



C.S.No. 642 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No. 642 of 2018

P.Janakiraman

... plaintiff

Vs.

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai – 600 003.

2.The Superintending Engineer,
Bus Route Road Department,
Corporation of Chennai, Ripon Buildings,
Chennai – 600 003.

... defendants

Prayer: Complaint filed under Order IV Rule (1) of OS Rules High Court Madras, 1956 read with Order VII Rule (1) of CPC, 1908, for

(a)Directing the defendants to pay a sum of Rs.6,18,00,341/- and pay interest @ 12% from the date of complaint till the date of realisation on Rs.2,60,76,222/-.



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(b) Grant such other relief or reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr. V.Srikanth

For Defendants : Mr. Bharath Gowtham
for Ms.Aswini Devi

J U D G E M E N T

The above suit is filed for recovery of a sum of Rs.6,18,00,341/- together with interest at 12% per annum from the date of the plaint till the date of realisation of sum of Rs.2,60,76,222/-.

Plaintiff's case:

2. It is the case of the plaintiff that the defendants had floated tender for laying of cement concrete road for the stretch from (i) Ennore Road to Joint Canal Bridge, (ii) Tiruvottiyur High road to Vaidhyathan Bridge and (iii) Muthamizh Nagar, 5th Main Road



(from north Avenue to South Avenue).

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3. The plaintiff had participated in the tender on 23.07.2004. However, it was only on 27.04.2005 that the 2nd defendant had issued a letter of acceptance and the site was handed over to the plaintiff on 04.07.2005. The period of contract was fixed at 6 months. The defendants had taken a year for entrusting the work from the date of tender, as a result the prices of raw material had increased substantially.

4. By letter dated 04.10.2005, the plaintiff informed the 2nd defendant that sufficient site was available only at Muthamizh Nagar, 5th main road and not at Vaidyanathan road and Manali road and stated that this was only on account of the delay on the part of the corporation of Chennai. The plaintiff therefore requested the 2nd defendant to arrange for the sufficient site so that the work in the other two roads also be completed within the time frame of the



contract. The 2nd defendant had responded by calling upon the plaintiff to submit PERT/CPM chart by letter dated 25.11.2005. By letter dated 17.12.2005, the plaintiff had submitted PERT chart for the said three roads individually.

5. The plaintiff would further submit that in May 2006, on account of assembly election, the plaintiff was not in a position to continue the work and therefore by letter dated 17.05.2006, the plaintiff had requested the 2nd defendant to grant an extension of time by further period of 4 months from 04.04.2006. By letter dated 25.07.2006, the 1st defendant had granted the extension for a period of 6 months on condition that from 04.04.2006 a fine of Rs.5,000/- per day would be levied and action would be initiated to debar the plaintiff, in case the work is not completed before 31.08.2006.

6. The plaintiff would submit that on account of efflux of time, the prices of the raw materials also increased and therefore, the



plaintiff once again vide letter dated 06.09.2006 had sought for extension upto 30.11.2006. The 2nd defendant by letter dated 28.09.2006 granted the extension, after imposing the penalty of Rs.5,000/- per day upto 30.11.2006. Although the plaintiff by letter dated 04.10.2006 had requested the 2nd defendant to obtain orders from the competent authority for escalation of prices since prices of raw materials and labour had gone up, the 1st defendant by letter dated 14.11.2006 had turned down the request and levied the penalty of Rs.5,000/- per day upto 30.11.2006.

7. The 2nd defendant had declined the request for escalation of prices vide their letter dated 24.01.2007, however, granted extension upto 28.02.2007 to complete all the minor works. The plaintiff thereafter vide letters dated 31.01.2007 and 01.02.2007 had requested the defendants to waive fine of Rs.5,000/- per day and once again requested them to re-consider the plaintiff's request for price escalation. This request was once again reiterated vide letter dated



12.02.2007 and 30.08.2007, none of which was responded to.

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8. By letter dated 23.05.2008, the plaintiff had set out the reasons for the delay and reasons for requesting an escalation of price. It was their contention that they were unable to take up work in Manali road from Ennore road to Joint Canal Bridge, since there were several underground cables running on this road and it was not possible to shift / remove the cables and proceed with the laying of the road. In the light of these hurdles, hindrances and difficulties, the defendants themselves had pre-closed contract with reference to this stretch of the road and the final bill was disbursed to the plaintiff on 13.03.2007.

