



WEB COPY

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 27.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A.NO.2831 OF 2019 AND C.M.P. NO.25470 OF 2019

1. The Managing Director,
C.M.W.S.S.B.,
No.1, Pumping Station Road,
Chennai - 600 002.

2. The General Manager,
C.M.W.S.S.B.,
No.1, Pumping Station Road,
Chennai - 600 002.

... Appellants

versus

V.N.Mohanraj

... Respondent

Prayer:

Appeal filed under Clause 15 of the Letters Patent against the order dated 14.09.2018 passed in W.P.No.29562 of 2013.

Prayer in W.P.No.29562 of 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus, to direct the respondents herein to make payment as per the petitioner's fee bill dated 06.12.2005 with 12% interest from the date of the bill.

For Appellants : Mr.N.Ramesh

For Respondent : Mr.K.Doraiswamy,
Senior Counsel for
Mr.N.Ishtiaq Ahmed



JUDGMENT

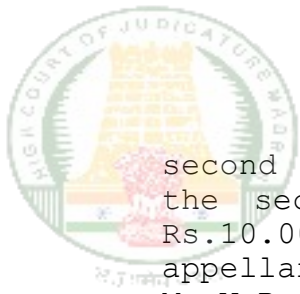
(Judgment of this Court was delivered by T.RAJA,J.)

This writ appeal has been brought by the Managing Director and the General Manager of C.M.W.S.S.B., Chennai, challenging the correctness of the impugned order dated 14.09.2018 passed in W.P. No.29562 of 2013, wherein the learned Single Judge, allowing the same, directed the appellants to settle the bill amount along with interest at the rate of 9% per annum within a period of three months from the date of receipt of the copy of the order. Aggrieved by the same, the appellants are before this Court.

2.Mr.N.Ramesh, learned counsel appearing for the appellants submitted that the respondent/writ petitioner has submitted his bio-data requesting the Board to include his name in the Board panel advocates. Accepting his request, the second appellant had sent a letter dated 07.06.2002 to the respondent/writ petitioner informing that as per his request, the Board has decided to entrust the High Court cases to the respondent with the following fees structure:

'As per the Board's Fees Resolution No.273/2000, dated 31.07.2000, a sum of Rs.1,500/- is payable for a single W.P. Including W.M.Ps if any, if the case is won and Rs.1,200/- if the case is lost. Legal fees for second appeal (appeal suit) and Civil Suits (High Court Suits) for Application in Civil Suits and Original Petitions and Original Side Appeals, the fees will be paid as per the above said fee structure only.'

3.Learned counsel for the appellants further submitted that the above said letter dated 07.06.2002 clearly stated that the fees would be paid as per the above said fee structure only and the same was duly acknowledged by the respondent/writ petitioner on 14.06.2002. In this regard, the Board has entrusted a case in O.A. No.309 of 2005 to the Advocate Mr.V.N.Mohanraj/ respondent herein and engaged the Government Pleader Mr.V.Raghupathy to defend the case on behalf of the Board, which, by filing a counter affidavit, disclosing the facts, prayed this Court to issue suitable directions to settle the issue in the interest of justice. As against the interim order passed on 18.04.2005 in A.No.1440 of 2005 in O.A. No.309 of 2005, O.S.A. No.81 of 2005 was preferred by one IVRCL Infrastructures and Projects Ltd. and Chennai Metropolitan Water Supply and Sewerage Board, represented by its Chief Engineer. However, the said O.S.A. No.81 of 2005 was disposed of on 29.04.2005 with a direction to M/s.IVRCL Infrastructures and Projects Ltd., Chennai-97 to furnish a Bank Guarantee for a sum of Rs.5.00 crores to the



