



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.08.2021
Pronounced on	26.08.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.1405 of 2010

Test Steel Suppliers,
Rep. by its Proprietor S.P.Palanisamy,
No.36, (Old No.70), Sembudoss Street,
(B-10), Second Floor,
Chennai - 600001. ... Appellant/Plaintiff

Vs.

Tamilnadu State Transport Corporation,
(Villupuram Division - I) Limited,
Rep. by its Managing Director,
No.3/137, Saalmedu, Varadha Reddy Post,
Villupuram District, Pin - 605602. ... Respondent/Defendant

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure, praying to allow the second appeal by setting aside the Judgement and Decree dated 21.04.2010 rendered in A.S.No.568 of 2008, on the file of the V Additional Judge, City Civil Court, Chennai, and to decree the suit in O.S.No.4782 of 2004, dated 27/04/2007 as prayed with costs throughout on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Prasanna Vineeth Durai
for Mr.N.Prem Kumar

For Respondent : Mr.T.Chandrasekaran

JUDGEMENT

(Heard through video conferencing)

This Second Appeal is directed against the Judgement and Decree dated 21.04.2010 passed by the V Additional Judge, City Civil Court, Chennai in A.S.No.568 of 2008.

2. The Plaintiff is the Appellant herein.

3. The averments of the parties in brief:-

The Appellant/plaintiff is the dealer for supplying iron and steel. The defendant/transport corporation opened various



tenders for supply of materials for the vehicles run by them between the period from April, 2001 to September, 2003. For the allotment of tenders, the plaintiff has to pay a refundable earnest money deposit as prescribed by the defendant/Corporation. A sum of Rs.75,000/- so deposited by the appellant was not refunded to him after the supply for the accepted tender has been made. Since the Appellant made repeated demands, the respondent/defendant refunded a sum of Rs.40,000/- alone on various dates by retaining the balance of Rs.25,000. For the legal notice sent by the appellant/plaintiff, the defendant has sent a reply stating that the plaintiff has not complied the open tender condition with regard to the purchase orders placed by the defendant. But the said contention is not correct. The materials were supplied only as per the terms and conditions agreed between both parties. So the plaintiff has filed a suit for recovery of sum which is part of the earnest money deposit along with interest at 24% p.a from 24.06.2004.

4. The defendant has stated that the plaintiff has failed to execute the purchase orders as per the terms and conditions of the tender. As per Clause 16 of the tender condition, the earnest money deposit can be refunded only after completion of supply of materials in accordance with the purchase order. Since the plaintiff has not completed the supply of materials in terms of the purchase order, the defendant is not liable to refund the earnest money deposit.

5. The learned trial Judge has framed the following issues :-

- 1) Whether the plaintiff is entitled for the suit claim?
- 2) To what relief?

6. During the course of trial, on the side of the appellant/plaintiff, P.W.1 was examined and Exs.A1 to A16 were marked. On the side of the defendant, D.W.1 was examined and Exs.B1 to B12 were marked.

7. The trial Court decreed the suit as prayed for. The defendant/Corporation challenged the Judgement of the trial Court by way of filing the First Appeal by stating that the trial Court has not complied the Clause 16 of the tender conditions. It is further stated that because of the failure on the part of the plaintiff to supply the materials as per the purchase order, the defendant had to place the materials from the open market by incurring a higher price and because of that, he sustained loss. The learned First Appellate Judge has taken up the issue as to whether the defendant is liable to refund the earnest money deposit to the plaintiff. After hearing the parties, the trial Court reversed the Judgement of the trial Judge and dismissed the Suit. Aggrieved over that, the present Second Appeal is filed.



learned First Appellate Judge has not rendered his Judgement solely on the basis of the eligibility of the accountant to give evidence on behalf of the plaintiff. The first Appellate Judge has dealt the whole evidence and the conclusion given by the First Appellate Court is in consideration of the same. In such circumstances, the substantial question No.1 will not arise for consideration at all. Hence, in this Second Appeal, the following substantial questions of law alone have been taken up for consideration:-

1. Whether the Lower Appellate Court is correct in allowing the First Appeal, without framing a proper additional issues in dis-allowing the interest given by the Lower Court?

2. Whether the Lower Appellate Court exceeds its jurisdiction in allowing the First Appeal, when the case of the defendant has been disproved by Ex.A14 to Ex.A16?

9. The facts that the Appellant/plaintiff has been allotted with various open tenders by the respondent/defendant between the period from April, 2001 to September, 2003 for supply of materials like M.S Angles, M.S Flats, M.I Channels and S.I sheets, is not denied. Before fulfilling the purchase orders given by the respondent/defendant, the appellant has to remit the earnest money deposit and accordingly, the appellant has deposited a sum of Rs.75,000/- on various dates for 6 open tenders. Out of the above 6 tenders, for 4 tenders no purchase orders have been placed within the prescribed time and hence, they were lapsed. There are 2 remaining open tenders and for which, purchase orders No.041/PS4/TNSTC/2 dated 18.04.2002 and No.187/PS4/TNSTC/3 dated 06.06.2003, the respondent/defendant raised purchase orders.

