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A.S.No.729 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:06.03.2023

Delivered on: 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.No.729 of 2015

&

M.P.No.1 of 2015 and C.M.P.No.239 of 2016

Tamil Nadu Rural Housing and Infrastructure
Development Corporation
Rep by the Superintending Engineer (R.D)
of the Directorate of Rural Development,
Panagal Building, Saidapet, Chennai

.. Appellant

Vs.

K.Rajendran Nair

.. Respondent

Prayer:- Appeal Suit filed under Section 96 of Code of Civil Procedure
against the judgment and decree dated 10.07.2014 made in O.S.No.7248 of
2010 on the file of the VII Additional District Judge, City Civil Court,
Chennai.



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For Appellant : Mr.T.Chandrasekaran, Spl.G.P

For Respondent : Mr.K.Bijai Sundar

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The defendant in O.S.No.7248 of 2010 on the file of the VII Additional Judge, Civil City Court in Chennai is the appellant before this Court by way of First Appeal. The appellant challenges the judgment and decree in the above said O.S.No.7248 of 2010 dated 10.07.2014.

2. Brief summary of the plaint:

The case of the plaintiff before the Trial Court was that the defendant being an undertaking of the Tamil Nadu Government called for tenders for construction of 150 houses (Group A) for Beedi workers at Melapalayam Village, Thirunelveli District on a lumpsum contract basis. The plaintiff's tender dated 10.11.1999 was accepted by the defendant and a work order was issued on 14.01.2000. Consequently, an agreement was also entered into between the plaintiff and the defendant vide TNRHC Agreement No.3/2000-2001 dated 25.08.2000. The value of the work



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agreed upon was to the tune of Rs.46,19,997/-. The case of the plaintiff is that the defendant handed over the site to the plaintiff in March 2000 and that the period of completion was five months from the said date of handing over. The plaintiff further contended that in anticipation of completion of the work within the stipulated time, the plaintiff had mobilised men and material. However, according to the plaintiff even when the work site was handed over to him in March 2000, the entire area was covered with heavy jungle and wild vegetation which had to be cleared only by use of machinery. It is the further case of the plaintiff that when the work was in progress, he received a letter dated 14.09.2000 from the defendant, asking the plaintiff to go slow in execution of the work, since the defendant was not able to provide necessary funds.

3. The plaintiff claimed damages under seven broad heads viz., claims 1 to 7, totalling in all Rs.9,82,665/-. The plaintiff has further stated that the defendant sent another letter on 17.01.2001 presuming that the plaintiff was willing to continue the work at the originally agreed rates and giving an option to the plaintiff to foreclose the contract. It is the admitted case of the plaintiff that he sent a letter on 24.01.2001 and received a sum of



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Rs.1,49,659/- towards the work completed already. It is the specific case of the plaintiff that in the suit, the said amount received by him was only an interim payment and without prejudice to his claims for recovery of losses and damages suffered by him. Plaintiff further states that since the parties have agreed to an arbitration clause, the plaintiff approached the Original Side of this Court in O.P.No.270 of 2002 U/s. 11 of the Arbitration and Conciliation Act, 1996 and that in and by order dated 03.02.2006, the Arbitration Original Petition was dismissed. Citing the period lost in the Sec.11 application, the plaintiff filed the suit claiming total sum of Rs.24,71,551/- together with interest and costs.

4. Brief summary of the written statement filed by the appellant as defendant in the suit:

The defendant denied entire allegations in the plaint save those that are specifically admitted. Thereafter, in so far as all the claims made by the plaintiff under various heads, the defendant denied each and every claim specifically and ultimately contended that a sum of Rs.1,49,659/- was the actual amount due and payable to the plaintiff for the work actually done. In view of the parties agreeing to bring down the curtains on the



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agreement, there was no question of any breach of contract entitling the plaintiff to claim damages.