9. This would clearly go to prove that the defendants had not made available the road for which the plaintiff had tendered. The plaintiff therefore submitted a claim as detailed herein below:



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Claim No.1	Request payment for the difference in cost between the agreement rate and the escalated rate during the extended period of contract Rs.22,63,751/-
Claim No.2	Request to refund the fine imposed and recovered against the terms and conditions of contract Rs.4,15,271/-
Claim No.3	Request payment for the prevention of profit earning due to foreclosure of contract at Rs.32,43,323/-
Claim No.4	Request payment for the loss of profit and over heads due to prolongation of contract Rs.2,01,54,377/-.

10. By letter dated 30.11.2010, the plaintiff had called upon the 2nd defendant to give his decision with reference to each of these claims, for which there was no response. The plaintiff had addressed several letters in this regard, to which the defendants had not sent any reply and ultimately by letter dated 04.05.2011 the request was rejected as one without basis since the delay according to the



defendants was only on account of the plaintiff's lethargic and casual attitude.

11. Therefore, the plaintiff had preferred an appeal vide their communication dated 28.05.2011 and requested the defendants to give decision and stating that in case the authorities are not re-considering their decision, the plaintiff would be initiating arbitration proceedings as contemplated under Clause 7.8. Since there was no reply from the 2nd defendant, the plaintiff by letter dated 21.06.2011 had requested the dispute to be referred to an arbitrator. The 2nd defendant had replied that there was no provision to consider escalation of price and therefore the request for appointing arbitrator would not arise. The plaintiff therefore was constrained to file O.P.No.700 of 2012 under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.



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14. The defendants would submit that the site was handed over to the plaintiff on 04.07.2005. As per tender condition no.1-16, the tender period for competing the work on the three roads was 6 months from the date of handing over of the site and therefore the work should have been completed on or before 04.02.2006. However, on the request of the plaintiff, the contract was extended for a further period of 6 months from 04.01.2006 for completing the works at the three sites. Despite the extension, the plaintiff had not taken steps to expedite the work and the defendants were constrained to send letters dated 20.04.2006, 28.04.2006 and 17.05.2006, requesting the plaintiff to expedite the work at Muthamizh Nagar and Vaidyanathan Salai and to commence the work at Manali road. The defendants had also intimated the plaintiff that if no action was taken by the plaintiff then they would have to invoke the tender condition.



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15. On 17.05.2006, the plaintiff had requested the extension of time for a further period of 4 months from 04.06.2006. However, during this extended period the work at Vaidyanathan salai remained only at the sand and gravel mix level and at Muthamizh Nagar had progressed to the laying of about 30% of the total length and beyond this the plaintiff had not shown any progress. The plaintiff appeared to be working at his convenience and had not given importance to the public need. Therefore, the defendant had decided to impose penalty for the delay and non-completion of work by way of penalty of Rs.5,000/- per day.

16. Though the plaintiff had been entrusted with the work at three sites, he had only completed the work at 2 sites and the work at Manali road was dropped since the plaintiff had not even commenced the work and thereafter the work was finished by another contractor. The defendant had set out the amounts that had been paid to the plaintiff with reference to both Muthamizh Nagar and Vaidyanathan



salai and had also stated that a sum of Rs.34,81,037/- had been retained. The defendants had submitted that the claim was highly exorbitant and without jurisdiction. Therefore, they sought to have the suit dismissed.

17. This Court by order dated 13.07.2021 had framed the following issues:

“(i) Whether the suit is within the limitation in view of the order passed in O.P.No.700 of 2012 dated 30.10.2017?

(ii) Whether the plaintiff is entitled for the suit claim of Rs.6,18,00,341/- with interest as prayed?

(iii) Whether the request of the plaintiff seeking extension of time to execute the contract and waiver of fine imposed will dis-entitled the plaintiff seeking payment of differences in cost between the agreed rate and accelerate rate, refund the fine imposed and recover,



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*payment for the prevention of profit arising due to
foreclosure and payment of loss of profit and over its due
to prolongation of contract and*

(iv) what other relief, the plaintiff is entitled?

18. The plaintiff had examined P.W.1 and marked Ex.P.1 to Ex.P.29. On the side of the defendants D.W.1 was examined and Ex.D.1 to Ex.D.11 were marked on their side.

19. The defendants had raised the preliminary issue of limitation. Therefore, this Court proceeded to hear the arguments with reference to limitation on account of the fact that if the issue is answered in favour of the defendants it would bring the suit to an end.