10. It is submitted by the appellant/plaintiff that despite the purchase orders were complied by supplying the materials, the respondent/defendant did not refund the earnest money deposit. Since the appellant has been making repeated demands, the defendant has refunded a sum of Rs.40,000/- and thereafter, a sum of Rs.15,000/-. However, it is claimed by appellant that the respondent/defendant has not refunded the balance earnest deposit of Rs.25,000/-. Though the total earnest money deposit refunded by the respondent/defendant was Rs.55,000/-, the appellant continued to claim that there is a balance of Rs.25,000/-. The respondent/defendant also did not dispute the quantum of the refund amount retained by them. Their only contention is that as per Clause 16 of the tender conditions, the earnest money deposit and security deposit will be refunded only after the completion of the supplying of materials against the purchase orders. Even as per Ex.A13, the respondent/defendant has admitted that they have refunded Rs.15,000/- to the appellant and there is a balance of Rs.25,000/- and that has not been refunded due to non-completion of the supply against purchase orders as per the



terms. But the appellant/plaintiff has submitted that as per the tender conditions No.8, which is with regard to the terms of payment, it is laid down as under:-

8. Payment Terms :

The payment terms for the supply will be 60 days credit.

(or)

Any other payment terms quoted which shall be more beneficial to our Corporation including those carrying attractive cash discount as alternative terms of payment. Bank commission/charges if any will be borne by the firm.

11. So as per the above condition, there is an option that the payment terms can be set out by the parties. It is claimed by the appellant that the appellant has set the following terms of payment for the open tenders.

OUR TERMS AND CONDITIONS OF THE RATE QUOTED FOR THE SUPPLY OF STEEL SHEETS (GI & CRC)

1. The quoted rates are inclusive of all taxes.
2. The quoted rates are Ex-our Godown, Chennai.
3. Unloading should be done by you at your cost.
4. 100% Proforma Invoice payment should be made by D.D.

Payable at Chennai. DD charges at your Cost.

5. The quoted rates are valid for Thirty Days from the closing date of this Tender.

6. We require minimum Seven Days time to supply Gusset piece.

Hence the gusset piece will be supplied within seven days from

the date of receipt of your Purchase Order. The order for the

total quantity of gusset piece should be placed in single

Purchase Order.

The rates offered by us is applicable only if the above terms and conditions are accepted by you.

12. It is seen from the oral evidence given on the side of the respondent/defendant that the transaction between the appellant and the respondent in connection with the supply of materials on purchase orders would be on the basis of payment of 100% amount on raising the invoice. It has been admitted by D.W.1 that even the orders placed under Exs.B3 and B4 were also in accordance with the said terms only. For the purchase orders placed by the respondent/defendant vide 41/PS4/TNSTC/2 dated 18.04.2002, invoice has been raised vide Ex.B6.

13. The above mentioned purchase order is seen from Ex.B3. In Ex.B3 unit rate has been specified for the quantity specified in the purchase order Ex.B6. And the said rate was accepted by the appellant also. Had the respondent/defendant



14. In a contract for supply of material from open tenders, the terms of contract would be bilateral and it cannot be unilateral. Since the parties have agreed to the payment term as proposed by the appellant/plaintiff, the respondent/defendant cannot find fault with the appellant without making 100% performa invoice payment. It is not the claim of the respondent/defendant that the appellant/plaintiff did not supply the materials, despite the defendant made 100% payment as per the payment terms.

16. The respondent/defendant produced Ex.B4 to show that he has purchased certain materials from other sources on higher price. But it is not due to the fault of the appellant but it is because of the failure to make payment as per the payment terms by the respondent himself. Hence, any loss caused to the respondent/defendant on this score, cannot be attributed to the appellant/plaintiff.

18. The learned First Appellate Judge has given his own interpretation for the payment term of 100% performa invoice payment, by overlooking the practice adopted by the parties while placing orders and supplying materials. The learned First Appellate Judge has recorded certain findings with regard to the payment term which was not the claim of the respondent/defendant himself. Hence, the conclusion of the learned First Appellate Judge about the entitlement of the respondent/defendant to withhold the earnest money deposit of Rs.25,000/- is totally misconceived and hence, warrants interference. Regarding the interest part also, the learned



First Appellate Judge misguided himself and dealt a new issue in the appeal without giving an opportunity for the appellant/plaintiff. In fact, there is no pleadings made by the respondent/defendant himself about the dis-entitlement of interest in the event of allowing the refund claim made by the plaintiff. Further, there is no dispute with regard to the quantum of earnest money deposit but the withholding of the earnest money deposit is because of the partial interpretation of the terms of the tender conditions. So the substantial questions of law Nos.1 & 2 are answered in favour of the appellant/plaintiff.

In the result, this Second Appeal is allowed and the Judgement and Decree dated 21.04.2010 passed by the V Additional Judge, City Civil Court, Chennai, in A.S.No.568 of 2008 is set aside by upholding the Judgement and Decree dated 27.04.2007 passed by the XV Assistant City Civil Judge, Chennai, in O.S.No.4782 of 2004. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The V Additional Judge,
City Civil Court, Chennai.

2.The XV Assistant Judge,
City Civil Court,
Chennai.

3.The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to Mr.N.Premkumar, Advocate, S.R.No.43492

+1cc to Mr.T.Chandrasekaran, Advocate, S.R.No.43242

S.A.No.1405 of 2010

SS(CO)
GN(20/10/2021)