second appellant Board and on compliance of the said condition, the second appellant Board was directed to make payment of Rs.10.00 crores to the first appellant. Learned counsel for the appellants further submitted that the Government Pleader Mr.V.Raghupathy had claimed Rs.30,000/- and Rs.15,000/- as fees for his appearances in O.S.A. No.81 of 2005 and O.A. No.309 of 2005 and claimed 1/3rd fees for the respondent herein in the above cases, namely, Rs.10,000/- and Rs.5,000/-. Accordingly, the Board has paid fees Rs.30,000/- and Rs.10,000/- in O.S.A. No.81 of 2005 on 23.05.2005 and paid Rs.15,000/- and Rs.5,000/- in O.A. No.309 of 2005 on 24.01.2006 and 11.11.2009 to Mr.V.Raghupathy and Mr.V.N.Mohanraj respectively. Subsequently, the sub contractor M/s.IVRCL Infrastructures and Projects Ltd., the applicant and M/s.Gammon India Ltd., main contractor, the first respondent in O.A. No.309 of 2005 had settled the issue amicably out of the Court and filed a memo withdrawal of O.A. No.309 of 2005. Accordingly, Application Nos.1440 and 1441 of 2005 were dismissed as settled out of Court and consequently O.A. No.309 of 2005 was also dismissed on 08.11.2005. While so, the writ petitioner/respondent has claimed a fee of Rs.10,91,789/- as per the bill dated 06.12.2005 with interest from the date of the bill for O.A. No.309 of 2005 as per the High Court Fees Rules 1956. As he was entrusted with the case after agreeing for the fee structure of the Board, he is estopped from claiming more fees than what he had agreed and acknowledged as per letter dated 07.06.2002. Therefore, the Rule 2(1)(b) will be applicable only to the suits and not to the Original Application and the claim of Rs.10,91,789/- by the respondent/writ petitioner is not justifiable. But, this aspect has been completely over looked by the learned Single Judge.

4.Mr.K.Doraiswamy, learned Senior Counsel representing for Mr.N.Ishtiaq Ahmed, learned counsel for the appellant submitted that the respondent/writ petitioner was appointed as Panel Advocate of the appellants Board for the years 2002-2006 to defend the cases of the Board. In this regard, the appellants Board entrusted O.A. No.309 of 2005 on the file of the Original Side of this Court to defend the case. However, the writ petitioner, being the counsel for the second respondent in O.A. No.309 of 2005, filed counter and defended the Board all throughout the proceedings running for months. Finally, when the Court was about to deliver the judgment, the applicant reported that the matter was settled out of Court and therefore, the same was dismissed on 08.11.2005 as settled out of Court. In this regard, the writ petitioner/respondent forwarded the same to the appellants on 06.12.2005 along with his fee bill for Rs.10,91,789/-. But, on 10.10.2006, the first appellant informed the respondent/writ petitioner that since the Board is not a beneficiary of the amount, Rule 2(1)(b) of the High Court Fee is not applicable in the case and therefore, the fee claimed cannot



be complied with. Hence, on 17.10.2006, the respondent/writ petitioner stated that if the High Court Fee Rule is not applicable for the above case, the same is applicable to the above O.S.A. No.81 of 2005, for which, the second appellant informed that the respondent/writ petitioner was paid fee for O.S.A. No.81 of 2005 by letter dated 20.12.2006. For the above reply, the respondent/writ petitioner informed the second appellant that after disposal of O.S.A. No.81 of 2005 on 29.04.2005, the above O.A. No.309 of 2005 was posted for hearing on 17.06.2005 and it was argued by all the counsels at length on various dates till it was withdrawn on 08.11.2005 as settled out of Court. Therefore, the respondent/writ petitioner requested the appellants to pay the fee as per the Bill dated 06.12.2005 and made a reminder on 08.06.2007. By letter dated 15.06.2007, the second appellant informed that detailed replied had already been sent and hence, further claim in this regard could not be considered. For the above letter, the respondent/writ petitioner sent a reply on 20.07.2007 informing the details and requested for payment of the fee, for which, the second appellant, by letter dated 17.09.2008 informed that in the case, the Board was not a beneficiary of the amount of Rs.21,77,07,845/- as contract value and that the case was dismissed as settled out of Court and was not contested at the final stage and therefore, the fee claim could not be considered. Therefore, the respondent/writ petitioner filed the above W.P. No.29562 of 2013 for issuance of writ of mandamus directing the appellants to make payment as per the writ petitioner's fee bill dated 06.12.2005 along with 12% interest per annum.

5.Drawing our notice to 2(1)(b) of the High Court Fees Rules, 1956, learned Senior Counsel submitted that since the respondent/writ petitioner is eligible to get the fee claimed by him as per 2(1)(b) of the High Court Fee Rules, the learned Single Judge, allowed the writ petition, directing the appellants to settle the bill amount along with interest at the rate of 9% per annum. Therefore, the impugned order passed by the learned Single Judge does not call for any interference.