5. Before the Trial Court, plaintiff was examined as P.W.1 and one Mr.Chakravarthi representing the appellant/defendant was examined as D.W.1. On the side of the plaintiff, Exs.A1 to 28 were marked. On the side of the defendant, Exs.B1 to B5 were marked.

6. The Trial Court, on considering the oral and documentary evidence available on record before it, rejected the amounts claimed under the heads of 'Work done but not measured and paid' to the tune of Rs.63,079/-; 'Heavy jungle clearance' to the tune of Rs.10,200/-; 'Surveying and demarcation' Rs.10,750/-; 'Water supply arrangement for construction work i.e., compressor and motor' Rs.9,400/- and 'Payment of Site Engineers' Rs.1,01,000/-, totalling in all Rs.1,94,429/-. In so far as the claim for payment of Site Engineers, the plaintiff has sought for Rs.1,51,000/- out of which the Trial Court awarded only a sum of Rs.50,000/- and disallowed a sum of Rs.1,01,000/-. The Trial Court also took into account the deposits by way of retention money etc., and held,



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they were liable to be refunded by the defendant. On account of loss of profit, the Trial Court placing reliance of the judgment of the Hon'ble Apex Court reported in ***Mohd. Salamatullah and Ors Vs. Government of Andhra Pradesh, AIR 1977 SC 1481***, held that the plaintiff was entitled to claim loss of profit for a sum Rs.6,70,551/- at the rate of 15% on the value of balance work and and subsequently awarded total sum of Rs.10,99,798/- together with interest at 12% per annum.

7. Aggrieved by the said judgment and decree of the Trial Court, the defendant as appellant has filed the First Appeal raising the following grounds:

(1) The Trial Court failed to note that the initial work entrusted to the plaintiff was only for construction of four model houses and therefore the plaintiff cannot saddle liability on the defendant for unilaterally having stocked material for entire volume of contract namely 150 houses.

(2) The Trial Court failed to see that Beedi workers scheme was only under subsidy from the Government of India and HUDCO loan and defendant cannot be blamed for delay in release of funds by the Central Government.



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(3) The plaintiff voluntarily agreed to receive the payment for the work already done and go out of the project and therefore the question of claiming loss or compensation on account of breach is unsustainable.

(4) Even according to the tender notice clear instructions are given under the head special conditions and additional specifications and after agreeing to the same, it is not open to the plaintiff to claim damages under various heads.

8. We heard Mr.Chandrasekaran, learned Special Government Pleader, appearing for the appellant and Mr.Bijai Sundar, learned counsel appearing for the respondent/plaintiff. This Court has considered the rival contentions put forth by the counsel on either side.

9. Having regard to the pleadings, evidence adduced by the parties and the arguments of the learned counsel on either side, this Court is able to see that it is an admitted case by both sides that the defendant requested the plaintiff to go slow with the construction and followed it up with another letter leaving an option to the plaintiff to stay in the project at the originally agreed rates or alternatively foreclose the contract. Vide Ex.A4,



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the plaintiff wrote to the defendant stating that since the defendant is not willing to pay new rates for the items of work, he was agreeable for the accounts being finalised and payment for the work done to be released at the earliest. Subsequently, the plaintiff in and by letter dated 29.01.2001 has acknowledged the receipt of a sum of Rs.1,49,659/- mentioning “ I have received a cheque for Rs.1,49,659/- on 24.01.2001 as per actual volume of work already done by me above date. I have yet to receive payment for the remaining volume of work and refund of deposits ”.

10. It is not in dispute that the plaintiff was not satisfied with the payment made to him towards work completed and had to pursue his remedy by way of arbitration proceedings and that ultimately, the Arbitration Original Proceedings came to be dismissed, which necessitated the plaintiff to file the Civil Suit in O.S.No. 7248 of 2010. The learned counsel for the appellant submitted that since the plaintiff had agreed to break the contract voluntarily, he was not entitled to any damages or compensation and argued that the Trial Court had committed grave error in decreeing the suit and prayed for the Appeal to be allowed.