20. Mr. V.Srikanth, learned counsel for the plaintiff would submit that though the final bill was settled on 17.08.2007, however, the rejection of the claim by the defendants was only on 04.05.2011



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and therefore the time for filing the suit would commence from 14.08.2011 and therefore there is no limitation. The learned counsel would further submit that as soon as the claim was rejected, the plaintiff had taken steps to request the defendants to appoint an arbitrator as per the terms of the contract and ultimately the petition under Section 11 of the Arbitration and Conciliation Act was ordered only on 30.10.2017 and therefore the suit is well within time.

21. The learned counsel would rely upon the Judgement of this Court reported in **2022 SCC Online Mad 3618 – P.P.Thomas Vs. State of Tamil Nadu**, wherein, the learned Judge on examining the rival contention in the said suit had held that it was only Article 113 that would be applicable for a consolidated suit claim and limitation period would run from the date when the right to sue first accrues.

22. Per contra, Mr. Bharath Gowtham appearing on behalf of the defendants would submit that the plaintiff had received the final



bill on 17.08.2007 without demur and in fact the same was not even received under protest. He would rely upon the legal notice issued by the plaintiff on 23.05.2008, Ex.P.17, where the plaintiff had only sought for recovery of a sum of Rs.2,01,54,377/- towards loss of profits and overheads. Therefore, he would submit that the suit which is filed in the year 2018 in respect of the claim which has been settled finally in the year 2007 is clearly barred by limitation.

23. The learned counsel would rely upon the Judgement of the Hon'ble Supreme Court reported in **2016 (14) SCC 761 – State of Gujarat Vs. Kothari and Associates.**

Discussion:

24. As already observed, if the issue of limitation goes in favour of the defendants then the suit has to be dismissed. However, if the Court comes to a decision that the suit is not barred by limitation, it is only then the other issues have to be considered.



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25. Admittedly, the plaintiff has received the final payment on 17.08.2007 and when he had received the payment, he has not objected to the same or contended that he is receiving the same without prejudice to his claim. On the contrary, the plaintiff has received the amount towards full and final settlement of his dues under the contract. The subsequent communication of the plaintiff calling upon the defendants to appoint an arbitrator appears to be an after thought particularly on considering the notice, Ex.P.17, which was issued within 10 months of the plaintiff receiving full and final settlement, in the said notice for the first time the plaintiff has made a claim with reference to the delay, escalation of prices etc., and had called upon the defendants to pay a sum of Rs.32,43,323/- towards compensation for loss of profit for work not done and Rs.2,01,54,377/- towards loss of profit due to prolongation of contract, though the full payment was received by the plaintiff on 17.08.2007 there was no response. Further, the plaintiff has not taken



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any steps whatsoever to institute the suit.

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26. The Hon'ble Supreme Court in the Judgement reported in **2016 (14) SCC 761 – State of Gujarat Vs. Kothari and Associates**, was considering the similar case, where the respondent who had participated in the tender floated by the State of Gujarat in that case, for every extension that was granted to the contractor had sought for compensation for the monetary loss due to the extended time limit and on every occasion the State had denied the compensation. The contractor had also received the full payment under protest on 01.01.1982 and the security deposit was also refunded. On 07.08.1983, the contractor had issued a statutory notice under Section 80 CPC to the State claiming damages. Ultimately, the suit was filed on 25.01.1985. The Trial Court held in favour of the contractor against which the State had preferred an appeal before the High Court and the contractor had also filed a counter claim. The High Court had dismissed the appeal and the said dismissal order was taken up to the



Hon'ble Supreme Court.

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27. While dismissing the appeal filed by the State, the High Court had opined that limitation need not mandatorily be computed on the basis of each cause of action. It held that date of return of security deposit could be taken for calculating the period of limitation.

28. The Hon'ble Supreme Court after considering the arguments and the facts in the said case has held as follows:

“11.....The High Court’s conclusion that the last date of breach and last date of payment were relevant, not each cause of action, was thus patently erroneous. For each breach, a corresponding amount of damages for additional costs could have been sought. The suit, however, was filed on 25.1.1985, well after the limitation period of three years for even the final breach, as the various causes of action became time barred on



15.11.1979, 15.11.1980, 15.11.1981 and 15.11.1982

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respectively.”

