



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T. RAVINDRAN

S.A.No. 1013 of 2008

and

M.P.No.1 of 2008

The Union of India
Rep. by Garrison Engineers
Fort. St. George
Chennai 600 009

... Appellant/Appellant/Plaintiff

Vs.

1. Famectech
No.17, N.P. Developed Plot
Industrial Estate, Guindy
Chennai 600 097

2. R.S. Kanwar
Superintending Engineers
SOI (Services)
Chief Engineer Chennai Zone
Island Grounds, Chennai 600 009

... Respondents/ Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment of the learned Appellate authority, the Principle Judge, City Civil Court at Chennai dated 24.07.2006 made in Appeal Suit No. 583/05 confirming the judgment and order dated 30.03.1999 passed by the learned III Asst. Judge, City Civil Court, Chennai in O.S.No.3054/95.

For Appellant : Mr. S. Janarthanam, SPC

For Respondents

For R1 : Mr. P.B. Ramanujam

For R2 : No appearance

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 24.07.2006 passed in Appeal Suit No. 583/05 on the file of the Principle Judge, City Civil Court, Chennai



confirming the judgment and decree dated 30.03.1999 passed in O.S.No.3054/95 on the file of the III Assistant Judge, City Civil Court, Chennai .

2. The unsuccessful plaintiff in the courts below is the appellant in the Second Appeal.

3. The plaintiff has laid the suit against the defendants under Section 14 of the Indian Arbitration Act, 1940 for directing the sole Arbitrator, namely, the second defendant to file the award published by him on 19.10.1994 into the Court and on such production to pass a decree in favour of the plaintiff and against the first defendant in terms of the award passed by the second defendant with costs.

4. Shorn of unnecessary particulars, it is seen that the case of the plaintiff is that the plaintiff had called for tenders from various contractors for relaying the water supply line at the family quarters in Nandanam and the lowest tender was submitted by the first defendant and thereafter, on 10.02.1992, a revised amount of Rs.2,18,945/- for carrying out the special requirements for the said quarters was submitted by the first defendant, which was accepted by the plaintiff on 18.03.1992 by way of a letter and when the plaintiff insisted the first defendant for signing the contract and to receive the work order, the first defendant did not put its signature nor commenced the work at the site as per the terms of the contract and despite the forwarding of the work order through registered post on 21.04.1992, there had been no response from the first defendant and consequently, the plaintiff was unable to complete the work and left with no other alternative, gave a final warning to the first defendant on 28.07.1992 and had accepted the tender of another agency on 21.11.1992 for Rs.2,64,505/- and the entire work was completed on 23.03.1993 and on account of the abovesaid facts, according to the plaintiff, it had sustained loss and thus, the first defendant had to compensate the plaintiff for the breach of the contract by the first defendant for a sum of Rs.32,689.38 and the first defendant failed to pay the said amount to the plaintiff. Therefore, according to the plaintiff, it had appointed a sole arbitrator as per the terms of the contract, namely, the second defendant and the sole arbitrator had issued a notice to both the parties and passed the award on 19.10.1994 and even thereafter, the plaintiff's request to the first defendant to settle the claim did not yield any positive response from the first defendant and the arbitrator had signed and published the award for a sum of Rs.32,689.38 without costs or interest and the plaintiff had received the award published and signed by the arbitrator on 24.10.1994 at Madras and therefore, the plaintiff's claim is



within the time prescribed under law and hence, the suit against the first defendant is filed.

5. It is seen that the arbitrator, who had been arrayed as the second defendant in the suit had remained exparte both in the suit and in the first appeal.

6. The first defendant resisted the plaintiff's suit contending that the plaintiff's suit is hopelessly barred by limitation and the arbitrator is none other than the officer of the plaintiff who is stated to have made the award and though the award was claimed to be published after giving notice to the parties on 19.10.1994 and from the said date of the notice, the plaintiff, as per law, is required to file the award of the arbitrator within 30 days as per Article 119 of the Arbitration Act. The suit having been filed on 23.11.1994 beyond 30 days is clearly barred by limitation. Further it is also put forth by the first defendant that the claim of the plaintiff that he had received the award on 24.10.1994 is incorrect as in the plaint the date of receipt of the award has been originally mentioned as 21.10.1994 in several places and also the date had been corrected from 21.10.1994 to 24.10.1994 solely for the purpose of showing the limitation period as if the suit is filed within the time allowed by law from the date of receipt of the award and therefore, the first defendant contended that the plaintiff's suit is barred by limitation and liable to be dismissed.

7. It is found that neither the plaintiff nor the first defendant had adduced oral and documentary evidence in support of their case and hence the courts below had proceeded to dispose of the case laid by the plaintiff based on the documents produced along with the plaint as well as the pleas put forth by the parties and resultantly, it is noted that both the trial court as well as the first appellate court has held that the plaintiff's suit is clearly barred by limitation. Impugning the judgment and decree of the courts below, the plaintiff has preferred the second appeal.