6.Heard Mr.N.Ramesh, learned counsel appearing for the appellants and Mr.K.Doraiswamy, learned Senior Counsel, representing for Mr.N.Ishtiaq Ahmed, learned counsel for the respondent.

7.The case of the respondent/writ petitioner is that as per Boards Fee Structure for original side matters, High Court Fee Rule alone is applicable, but, the appellants have not come forward to pay his fee bill dated 06.12.2005. Therefore, he has come forward with the above W.P. No.29562 of 2013 seeking direction to the appellants to make payment as per the fee bill dated 06.12.2005 along with 12% interest per annum. Whereas, the



case of the appellants is that the writ petitioner/respondent has claimed a fee of Rs.10,91,789/- as per the fee bill dated 06.12.2005 with interest from the date of the bill for O.A. No.309 of 2005 as per the High Court Fees Rules 1956. As he was entrusted with the case after agreeing for the fee structure of the Board, he is estopped from claiming more fees than what he had agreed and acknowledged as per letter dated 07.06.2002. Therefore, the Rule 2(1)(b) will be applicable only to the suits and not to the Original Application and that the claim of Rs.10,91,789/- by the respondent/writ petitioner is not justifiable. In this regard, it is necessary to extract Rule 2 (1)(b) of the High Court Fees Rules, 1956:

(b) In cases where the suit is decided ex parte, the defendant not entering appearance or having entered appearance not contesting, then -

(1) If the amount or value of the claim does not exceed Rs.5,000/-, 10 percent;

(2) If the amount or value exceeds Rs.5,000/- and does not exceed Rs.10,000/-, on Rs.5,000 as above and on the remainder, 7 percent;

(3) If the amount or value exceeds Rs.10,000 and does not exceed Rs.20,000, on Rs.10,000 as above, and on the remainder, 5 percent;

(4) If the amount or value exceeds Rs.20,000 and does not exceed Rs.50,000, on Rs.20,000 as above, and on the remainder, 3 percent;

(5) If the amount or value exceeds Rs.50,000 and does not exceed Rs.1,00,000, on Rs.50,000 as above, and on the remainder, 2 percent;

(6) If the amount or value exceeds Rs.1,00,000 and does not exceed Rs.2,00,000, on Rs.1,00,000 as above, and on the remainder, 1 per cent;

(7) If the amount or value exceeds Rs.2,00,000, on Rs.2,00,000 as above, and on the remainder, $\frac{1}{2}$ per cent;

8. A perusal of the above Rule shows that if the amount or value of the claim does not exceed Rs.5,000/-, 10 percent would be payable as fees in cases, where the suit is decided ex parte, namely, the defendant has not entered appearance or having entered appearance, but, not contested the case. Moreover, in such cases, if the amount or value exceeds Rs.5,000/-, Rs.10,000/-, Rs.20,000/-, Rs.50,000/- and Rs.1,00,000/- and does not exceed Rs.10,000, Rs.20,000/-, Rs.50,000/-, Rs.1,00,000/- and Rs.2,00,000/- on Rs.5,000/-, Rs.10,000/-, Rs.20,000/-, Rs.50,000/- and Rs.1,00,000/- as above and on the remainder, 7, 5, 3, 2, 1 percent respectively would be payable and if the amount or value exceeds Rs.2,00,000/-, on Rs.2,00,000/- as above, and on the remainder, $\frac{1}{2}$ percent would be payable. Since



it is clear that Rule 2(1)(b) of the High Court Fees Rules is not applicable in the case on hand, we are unable to accept the submission made by the learned senior counsel. Therefore, this writ appeal is liable to be allowed. Hence, the impugned order is set aside.

9. Accordingly, this writ appeal stands allowed. Consequently, C.M.P. No.25470 of 2019 is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Managing Director,
C.M.W.S.S.B.,
No.1, Pumping Station Road,
Chennai - 600 002.
2. The General Manager,
C.M.W.S.S.B.,
No.1, Pumping Station Road,
Chennai - 600 002.

+1cc to Mr.N.Ishtiaq Ahmed, Advocate, S.R.No.49933

W.A.No.2831 of 2019 and C.M.P. No.25470 of 2019

CP(CO)
PM/19/01/2022