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11. Per contra, the learned counsel for the plaintiff contended that the time span agreed upon between the parties was only five months and as a natural consequence the plaintiff had to be ready with all the necessary labour and materials to complete the project within the stipulated time and that in consequence thereof he had incurred huge expenses which the defendant necessarily would have to make good. Learned counsel also relied on the judgment of the Hon'ble Supreme Court in *Mohd. Salamatullah and Ors Vs. Government of Andhra Pradesh, AIR 1977 SC 1481*, which was primarily relied upon by the Trial Court in granting the decree, especially, on the ground of 'loss of profit'. Learned counsel also relied on the another judgment of the Hon'ble Supreme Court reported in *A.T.Brij Paul Singh and Ors Vs. State of Gujarat, AIR 1984 SC 1703* and Division Bench judgment of this Court in *S.Deivanai and Ors Vs. V.M.Kothandaraman and Ors, (2017) 4 CTC 734 (DB)* drawing strength from the ratio laid down by the Hon'ble Supreme Court in the above referred two cases and also the Division Bench of this Court, learned counsel contended that the plaintiff was entitled to 'loss of profit' on account of breach committed by the defendant. Learned counsel also contended that the appellant as defendant did not specifically deny



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paragraphs 1 to 11 of the plaint and therefore in view of the mandate of Or.8.Rules 3 to 8 of Code of Civil Procedure, 1908, the plaintiff was entitled to a decree and that the appeal had no legs to stand.

12. This Court after hearing the learned counsel for the appellant as well as the respondent formulates the following points to be decided in the above Appeal:

1. Whether the plaintiff is entitled to claim damages or compensation from the defendant.

2. If the plaintiff is so entitled, what would be the amount that the plaintiff can recover from the defendant.

13. With regard to the argument that the defendant has not specifically denied the plaint allegations, this Court has perused the plaint as well as the written statement. It is no doubt true that the defendant in his written statement has not specifically denied paragraphs 1 to 11. However, the sum and substance of the suit claim is based on the averments made in paragraph 12 of the plaint. The defendant has set out in great detail referring to each and every particular claim made in paragraph 12 and



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stated as to how the plaintiff was not entitled to the same. That apart, the defendant has also denied all the allegations in the plaint excepting those that are specifically admitted in the written statement and called upon the plaintiff to prove the allegations, which have not been admitted. In view of the defendant denying the various claims made by the plaintiff specifically, this Court finds the fact that the defendant had not specifically denied plaint averments and allegations in paragraphs 1 to 11 would not be counter productive or fatal to the defence set up by the appellant.

14. Coming to the crucial aspect as to whether the plaintiff can allege any breach on the part of the defendant, this Court has carefully examined the exchange of correspondence between the plaintiff and the defendant. Firstly, it was the defendant who, on 17.01.2001 sent a letter to the plaintiff referring to an earlier letter dated 14.09.2000, informing the plaintiff that despite the defendant requesting the plaintiff to give his acceptance to keep the agreement alive at the originally agreed rates, the plaintiff had not come forward to respond. Secondly, even though the plaintiff appears to have written letters to the defendant on 13.10.2000, 23.11.2000 and 20.12.2000 (as seen from Ex.A3) the plaintiff



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was silent with regard to continuance of the agreement at accepted rate and also the option regarding foreclosure. Therefore, the defendant in and by the said letter stated that the plaintiff can be presumed to have accepted to do the work at the originally agreed rates. It was reiterated in the said letter that the plaintiff was at liberty to apply and foreclose the contract. In response to the said letter of the defendant, the plaintiff on 24.01.2001, replied to the defendant stating that he was not agreeable to work at the agreed rates. However, he agreed to the suggestion of the defendant to foreclose the contract and release the payments due to him for the work completed. Even before the project was substantially commenced and as already contended by the defendant the initial model houses numbering four alone were required to be constructed and thereafter in view of non receipt of funds from the Central Government and delay in getting the same, the defendant had given an option to the plaintiff to foreclose the contract itself. In such circumstances, the plaintiff having opted to foreclose the contract, it will not be open to the plaintiff to allege breach of contract on the part of the defendant and consequently claim damages.