8. The plaintiff has laid the suit in the form of Original Petition directing the second defendant, the arbitrator, to file the award published on 19.10.1994, which, according to the plaintiff, was passed in respect of the dispute arising between the plaintiff and the first defendant. As per the pleas put forth by the plaintiff in the plaint though the tender of the first defendant had been originally accepted, it is noted that the revised tender had been submitted by the first defendant which was also accepted by the plaintiff. However, the plaint clearly avers that the first defendant did not sign the contract

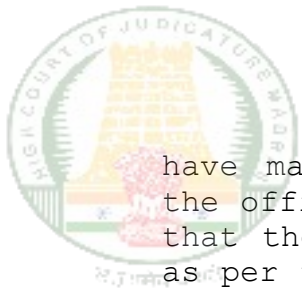


nor received the work order to undertake the work specified by the plaintiff in the tender. That apart, the first defendant had also failed to proceed with the work despite the final warning given by the plaintiff and hence, the plaintiff had been necessitated to hand over the work under question to the third party. Therefore, the plaintiff has to establish clearly that there has been a clear concluded contract between the plaintiff and the first defendant for the specified work mentioned by the plaintiff in the tender. If there is no contract, as such, between the parties nothing would flow from the alleged passing of the award by the arbitrator, namely, the second defendant.

9. When the parties had not endeavoured to adduce evidence in respect of their respective claims, as noted by the courts below, there is nil material on the part of the plaintiff to establish that a concluded contract had been entered into between the plaintiff and first defendant and that there is a clause contained in the contract for appointing an arbitrator in the case of any dispute arising out the said contract. When it is admitted that the first defendant had not even signed the contract sent to him, therefore, it is seen that as concluded by the courts below, the appointment of an arbitrator on the part of the plaintiff to resolve the dispute between the parties is found to be not legally sustainable.

10. Even the award copy has not been, as such, exhibited in the court. Be that as it may, when according to the plaintiff the arbitrator has signed the award on 19.10.1994 and the same had been received by the plaintiff on 21.10.1994, it is not made clear by the plaintiff as to why the date of receipt of the award mentioned as 21.10.1994 in the plaint in all the places had been corrected as 24.10.1994 wherever it is mentioned and accordingly, according to the first defendant, the plaintiff had not actually received the award on 24.10.1994 as claimed by it and by way of correcting the date, as above pointed out, had endeavoured to bring its suit within the limitation period by committing fraud upon the court and with reference to the abovesaid factors, no proper explanation is forth coming on the part of the plaintiff.

11. When the first defendant had denied the receipt of the award by the plaintiff from the arbitrator, it is the duty of the plaintiff to produce the copy of the award delivered to him and the date of receipt of the award was only on 24.10.1994 as mentioned in the plaint and thereby establish that the plaintiff's suit is in time. As held by the courts below, the plaintiff has not chosen to examine any person to safely hold that the award had been received by the plaintiff's office on 24.10.1994 only. The plaintiff being the public office ought to



have maintained the despatch and receipt of tapal received in the office. The said register should have been produced to show that the award was received by the plaintiff only on 24.10.1994 as per the correction made in the plaint. Therefore, the courts below are found to be justified in drawing adverse inference against the plaintiff for failing to place the best evidence to show that the award of the arbitrator had been really received by the plaintiff only on 24.10.1994.

12. In the light of the abovesaid discussions, as rightly contended by the first defendant and as rightly concluded by the courts below, when there is no material on the part of the plaintiff to determine that it had received the award only on 24.10.1994, the courts below are justified in assuming that the notice of the award was given to the parties on 19.10.1994 i.e., the date of the award and thereafter only it has been published by the arbitrator and so calculated, it is found that particularly considering the plea of limitation as provided under Article 119 of the Limitation Act, the time limit being given is only 30 days and by the abovesaid calculation, the period of limitation would expire by 20.11.1994 and even assuming that the award, as originally stated in the plaint i.e. 21.10.1994 is taken into consideration and the limitation period is calculated, the limitation for the suit would expire by 22.11.1994 on factual matrix and when the plaintiff is found to have presented the suit before the Court only on 23.11.1994 and when there is no acceptable cause put forth by the plaintiff as to how it would be entitled to seek the exemption as provided under Order 7 Rule 6 CPC, in all, the courts below have rightly concluded that the plaintiff's suit is hopelessly barred by limitation. As above pointed out, the plaintiff having failed to establish that there is a concluded contract between the plaintiff and the first defendant and the said contract had been reduced into writing and the contract contains the clause for appointment of an arbitrator for deciding the dispute between the parties, above all, in the light of the abovesaid discussions, when the plaintiff's suit is not established to have been laid within the time laid by the law, the courts below are justified in declining the reliefs sought for in the suit. The reasonings and the conclusions of the courts below for dismissing the plaintiff's suit for the reasons including the point of limitation when found to be based on proper appreciation of the materials available on record and on the point of law and when no valid reason has been projected by the plaintiff for warranting any interference to the same, it is seen that no substantial question of law is involved in the second appeal.



13. For the reasons aforestated, the judgment and decree Judgment and decree dated 24.07.2006 passed in Appeal Suit No. 583/05 on the file of the Principle Judge, City Civil Court, Chennai, confirming the judgment and decree dated 30.03.1999 passed in O.S.No.3054/95 on the file of the III Assistant Judge, City Civil Court, Chennai, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principle Judge, City Civil Court, Chennai
2. The III Assistant Judge, City Civil Court, Chennai,

+1CC to Mr.P.B.Ramanujam, Advocate, Sr.No.6838

S.A.No.1013 of 2008

GJ (CO)
K.RK. (01.10.2021)