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S.A.No.1174 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

S.A.No.1174 of 2008

M/s.Sakthi Engineering Constructions
a registered Partnership Firm rep. by
Mr.N.Kirubasankar
having its office at
No.16, Jai Nagar, Palayapalayam Road
Erode - 638 011.

...Appellant/1st Respondent
/Plaintiff

Vs.

1.Bharat Sanchar Nigam Limited
represented by its Chief General Manager,
Telecom (Tamil Nadu Circle) B.S.N.L.,
Anna Salai, Chennai - 600 002. ...1st Respondent/1st Appellant
1st Defendant

2.The General Manager
Telecom, B.S.N.L.,
Gandhiji Road,
Erode - 638 001. ...2nd Respondent/2nd Appellant
2nd Defendant



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3.Telecommunications India Ltd.,
rep. by its Senior General Manager,
24, Chakrapani Street, 1st Floor,
West Mambalam,
Chennai - 600 033.

...3rd Respondent/2nd Respondent
/3rd Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 22.04.2008 in A.S.No.42 of 2007 on the file of the learned Additional District Judge (Fast Track Court No.1) Erode, reversing the Judgment and Decree dated 14.11.2006 in O.S.No.402 of 2004 on the file of the learned I Additional Subordinate Judge, Erode.

For Appellant : Mr.B.Singaravelu

For Respondents : Mr.M.S.Velusamy

JUDGMENT

The plaintiff is the appellant. The plaintiff is the partnership firm doing contractual works, such as, laying optic fiber cables, microwave tower installations, transmission, equipments installations, etc., The



parties are referred to in the same ranking as before the Trial Court.

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2.The first defendant decided to install and maintain Telecommunication Networks in Tamil Nadu Circle. The 2nd defendant is his subordinate with respect to Erode Telecom District. The 3rd defendant is the Government of India Enterprise which had been floated for the purpose of undertaking Telecommunication Development and Maintenance works at pre-approved rates on turn key basis, etc., The rates are approved by the first defendant and the works to be executed were awarded by the 2nd defendant. The plaintiff claimed that it is a registered contractor with the Government of India and several other private agencies for laying Optic Fiber Cables. It is the case of the plaintiff that the offer was made by the plaintiff and it was accepted by the 3rd respondent for laying HDPE pipe lines and pulling the cables to Padiyur Telephone Exchange. The second work was trench laying activity for the HDPE pipe lines and pulling up the cables from Kangeyam Telecom Exchange. The extent of work was about 7050 meters running along with Kangeyam – Dharapuram Road.



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3. According to the plaintiff, it had carried out the works, i.e., the trenching and laying of pipes on Padiyur Telecom Exchange as well as from Kangeyam Telecom Exchange. The said work was inspected by both the 3rd defendant as well as the defendants 1 and 2 and found to be correct. The rates on which the work was being executed was approved by the first defendant and the beneficiary of the work was the 2nd defendant. As already pointed out, the 3rd defendant is only a consultant for the purpose of identifying the contractor. On completion of the work, the defendants produced the bills under the following categories:

1. Kankeyam - Padiyur OFC work
under project No: ED/W.O/F-1 AND
F-2/97. The balance is

:Rs. 65,753.00

Interest at the rate of 18% for Rs.65,753.00
From 30.08.2002 to 15.09.2004

:Rs. 24,164.15

Total

:Rs. 89,917.15



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2.Velliravelli work under Project No:ED/F-4/97

The balance is :Rs. 77,020.00

Interest from 30.10.1999 to 15.09.2004 :Rs. 67,585.05

Total :Rs.1,44,605.05

Total Amount payable by the defendants
(89,917.15 + 1,44,605) :Rs.2,34,522.20

The claim of the plaintiff was that he is entitled to a sum of Rs.2,34,522/-. This consists of two components namely Rs.65,753/- @18% from 30.08.2002 to 16.09.2004 and Rs.77,020/- from 30.10.1999 till 16.09.2004.

4.This suit was resisted by the defendants 1 and 2 and the 3rd defendant separately. The stand that was taken by the defendants 1 and 2 in Para 11 was that there was no direct connection between the plaintiff and the defendants and that the work was executed only at the instance of the 3rd defendant and as the 3rd defendant is the person



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who issued the contract he is liable to pay the same.

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5.The 3rd defendant had taken a stand that that he had offered the tenders on behalf of the defendants 1 and 2 and as the area of work was limited instead of calling tenders it adopted the procedure of finalising the sealed quotations. The main plea of the plaintiff that the cables were laid and work had been completed, had been accepted. It was the case of the 3rd defendant that the work was completed on 12.11.1998 instead of 31.07.1998.

6.Insofar as the second project is concerned, according to them, the work was awarded on 24.07.1998 and the work was to be completed on 23.10.1998, but the work was completed on 28.11.1999. The plea was not that the work was not done but it was done with some delay.

7.The trial Court found that the case of the plaintiff is proved and genuine and decreed the suit as prayed for with costs.



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8.On appeal, the learned First Appellate Judge held that there is no privity of contract between the defendants 1 and 2 and the plaintiff and allowed the appeal. As against the reversal finding, this Second Appeal has been filed.

9.The Second Appeal has been admitted and the following Substantial Questions of law were framed:

"a) Is the Lower Appellate Courts below correct and justified in reversing the well-considered Judgement of the trial Court?

b)Is the Lower Appellate Court correct and justified in holding that there was no agreement between plaintiff and defendants 1 and 2 and that consequently they are not liable for the suit claim?

c) Are not the defendants 1 and 2 estopped from denying their liability to the suit claim?"



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10.I am saved the trouble of going into the details as against the other contract granted for the same period because the plaintiff had presented O.S.No.189 of 2005 which was decreed on 06.09.2007. Against the said Judgment and Decree, the respondents herein had filed A.S.No.1116 of 2007. The learned Single Judge of this Court went through the evidence and found as in this case that the day to day progress of the work had been followed by the respondents herein and returned the finding that the bills that was submitted by the plaintiff/appellant to the respondents/defendants 1 and 2 were being returned on one reason or the other. The Court held that there is a privity of contract between the appellants and the respondents and decreed the suit. The said finding had been confirmed by this Court as pointed out above. Therefore, the ground on privity of contract does not exist any more. Hence, I am constrained to reverse the finding.



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11.Mr.M.S.Velusamy, learned counsel for the respondent fairly submitted that as against the order of this Court in A.S.No.1116 of 2007, a Special Leave Petition was preferred to the Supreme Court and such Special Leave Petition was also dismissed. This Court having already concluded for the contract between the appellant and the respondents in A.S.No.1116 of 2007, I am afraid I cannot go into the said issue all over again. The contractors are the same and the parties are the same and only the work to be executed at a different place. The manner of execution of the work is similar and the contract was also similar in nature. The defence taken in both the suits are also identical and one having reached the finality, I cannot take a different view in this appeal. Therefore, this Court holds that there is a privity of contract between the appellant/plaintiff and the defendants 1 and 2.

12.This Second Appeal is allowed. The suit in O.S.No.402 of 2004 on the file of the learned I Additional Subordinate Judge, Erode,



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is decreed. I am not inclined to grant 18% interest from the date of
Plaint till the date of decree granted by the trial Court. This Court
modifies the interest @18% from the date of demand till the date of
presentation and 12% thereafter. There will be no costs in this appeal.

03.04.2023

Index : Yes/No
Internet : Yes/No
Speaking order : Yes/No
mps

To

1.The Additional District Judge,
(Fast Track Court No.1),
Erode.

2.The I Additional Subordinate Judge,
Erode.



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V. LAKSHMINARAYANAN, J.

mps

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