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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2021

PRONOUNCED ON : 06.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.NO.1193 OF 2010

AND

M.P.NO.1 OF 2010

Namakkal Municipality,
Rep. by its Commissioner,
Namakkal.

... Appellant / Defendant

versus

M.Palaniyandi

... Respondent / Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.09.2009 made in A.S.No.22 of 2005 on the file of the Sub Court, Namakkal, modifying the judgment and decree dated 16.07.2004 made in O.S.No.86 of 2003 on the file of the learned Additional District Munsif, Namakkal.

For Appellant : Mr.P.Srinivas

For Respondent : Mr.T.Dhanyakumar

JUDGMENT

Being aggrieved over the enhancement of compensation ordered in A.S.No.22 of 2005 dated 17.09.2009 on the file of the learned Subordinate Judge, Namakkal, the respondent in the said appeal, preferred this Second Appeal.

2. Before the learned Additional District Munsif, Namakkal, the respondent in this Second Appeal, filed a suit in O.S.No.86 of 2003 as against the appellant, seeking the following reliefs;



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"a) directing the defendant by a mandatory injunction to accept the plaintiff as the successful bidder for the lease of Perarignar Anna Bus Stand and Taxi Stand Toll Collection for 2003-2004 or in the alternative accepting the right of the plaintiff to claim damages for the loss sustained by him in not accepting his tender;

b) interdicting the defendant by a permanent injunction from holding any auction for the lease of Perarignar Anna Bus Stand and Taxi Stand Toll Collection for 2003-2004 on 21.02.2003 or any date thereafter,

c) awarding costs of the suit payable by the defendant."

3. The learned Additional District Munsif, Namakkal, by judgment and decree dated 16.07.2004, after awarding Rs.250/- as compensation to the plaintiff, dismissed the suit and negatived the prayer sought for by the plaintiff.

4. Aggrieved over the said findings, the plaintiff preferred an appeal in A.S.No.22 of 2005 on the file of the learned Subordinate Judge, Namakkal. By judgment and decree dated 17.09.2009, the learned Subordinate Judge, Namakkal, after enhancing the compensation from Rs.250/- to Rs.10,000/-, dismissed the appeal filed by the respondent. Feeling aggrieved over the same, particularly, in respect to the enhancement of compensation, the appellant / defendant, preferred this Second Appeal.

5. For the sake of convenience, hereinafter, the parties, are referred to, as per their litigative status before the trial Court.

6. The laconic averments made in the plaint, are as follows:

(i) The defendant invited tenders for leasing the right of collection of toll at Namakkal Perarignar Anna Bus Stand and Taxi Stand i.e. for one year from 01.04.2003 to 31.03.2004 along with the leasing of some other items, for January 2003. As per the said invitation, the intending parties, are to submit their closed tenders, on or before 11.00a.m. of 14.02.2003 to be addressed to the Commissioner, Namakkal Municipality. Those participating in the tenders, are to submit



the deposit amount of Rs.2,00,000/- for this item, which is noted as item no.2 in the said auction notice. Apart from that, Solvency Certificate to the tune of Rs.3,00,000/-, is to be submitted or in the alternative additional Rs.1,00,000/- by Draft, is to be submitted with the deposit.

(ii) The plaintiff desirous of submitting his tender for the auction date of 14.02.2003 for obtaining the lease of the said item no.2, submitted a closed tender for Rs.12,12,111/- [Rupees Twelve Lakhs Twelve Thousand and One Hundred Eleven only] along with his consent letter to bid and two banker's cheques dated 13.02.2003 on State Bank of India, Namakkal, in favour of the Commissioner, Namakkal Municipality.

(iii) The date of opening of the tender was fixed at 11.30a.m. on 14.02.2003. Though the plaintiff even long before 11.00a.m., was waiting at the Office of the defendant at 5.00p.m., he was told by the Commissioner that, because of the reason that, the tender submitted by the plaintiff, was the only tender and so, he decided to call for a fresh tender. Thereafter, the defendant postponed the auction for some other date. After postponing the auction, he has not returned the deposit amount to the plaintiff. The auction taken by the defendant is malafide and arbitrary. There is no condition in the tender notice that, postponing the auction for the reason that, only one participant submitted a closed tender. Hence, the suit.

7. The case of the defendant, is as follows:

(i) In the tender notice, there was a condition that after retaining the deposit made by the successful bidder, the deposit made by others, has to be returned. Only due to the reason that, the plaintiff alone submitted a closed tender, the deposit made by the plaintiff was retained with the defendant, only, in order to threatened the defendant, the present suit has been filed.

