



S.A.No.1260 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.06.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

S.A.No.1260 of 2010

M/s.J.D.P. Associates,

Represented by P.Shanti Lal,

No.238, R.K.Mutt Road,

Chennai – 600 004.

.. Appellant

Vs.

1.Tamil Nadu Electricity Board,

Represented by its Chairman,

M.P.K.R. Maligai,

No.800, Anna Salai,

Chennai – 600 002.

2.Tamil Nadu Electricity Board,

Represented by its Superintending Engineer,

Chennai Development Circle,

Chennai – 600 002.

.. Respondents

PRAYER : The Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 02.11.2009 made in A.S.No.451 of 2008 on the file of Additional District Judge, 2nd Fast Track Court, Chennai confirming the Judgment and Decree dated 12.04.2006 made in O.S.No.5475 of 2000 on the file of XV Assistant Judge, City Civil Court, Chennai.



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For Appellant : Ms.G.Sumitra
For Respondents : No appearance

JUDGMENT

The plaintiff, who lost before both the Courts below in a suit filed by him for declaration and permanent injunction, has preferred the present second appeal.

2. The appellant/plaintiff filed the suit in O.S.No.5475 of 2000 before XV Assistant Judge, City Civil Court, Chennai for a declaration that the claim of liquidated damages made by the defendants is null and void and for a consequential relief of permanent injunction restraining the defendants from deducting or adjusting any amount from the Earnest Money Deposit of the plaintiff lying with the defendants, towards liquidated damages. The plaintiff has further prayed for refund of a sum of Rs.44,816/- together with interest at the rate of 24% per annum from the date of plaint till the date of realisation.



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3. The case of the plaintiff is as follows:

3.1. The plaintiff was entrusted with the work of construction of Control Room building for Velachery 110 KV Sub Station. As per the agreement between the plaintiff and the defendants, the plaintiff should complete the work within a period of nine months. However, the plaintiff could not complete the work within the time stipulated due to lorry strike and also due to heavy rain fall during the relevant period.

3.2. It is the further case of the plaintiff that a compound wall was constructed by the defendants abutting the site and also they did not supply sufficient cement for construction. Though the defendants extended the time till 19.02.1994 (Ex.A6), they directed the plaintiff to pay the liquidated damages vide their letter dated 26.10.1998 (Ex.A8). According to the plaintiff, the defendants do not have any right to claim liquidated damages



from him and therefore, the plaintiff filed the suit for the reliefs as stated above.

4. The suit was resisted by the defendants on the following grounds:

(i) The plaintiff was entrusted with the work of construction of Control Room building for Velachery 110 KV Sub Station. Though the plaintiff was directed to take possession of the site through a letter dated 18.03.1993, the plaintiff took possession of the same only on 21.04.1993.

(ii) As per the contract between the plaintiff and the defendants, the duration of the contract was nine months and the plaintiff completed the work only on 31.03.1994 with a delay of 70 days.



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(iii) The cement was actually available in the stores during the relevant period and the plaintiff has failed to draw the same from the stores. Moreover, the plaintiff never complained about the shortage of cement from 21.04.1993 till 08.06.1993.

(iv) The compound wall was constructed by some other Agency and it is nothing to do with the work entrusted with the plaintiff.

(v) As per Section E Clause 2.7 of the Contract, the plaintiff has to intimate to the board within 15 days about the lorry strike or any other hindrance and in the instant case, the plaintiff did not inform the defendants about the lorry strike. According to Section A-3 Clause 2.7 of the agreement, Monsoon or inclement weather condition shall not be considered as a reason for extension of time.



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(vi) Therefore the plaintiff now cannot contend that he could not complete the work within the time stipulated in the contract due to unprecedented rain.

(vii) The terms and conditions stipulated in the contract between the plaintiff and the defendants were never waived by the defendants by their letter dated 19.02.1994 (Ex.A6).

(viii) In fact, in the letter dated 19.02.1994 (Ex.A6), the Executive Engineer had informed that he has only recommended for the grant of extension of time but the Chief Engineer (Transmission) never accepted the recommendation and imposed a penalty of Rs.96,440/- as per Clause 8 of the Acceptance Letter dated 05.01.1993 issued by him.



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(ix) The plaintiff is therefore liable to pay the amount demanded by the defendants and the suit is therefore liable to be dismissed.

5. On the basis of the above pleadings, the trial Court Judge framed appropriate issues and after full contest, dismissed the suit filed by the plaintiff vide his decree and judgment dated 12.04.2006, aggrieved over which, the plaintiff filed an appeal in A.S.No.451 of 2008 before the learned Additional District Judge (Fast Track Court No.II), Chennai. The learned Additional District Judge dismissed the appeal vide his decree and judgment dated 02.11.2009 on the following grounds:

(i) The plaintiff did not complain about the shortage of cement supply in his letters dated 03.07.1993 (Ex.A3) and 19.07.1993 (Ex.A4) and only on 17.12.1993 he sent a letter (Ex.A5) stating that he was not supplied with sufficient cement



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and also sought for extension of three months time for completing the work.

