



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.09.2018

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HON'BLE MRS.JUSTICE R.HEMALATHA
(Through Video Conferencing)

Rev.Aplc.(MD).No.20 of 2018
in W.A.(MD)No.331 of 2011
and CMP(MD)No.1718 of 2018

- 1.The Chief Engineer,
Highways & Rural Road,
Guindy, Chennai-32.
- 2.The Superintending Engineer,
Rural Roads Circle, Trichy-20.
- 3.The Assistant Engineer,
Rural Roads,
Gramasalaigal, Kumbakonam.
- 4.The Assistant Divisional Manager,
Rural Roads (Gramasalaigal),
Kumbakonam.
- 5.The Divisional Engineer,
Rural Roads (H),
Gramasalaigal,
Thanjavur.

....Review Applicants

vs.

S.Kalyanasundaram

.....Respondent

Prayer: Review Application filed under Order 47 Rules 1 and 2 C.P.C. read with 114 C.P.C. to review the judgment dated 04.01.2018 made in W.A.(MD)No.331 of 2011.

Prayer in WA(MD). 331/ 2011 :

Writ Appeal is filed under clause 15 of the Letter patent against the order, dated 01/02/2008 passed in WP.No.2028/2005.

Prayer in WP(MD). 2028/ 2005 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the Respondents to consider the legal notice dated 15.07.2004 and 29.10.2004 issued to the Respondents herein in accordance with law and direct the Respondents to refund the Earnest Money Deposit, Retention amount and FSD amount in a sum of Rs.2,37,000/- along with interest to the petitioner.



For Review Applicants : Mr.A.K.Bhaskara Pandian,
Special Govt. Pleader

For Respondent : Mr.N.Sivakumar

ORDER

(Order of the Court was made by M.Sathyannarayanan, J.)

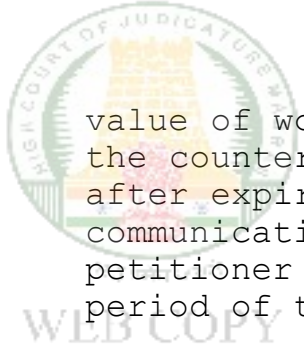
Facts leading to the filing of the present review application have been narrated in detail and in extenso in the impugned judgment dated 04.01.2018 made in W.A(MD)No.331 of 2011 and therefore, it is unnecessary to re-state the facts once again.

2. Mr.A.K.Bhaskara Pandian, learned Special Government Pleader appearing for the review applicants/official respondents in the writ appeal has drawn the attention of this Court to the counter affidavit filed in the main writ petition as well as additional affidavit of the fifth review applicant dated 26.06.2018 and would submit that as per the terms and conditions of the contract, 2½ % of the total value of the contract will be retained for a period of two years reckoned from the date of completion of work in order to enable the departmental officers to watch the effect of the work and an Indemnity Bond shall also be executed by the contractor for a period of three years to establish the quality of work executed, but due to inadvertence, the review applicants could not obtain the Indemnity Bond from the contractor and would further add that Kumbakonam Panchayat Union has addressed a letter dated 09.10.2001, indicating that rectification works to be carried out in respect of the road laid by the respondent/contractor and immediately the review applicants 3 and 4, sent letters dated 20.08.2003 and 30.10.2003 respectively to the respondent to rectify the defects and damages in the works executed by him and therefore, 2½ % of the total value of work has been retained and would further add that the review applicants have no objection in returning the National Saving Certificates in favour of the respondent.

3. Per contra, Mr.N.Sivakumar, learned counsel appearing for the respondent would submit that the review applicants, under the guise of this review application, wants to re-agitate the matter on merits and prays for dismissal of the same.

4. This Court has considered the rival submissions and also perused the entire materials placed before it.

5. Under the terms and conditions of contract, it was open to the Superintending Engineer, Rural Roads Circle, Trichy to retain 2½ % of the total value of work for a period of two years and to ensure the quality of work executed, the contractor is under obligation to execute Indemnity Bond for a period of three years and admittedly, the Indemnity Bond has not been executed by the contractor and rather the concerned official has also failed to get the Indemnity Bond from the contractor. Insofar as retention of 2½ % of the total



value of work for a period of two years, a perusal of paragraph 5 of the counter affidavit filed in the writ petition would disclose that after expiry of two years only, the review applicants 3 and 4 sent a communication on 20.08.2003 and 30.10.2003 to the respondent/writ petitioner and in the considered opinion of the Court, beyond the period of three years, the respondent is entitled to get the amount.

6. As rightly pointed out by the learned counsel appearing for the respondent, the review applicants, under the garb of filing this review application, wants to re-agitate on the merits of the writ appeal once again and the same is impermissible in law. This Court, while disposing of the writ appeal, has taken into consideration all the relevant aspects and rightly reached the conclusion to allow the writ appeal.

7. In the considered opinion of the Court, there is no error apparent on the face of the record in the impugned judgment.

8. In the result, this Review Application is dismissed. The review applicants are directed to comply with the judgment dated 04.01.2018 made in W.A.(MD) No.331 of 2011 within a period of six weeks from the date of receipt of a copy of this order, failing which the respondent is entitled to get interest @ 6% p.a. from the date of the impugned judgment in the writ appeal viz., 04.01.2018. It is made clear that the present case came to be decided on the facts and circumstances of the case and it cannot be cited as a precedent that 2½% of the total value of the work cannot be retained. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Chief Engineer,
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Guindy, Chennai-32.

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5.The Divisional Engineer,
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Thanjavur.

+1CC to the Special Government Pleader SR.No. 86229

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JVM
ES/PM/SAR 1/27.10.2018/4P/7C