

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.132 OF 2018

P.Ravi ...Appellant / Respondent /
Plaintiff

Vs.

R.Ponnusamy ...Respondent / Appellant /
Defendant

PRAYER : The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment in A.S.No.15 of 2017 passed by the III Additional District Judge, Salem dated 23.10.2017 reversing the judgment and decree in O.S.No.38 of 2012 dated 14.09.2016 on the file of I Additional Judge, Salem.

For Appellant : Ms.Revathy for
Mr.R.Nalliyappan

For Respondent : Mr.P.Jegadeesan

J U D G M E N T

Aggrieved over the reversal of the decree by the First Appellate Court, the plaintiff has preferred the above Second Appeal.

2. According to the plaintiff trusting the words of the defendant, he done some repairing works on behalf of the defendant in the defendant's building. At the request of the defendant he has informed him that a sum of Rs.2,60,000/- could be required for such work and for extra works further expenses would be incurred. He completed the works and demanded the money. But the defendant paid of Rs.5,000/- on 31.12.2008 and assured to pay the balance amount as soon as his son-in-law returns from abroad. But when he approached the defendant during February 2009, he behaved rudely and refused to pay the money. Inspite of exchange of messages, he did not pay the money and asked the plaintiff to come to the shop of one Mr.Rasik Patel, where it was informed that Rs.95,500/- has to be paid to the plaintiff towards arrears of labour charges excluding the sum of

Rs.30,000/- being material costs. The defendant has failed to keep his words in settling the amount. Plaintiff made a Police complaint in the first week of June 2010. At his request Mr.D.S.Panneer Selvam, President of Civil Engineer's Association, Salem was entrusted with an evaluation work and he submitted a report. The defendant after receiving the report took time under the pretext of his son's marriage. Even thereafter he did not kept up his promise and paid the money. Plaintiff issued a letter dated 01.11.2011 followed by a reminder dated 08.11.2011 and legal notice dated 26.11.2011. The defendant has replied the legal notice on 01.12.2011, denying the claim. Hence, he filed a suit for recovery of sum of Rs.2,37,979/-. In the written statement, the defendant denied the averments made in the plaint and contended that there is no cause of action for filing the suit that the plaintiff has not incurred any expenses. Therefore, the suit is liable to be dismissed. Trial Court framed appropriate issues and decreed the suit. Aggrieved over the same, the defendant preferred an appeal in the Appellate Court and reversed the finding that the plaintiff is not entitled to any claim.

3. Heard the submission of both sides.

4. The Second Appeal was argued on the basis of the substantial questions of law raised in the memorandum of Second Appeal. On perusal of the material, it is noted that the plaintiff made his claim based on a oral agreement between the parties. According to him he incurred expenses for purchasing materials and payment towards labour charges. Before the Trial Court he has not produced any material to show that he had incurred so much of expenses under specific heads. On the other hand, he would rely on the compliant given by him and letter and reply exchanged between the parties. The Trial Court had rested its finding on the basis of Ex.A2 a report given by the Civil Engineer appointed by the Police on the basis of complaint made by the plaintiff. But the evidence before the Trial Court does not disclose any genuinity of the claim. It is also an admitted fact that the report was given to the plaintiff and no copy was served on to the defendant by the Engineer who evaluated the work. Trial Court has also based its finding on the basis of Ex.A5 the letter written by the defendant to the plaintiff, wherein the defendant had admitted the liability. But on perusal of Ex.A2 and A5, it is found that no admission of liability. It is well settled that, when a claim is made by the party, it is his bounden duty to make specific claim based on material evidence. But in the instant case, admittedly the plaintiff did not produce any materials for the expenses made towards construction. It is pertinent to note that a sum of Rs.5,000/- was made as last payment. But in the evidence, plaintiff as P.W.1 would admit that after mediation, received a sum of

Rs.5,000/- paid by the defendant. Once the matter was settled finally on mediation by elders, plaintiff shall have no cause of action to make further claim. He has not produced any materials to show that he is entitled to the money as claimed by him. The evaluation report Ex.A2 relied on by the plaintiff was issued by one Engineer called D.S.Panner Selvam, but he was not examined before the Court. The First Appellate Court has rightly found that without any proof of the expenditure made by the plaintiff and the admission of liability by the defendant, the claim made by the plaintiff cannot be accepted. I do not find any substantial question of law arising out of the actual matrix of the plaintiff. Therefore, the Second Appeal merits no consideration. Accordingly, the Second Appeal stands dismissed. The judgment and decree passed by the III Additional District Judge, Salem in A.S.No.15 of 2017 dated 23.10.2017 are confirmed and the suit in O.S.No.38 of 2012 is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

kpr

To

1.The III Additional District Judge,
Salem.

2.The I Additional Judge,
Salem.

+1cc to Mr.P.Jagadeesan, Advocate Sr.No.5561

S.A.No.132 of 2018

KJ(CO)
RVM(13/07/2022)