(ii) As per Section E Clause 2.7 of the Contract Agreement, the plaintiff should intimate the defendants within a period of 15 days, if there is any lorry strike and the plaintiff did not do so. Similarly as per Section A-3 Clause 2.7 of the Contract Agreement, the unprecedented rain fall and inclement weather condition cannot be a reason for extension of time.

(iii) Though the Executive Engineer recommended for extension of time vide his letter dated 31.03.1994, the same was not accepted by the Superintending Engineer and therefore the plaintiff is liable to pay the liquidated damages as claimed by the defendants.



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6. In the present second appeal, notice of motion was issued to the respondents and after several adjournments the matter is posted today for final hearing. Today, there is no representation for the respondents either in person or through counsel.

7. The Substantial Questions of Law mentioned in the grounds of appeal are extracted hereunder:

“(a) Whether the Courts below were right in dismissing the suit filed by the appellant seeking declaration, when the appellant had established deduction by the respondents on the earnest money deposit, under the claim of liquidated damages is illegal by both oral and documentary evidence.

(b) Whether the Lower Appellate Court had exercised powers under Order 41 Rule 27 when the appellant had established reasons for non production of additional documentary evidence which he sought to produce before the



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appellate Court not produced before the trial Court it establish the case of the appellant.

(c) Whether the lower Appellate Court has determined the fact in issue independently and given its independent finding on facts in issue as contemplated under Order 41 Rule 31 when the lower Appellate Court being the final Court of fact.”

8. Heard Ms.G.Sumitra, learned counsel appearing for the appellant/plaintiff. Her specific contention is that the plaintiff could not complete the work due to (i) inclement weather condition, (ii) shortage of cement supply, (iii) construction of a compound wall next to the construction site and (iv) lorry strike. It is also her contention that though the Executive Engineer considered all these aspects and recommended for extension of time, the Superintending Engineer did not accept the same and directed the plaintiff to pay liquidated damages of Rs.96,440/- . According to her, this



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demand made by the defendants/Tamil Nadu Electricity Board is arbitrary and unsustainable.

9. The admitted fact is that the plaintiff was entrusted with the work of construction of Control Room for Velachery 110 KV SS and the contract was awarded by the Chief Engineer (Transmission) on 05.01.1993. As per the terms of the contract, the plaintiff should complete the work within a period of nine months from 05.01.1993. However, the plaintiff could not complete the work within the time stipulated in the contract and the constructed building was handed over with a delay of 70 days for which, the defendants levied a liquidated damages of Rs.96,440/-. After deducting a sum of Rs.44,816/- from the Earnest Money Deposit they directed the plaintiff to pay a sum of Rs.53,837/- towards liquidated damages. Both the Courts below after analysing the contract between the plaintiff and defendants and also the oral and documentary evidences adduced on both sides held that the suit filed



by the plaintiff is liable to be dismissed and that he is bound to pay the liquidated damages to the defendants.

10. It is seen from the records that the plaintiff did not complain about the shortage of cement supply either in his letter dated 03.07.1993 (Ex.A3) or in his letter dated 19.07.1993 (Ex.A4) to the defendants. He did not also intimate to the defendants about the lorry strike within 15 days as per Section E Clause 2.7 of the Contract Agreement executed between him and the defendants. Moreover, as per Section A-3 Clause 2.7 of the Contract Agreement, the unprecedented rain fall or inclement weather condition cannot be shown as a reason for non completion of the work within the stipulated time.

11. The further contention of the learned counsel appearing for the appellant/plaintiff is that though the Executive Engineer vide letter dated



19.02.1994 (Ex.A6) had recommended the department to extend the time till 31.03.1994 taking into account the various difficulties faced by the plaintiff, the Superintending Engineer did not accept the same.

12. It is pertinent to point out that the so called recommendation letter was not at all marked as an exhibit in the present case either by the plaintiff or by the defendants. Therefore, it is not known as to whether the recommendations were made on proper reasons. However, it is seen that in the letter dated 26.10.1998 (Ex.A7), the Superintending Engineer did not accept the recommendations of the Executive Engineer and levied the liquidated damages to the plaintiff and this rejection is based on the contract between the plaintiff and the defendants.

13. The reasons stated by the plaintiff for not completing the work within the stipulated time are not convincing and he did not follow the



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various conditions laid down in the contract. All these aspects have been dealt with by both the Courts below in extenso and I do not find any reason to interfere with the concurrent findings rendered by the Courts below. In fact, no substantial question of law is involved in the present case.

14. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 02.11.2009 in A.S.No.451 of 2008 on the file of the Additional District Court, 2nd Fast Track Court, Chennai and the decree and judgment dated 12.04.2006 in O.S.No.5475 of 2000 on the file of the XV Assistant City Civil Court, Chennai, are upheld.

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Index : Yes / No

Internet : Yes / No

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To
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- 1.The Chairman,
Tamil Nadu Electricity Board,
M.P.K.R. Maligai,
No.800, Anna Salai,
Chennai – 600 002.
- 2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Chennai Development Circle,
Chennai – 600 002.
- 3.The Additional District Judge,
2nd Fast Track Court, Chennai.
- 4.The XV Assistant Judge,
City Civil Court, Chennai.



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R. HEMALATHA, J.

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