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 11.01.2006.

46. Ex.P46 : Letter by the plaintiff along with the billing details dated 15.02.2006.

47. Ex.P47 : E-mail extract from one Jaswanth to the plaintiff dated 22.02.2006.

48. Ex.P48 : Fax message of work status report dated 27.02.2006.

49. Ex.P49 : Letter from the 1st defendant to the plaintiff dated 28.04.2006.

50. Ex.P50 : Letter sent by the plaintiff dated 22.07.2006.

51. Ex.P51 : E-mails sent by one Jaswath to the plaintiff dated 22.07.2006.

52. Ex.P52 : Photocopy of the letter sent by the plaintiff to Mr.S.G.Kalyanaraman, Chartered Accountant dated 07.08.2006.

53. Ex.P53 : Photocopy of the letter sent by the plaintiff to Mr.S.G.Kalyanaraman, Chartered Accountant dated 08.08.2006.

54. Ex.P54 : Photocopy of the letter sent by the plaintiff to Mr.S.G.Kalayanaraman, Chartered Accountant dated 05.10.2006.

55. Ex.P55 : Photocopy of the letter sent by the plaintiff to the 3rd defendant dated 21.11.2006.

56. Ex.P56 : Photocopy of the letter sent by the plaintiff to the 3rd defendant dated 22.01.2007.

57. Ex.P57 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 06.02.2007.

58. Ex.P58 : Photocopy of the letter sent by the plaintiff to the 2nd defendant dated 18.04.2007.

59. Ex.P59 : Acknowledgement card dated.

60. Ex.P60 : Photocopy of the letter sent by the plaintiff to the 3rd defendant dated 07.05.2007.

61. Ex.P61 : Photocopy of the letter sent by the plaintiff to 2nd defendant dated 18.07.2007.

62. Ex.P62 : Photocopy of the letter sent by the plaintiff to the 3rd defendant dated 21.11.2007.

63. Ex.P63 : Acknowledgement card.

64. Ex.P64 : Photocopy of the letter sent by the plaintiff to the 3rd defendant dated 24.12.2007.

65. Ex.P65 : Acknowledgement cards.

66. Ex.P66 : Photocopy of the letter sent by the plaintiff to the 3rd defendant dated 23.01.2008.

67. Ex.P67 : Acknowledgement cards.

68. Ex.P68 : Photocopy of the letter sent by the plaintiff to the 3rd defendant dated 22.02.2008.

69. Ex.P69 : Photocopy of the letter sent by the plaintiff to the 3rd defendant dated 11.04.2008.

70. Ex.P70 : Acknowledgement cards.

71. Ex.P71 : Legal notice sent by the plaintiff's counsel to the defendants dated 22.08.2008.

72. Ex.P72 : Acknowledgement cards.

73. Ex.P73 : Reply notice sent by the defendants' counsel to the plaintiff's counsel dated 14.10.2008.

74. Ex.P74 : Rejoinder sent by the plaintiff's counsel to the defendants' counsel dated 25.11.2008.

75. Ex.P75 : Proof of delivery.

76. Ex.P76 : Internal communication of the plaintiff dated 07.06.2005.

77. Ex.P77 : True copy of the draft agreement dated 17.04.2002.

78. Ex.P78 : Copy of the defendants' company website.

79. Ex.P79 : Photocopy of the letter dated 09.05.2002.

80. Ex.P80 : Office copy of the floating of civil tenders dated 14.06.2002.

81. Ex.P81 : Office copy of the tender for plumbing and sanitation works from plaintiff to the defendants dated 23.02.2004.

82. Ex.P82 : Photocopy of the correspondence relating to electrical works dated 12.01.2004.

83. Ex.P83 : Office copy of correspondence relating to HVAC works dated 20.08.2004.

84. Ex.P84 : Office copy of the correspondence relating to fire protection works dated 28.09.2005.

85. Ex.P85 : Office copy of the correspondence relating to fire alarm works dated 16.08.2004.

86. Ex.P86 : Office copy of the correspondence relating to lift works dated 03.05.2004.

87. Ex.P87 : Office copy of the correspondence relating to STP works dated 05.10.2004.

88. Ex.P88 : Office copy of the correspondence relating to D.G. Set works dated 20.08.2004.

89. Ex.P89 : Office copy of the correspondence relating to flooring works dated 12.12.2003.

90. Ex.P90 : Office copy of the correspondence relating to Hydro Pneumatic system dated 04.10.2004.

91. Ex.P91 : Office copy of the correspondence relating to name board dated 08.12.2005.

92. Ex.P92 : Office copy of the correspondence relating to sprinkler system dated 21.07.2005.

93. Ex.P93 : Office copy of the correspondence relating to GRP/SMP Panel Tank dated 13.07.2005.

94. Ex.P94 : Office copy of the correspondence relating to pumps

dated 18.08.2005.

95. Ex.P95 : Office copy of the correspondence relating to VCB Panel Switch Board dated 20.08.2004.

96. Ex.P96 : Office copy of the correspondence relating to supply and installation of windows, ventilators with supply of glass dated 31.12.2004.

97. Ex.P97 : Office copy of the correspondence relating to transformers dated 22.07.2004.

98. Ex.P98 : Office copy of the correspondence relating to lighting dated 19.10.2004.

99. Ex.P99 : Office copy of the correspondence relating to cement supply and reinforcement bars dated 22.05.2003.

100. Ex.P100 : Xerox copy of Engineers engaged by the plaintiff in graphic presentation.

101. Ex.P101 : Xerox copy of memento shield.

102. Ex.P102 : Original of performance report of works dated 20.03.2007.

103. Ex.103 : Xerox copy of tax deduction certificate issued by Foundation of Non Resident Indians, Medical College P.O., Trivandrum to the plaintiff dated 28.07.2007.

List of Witnesses Examined on the side of the defendant:-

D.W.1 – N.K.Shanmugam.

D.W.2 – V.Ramasamy

List of Exhibits Marked on the side of the defendants:-

1. Ex.D1 : Company has issued a Board Resolution dated 05.11.2012.

2. Ex.D2 : Authorization letter given by the Chief Manager in favour of DW-2 dated 23.09.2016.

3. Ex.D3 : Copy of the Trust Deed dated 14.08.2001.

4. Ex.D4 : Attested copy of the amended Trust Deed dated 03.12.2001.

5. Ex.D5 : Attested copy of the amended Trust Deed dated 26.03.2004.

6. Ex.D6 (series) : Attested copy of the Foundation of Non-Resident Indians account.

Smv/vsg 23.02.2021

C.V.KARTHIKEYAN, J.,

smv/vsg

Pre-Delivery Judgment made in

C.S.No.583 of 2009

23.02.2021