8. Based on the above said pleadings, the learned Additional District Munsif, Namakkal, framed necessary issues and tried the suit. On the side of the plaintiff, plaintiff himself examined as P.W.1 and marked 4 documents, as Ex.A.1 to Ex.A.4. On the side of the defendant, the Commissioner, Namakkal Municipality, was examined as D.W.1. and marked 3 documents, as Ex.B.1 to Ex.B.3.

9. Having considered the materials placed before him, the learned Additional District Munsif, Namakkal, vide judgment and decree dated 16.07.2004, came to the conclusion that, the



prayer sought for by the plaintiff, cannot be entertained. However, the learned Additional District Munsif, Namakkal, ordered the defendant to pay Rs.250/- as a compensation, to the plaintiff. In the appeal preferred by the plaintiff, the learned Subordinate Judge, Namakkal, enhanced the said compensation, as Rs.10,000/-. In otherwise, the learned Subordinate Judge, Namakkal, confirmed the findings arrived at by the trial Court in respect to the prayer sought for in the plaint.

10. Aggrieved over the said findings of the Court below, the defendant, is before this Court with the present Second Appeal. The Second Appeal was admitted on file after formulating the following substantial questions of law;

"1. is not the decree of the lower appellate court in enhancing the compensation liable to be set aside for the reason that there is no specific reason for the enhancement except that of the fact that the sum of money had been in deposit with the appellant municipality ?

2. Whether the decree of the lower appellate court in enhancing the compensation on the basis that the deposits of the other participants were refunded and that of the plaintiff was retained, is perverse for the reason that the plaintiff was the only bidder and the others had merely applied for participation and had not at all participated thus showing that a cartel had been formed to knock off the bid ?

3. is the respondent entitled to the compensation at all in view of the fact that the retention of the deposited amount is part of the steps taken to secure the public revenue from being put to loss ? "

11. The learned counsel for the appellant would submit that, without assigning any specific reason, the First Appellate Court, enhanced the compensation, which is erroneous in law.

12. On the other hand, it is the submission of the learned counsel for the respondent that, after the receipt of the deposit amount from the plaintiff on 14.02.2003 till filing of the suit, the said deposit amount, has not been returned to the plaintiff. Only in the said circumstances, by considering the loss (i.e. interest) incurred by the plaintiff, the First Appellate Court, enhanced the costs and therefore, it cannot be said that, the said findings arrived at by the First Appellate Court, is a perverse one.



13. Now, on considering the said submissions with the relevant records, in general, if the Second Appeal is filed against the concurrent findings, this Court will not interfere with the findings arrived at by the Court below. Therefore, in this case also, it is not appropriate to discuss the reasons for negating the prayer sought for by the plaintiff in the suit. Further, no appeal has been preferred against the concurrent findings made on the prayer sought for by the plaintiff.

14. In otherwise, during the time of his submissions, the learned counsel for the appellant fairly conceded that, the amount of Rs.3,00,000/-, which was deposited by the plaintiff, has not returned to him, till filing of the suit. In this regard, he fairly admit that, there was no condition in the tender notice as Municipality, is having the right to withhold the deposit amount, after postponing the auction.

15. Accordingly, without any tender condition, the Commissioner, Namakkal Municipality, withhold the deposit amount and therefore, the said act committed by the appellant would cause great hardship to the plaintiff, apart from the loss of interest. Therefore, being the reason that, the amount of deposit, is Rs.3,00,000/- [Rupees Three Lakhs Only], it cannot be said that, the compensation of Rs.10,000/-, is not an excessive one.

16. Though the reasoning given by the First Appellate Court is not having any much strength, being the reason that the defendant retained Rs.3,00,000/- for a considerable period, without authority. I am of the view that, there is no error found in the judgment rendered by the learned Subordinate Judge, Namakkal.

17. Accordingly, in the light of the said discussions stated supra, the substantial questions of law are all answered in favour of the respondent. Hence, the Second Appeal is dismissed and the judgment and decree of the lower Appellate Court dated 17.09.2009 passed in A.S.No.22 of 2005 on the file of the Sub Court, Namakkal, is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge,
The Sub Court,
Namakkal.

2. The Additional District Munsif,
Namakkal.

3. The Commissioner,
Namakkal Municipality,
Namakkal.

4. The Record Keeper,
V.R.Section,
High Court, Madras.

S.A.No.1193 of 2010
and M.P.No.1 of 2010

VG-II (CO)
RLP (14/06/2022)