



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2021
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S.(MD)No.201 of 2017

1. The State of Tamil Nadu,
Rep. by the District Collector,
Collectorate Building,
Madurai.
2. The Superintending Engineer(N.H.),
Division No.1, Madurai - 20.
3. The Divisional Engineer(N.H.),
Division No.1,
Gandhi Nagar, Madurai - 20. ... Appellants/Defendants

Vs.

R.Ayothi Raman(Died)

1. Jeya Lakshmi
2. Seenivasan
3. Uma Maheswari
4. Renganathan
5. Sathya Narayanan

(Cause titled is accepted vide Order dated 17.02.2012 in M.P.
(MD)No.1 of 2012 in ASSR(MD)No.65977 of 2011)

... Respondents/LRs. Of plaintiff

Prayer: Appeal suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree made in O.S.No.384 of 2004 on the file of the I Additional District Judge, Madurai, dated 07.08.2007 and allow the appeal.

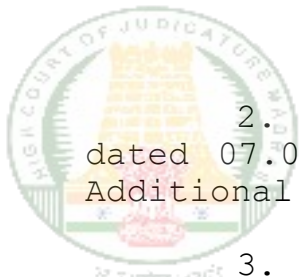
For Appellants : Mr.R.Ragavendran,
Government Advocate.

For Respondents : Mr.C.Arunmozhi Rajashankar

* * *

J U D G M E N T

Heard the learned Government Advocate appearing for the appellants and the learned counsel appearing for the respondents.



2. This appeal is directed against the judgment and decree dated 07.08.2007 made in O.S.No.384 of 2004 on the file of the I Additional District Judge, Madurai.

3. The suit was instituted by one Ayothiraman. The said Ayothiraman was a first class contractor. He entered into an agreement with the Highways Department for carrying out certain civil works (construction of bridge). Though the contract works should have been completed within a time frame, due to certain reasons, it got delayed. According to the plaintiff, the delay was on account of the department. The plaintiff suffered huge cost overrun. He filed the said suit claiming damages to the tune of Rs.51,83,721/-.

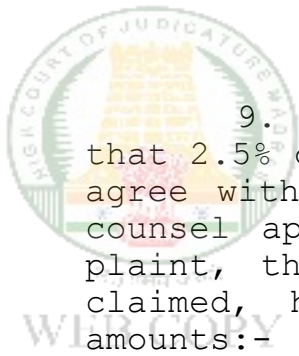
4. The plaintiff examined himself as P.W.1 and one Selvanayagam Thomas as P.W.2. Ex.A.1 to Ex.A.22 were marked. On the side of the defendants, an official was examined as D.W.1 and Ex.B.1 to Ex.B.8 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 and Ex.C.2. The suit was partly decreed. The learned trial Judge even while rejecting the other claims of the plaintiff, directed refund of E.M.D, I.V.P., security deposit and the withheld amount which were quantified at Rs.3,73,535/-. Interest was also awarded by the trial Court. Questioning the same, this appeal has been filed.

5. The plaintiff did not file cross appeal. In the meanwhile, the original plaintiff also passed away and his legal heirs have been brought on record.

6. The learned Government Advocate appearing for the appellants submitted that the Court below erred in quantifying the withheld amount at 5%. He drew my attention to an official communication from the audit wing indicating that 2.5% of the bill amount alone was withheld. He also stated that the appeal was filed with some delay. When the delay was condoned, a sum Rs.2,00,000/- was deposited by the appellants to the credit of the suit. Likewise, when interim stay was obtained, 50% of the decretal amount was deposited. According to the learned counsel appearing for the appellants, if the decree is modified by computing the withheld amount at 2.5% instead of 5%, it would be seen that excess amount had been deposited by the appellants/department. He called upon the Court to pass appropriate orders in this appeal.

7. Per contra, the learned counsel appearing for the respondents/legal heirs of the plaintiff submitted that the impugned judgment does not call for any interference.

8. I carefully considered the rival contentions and went through the evidence on record.



9. The main contention of the learned Government Advocate is that 2.5% of the bill amount was withheld and not 5%. I am unable to agree with this contention. As rightly pointed out by the learned counsel appearing for the respondents, in paragraph No.16 of the plaint, the plaintiff had stated that in addition to the damages claimed, he was also entitled to get refund of the following amounts:-

" 1. EMD	: Rs. 25,000.00
2. IVP	: Rs. 11,200.00
3. Security Deposit	: Rs.1,00,000.00
4. Withheld amount in the running bills 5%	: Rs.2,37,335.00
5. Aggregating	: Rs.3,73,535.00"

10. I went through the contents of the written statement. The claim of the plaintiff for refund of the aforesaid amounts has not at all been denied in the written statement. In the memorandum of grounds also, nowhere has it been pleaded that 2.5% of the bill amount was withheld and not 5%. In the absence of pleadings and in the absence of any challenge in the memorandum of grounds, I have to necessarily come to the conclusion that 5% of the bill amount was withheld and not 2.5%.

11. In this view of the matter, the impugned judgment and decree passed by the trial Court is confirmed and the appeal suit is dismissed. For depositing the balance amount, the appellants are given eight weeks time from the date of receipt of a copy of this Judgment. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1. The I Additional District Judge,
Madurai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.SPL GP (SR-21063[F] dated 02/07/2021)

A.S.(MD)No.201 of 2017
01.07.2021

RK (05.08.2021) 4P 5C