15. Strangely, in the plaint, plaintiff has alleged that these letters



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dated 24.01.2001 and 29.01.2001 were sent under duress. This Court is unable to accept the said contention of the plaintiff especially in the light of absence of any evidence being adduced in support of the said allegation. The plaintiff alleges duress and the same being the reason for issuing letters dated 24.01.2001 and 29.01.2001 agreeing for foreclosure and in such circumstances, certainly, the burden is only on the plaintiff to establish the same.

16. This Court has scanned the entire evidence, oral and documentary and does not find any piece of evidence supporting and proving the said contention of the plaintiff. Therefore, it is to be held that the plaintiff has miserably failed in establishing his case of foreclosing the contract under duress. Similarly, the plaintiff also claimed that he received a sum of Rs.1,45,659/- towards work already completed without prejudice to his claim for recovery of losses and damages suffered by him. This Court is unable to see any such positive assertion by the plaintiff while receiving and acknowledging payment of Rs.1,49,659/- and only in the plaint such an averment has been made.



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17. Coming to the various decisions relied upon by the counsel for the respondent, this Court has carefully gone through the facts and circumstances of the various cases which have been decided by the Hon'ble Supreme Court and this Court. The fact which is uncommon to all those cases and the present case is that here the plaintiff has agreed to foreclose the contract. In the other cases relied upon by the learned counsel for the respondent it was a clear case of breach of contract by one party under which circumstances the Hon'ble Supreme Court as well as this Court has held that the plaintiff was entitled to claim damages under the head 'loss of profit'. Here admittedly, the plaintiff by consenting to foreclose the contract has waived all his rights to claim such damages. The Trial Court has already rightly disallowed several claims that have not been proved by the plaintiff. This Court has already found that having been a party to foreclosure and in the absence of establishing that the consent for foreclosure was under duress, the plaintiff is not justified in alleging breach of contract and claiming damages or compensation from the defendant.



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18. Even in so far as the claim of payment to Site Engineers as against the claim of Rs.1,51,000/- the Trial Court awarded a sum of Rs.50,000/-. However, the reasoning of the Trial Court is based on mere surmises and conjunctures and not on any available material placed before it. However, this Court sees reason for allowing claim No.4 being deposits which were made by the plaintiff to the defendant. The details of claim No.4 are as follows:

S.No	Deposits	Amount
1	Earnest Money Deposit	Rs.31,000/-
2	Additional Security Deposit	Rs.30,300/-
3	Withheld amount	Rs.10,000/-

19. The defendant is bound to return the said deposits collected from the plaintiff and there is no justification to refuse or withhold the said deposits after the foreclosure of the contract. The claim under various other heads, excepting claim No.4 are necessarily to be disallowed for the various discussions and reasons already set out herein above.

20. In the result, the Appeal Suit is partly allowed directing the appellant/defendant to pay Rs.71,300/- together with interest at 12% per



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annum from 25.04.2001 till the date of plaint i.e 27.11.2006 and thereafter at the rate of 9% from the date of plaint till today and at 6% per annum from this date till the date of realisation together with proportionate costs. Consequently, connected miscellaneous petitions are closed. No costs.

(S.S.S.R.J) & (P.B.B.J)
16.03.2023

Internet : Yes
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

1. The VII Additional District Judge,
City Civil Court, Chennai.

2. The Section Officer
VR Section,
High Court, Madras



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S.S.SUNDAR, J.,
and
P.B.BALAJI, J

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Pre-delivery judgment in
A.S.No.729 of 2015

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