“13.In a works contract, more often than not, delays occur, and that is why it is assumed that time is not of the essence. Where extensions are asked for and granted, there must be a clear and discernable stand on behalf of either of the parties that the extension is granted and/or accepted without prejudice to the claim of damages. It has become commonplace that neither party lodges a claim for damages, but waits for the end of the contract to raise these disputes, taking advantage of the nebulous and equivocal nature of the transactions between them. This, however, is not the position that obtains before us since the Appellant State had categorically posited that the claim for damages for the alleged delay on its part would not be entertained.”



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29. Ultimately, the Hon'ble Supreme Court held as follows:

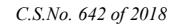
“It is thus clear that the Respondent failed to file the suit for damages within the period prescribed in the Limitation Act. The suit is required to be dismissed on this ground alone. The impugned Order is, therefore, set aside, and the Appeal is allowed, but with no order as to costs.”

This Judgement will apply on all fours to the case on hand.

30. Therefore, the primary issue of limitation is held against the plaintiff and the suit is dismissed however without costs.

08.08.2023

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
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P.W.1 - Mr. P.Janakiraman

Ex.P.1 - is the photocopy of letter of acceptance from Defendant to plaintiff dated 27.04.2005.

Ex.P.3 - is the photocopy of Plaintiffs letter to 2nd Defendant requesting free site for execution dated 04.10.2005.

Ex.P.4 - is the photocopy of 2nd Defendant instructed the Plaintiff to submit PERT/CPM Chart dated 25.11.2005.

Ex.P.5 - Ex.P5 is the photocopy of Plaintiff submitted the PERT CHART to the 2nd Defendant dated 17.12.2005.

Ex.P.6 - is the photocopy of a letter from Plaintiff to the 2nd Defendant seeking extension of time for 4 months from 04.06.2006 dated 17.05.2006.

Ex.P.7 - is the photocopy of a notice from the 1st Defendant to the Plaintiff duly imposing fine of Rs.5000/- per day from 04.07.2006 and granted EOT up to 31.08.2006 dated 25.07.2006.

Ex.P.8 - is the photocopy of a letter from Plaintiff to the 1st Defendant seeking EOT upto 30.11.2006 narrating the price hike of materials dated 06.09.2006.



Ex.P9 - is the a letter from Plaintiff to the 2nd Defendant granting EOT upto 30.11.2006 and imposed penalty at Rs.5000/- per day upto 30.11.2006 dated 28.09.2006.

Ex.P.10 - is the photocopy of a letter to the Plaintiff to the 2nd Defendant to obtain orders for price escalation citing Andhra Pradesh G.O dated 04.10.2006.

Ex.P.11 - is the photocopy of a letter from 1st Defendant to the Plaintiff rejecting the plea of the Plaintiff for price escalation and return of fine amount dated 14.11.2006.

Ex.P.12 - is the photocopy of a letter from Plaintiff to the 2nd Defendant duly enclosing a judgment and sought for price escalation and EOT upto dated 28.02.2007 dated 24.12.2006.

Ex.P.13 - is photocopy of a letter from Plaintiff to the 2nd Defendant requesting to waive the fine imposed dated 31.01.2007.

Ex.P.14 - is the photocopy of a letter from Plaintiff to the 2nd Defendant requesting to waive the fine imposed dated 01.02.2007.

Ex.P.15 - is the photocopy of a letter from Plaintiff to the 2nd Defendant requesting to Reconsider price escalation dated 12.02.2007.

Ex.P.16 - is the photocopy of a letter from the Plaintiff to the 2nd Defendant requesting to withdraw the fine imposed and pay price escalation dated 30.08.2007.

Ex.P.17 - is the photocopy of a letter from the Plaintiff to the 2nd Defendant duly submitting claims for redressal dated



23.05.2008.

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Ex.P.18 - is the photocopy of a letter from the Plaintiff to the 2nd Defendant requesting to give decision on each claims dated 30.11.2010.

Ex.P.19 - is the photocopy of a letter from the Plaintiff to the 2nd Defendant once again requesting to give decision on each claims dated 18.04.2011.

Ex.P.20 - is the photocopy of the letter from the 2nd Defendant to the Plaintiff duly rejecting the claims of the Plaintiff dated 04.05.2011.

Ex.P.21 - is the photocopy of a letter from the Plaintiff to the 2nd Defendant duly prefer an appeal to consider his claims, otherwise Arbitration will arise dated 28.05.2011.

Ex.P.22 - is the photocopy of a letter from 2nd Defendant to the Plaintiff duly rejecting the claims of the Plaintiff and rejected the Arbitration as time barred dated 09.06.2011.

Ex.P.23 - is the photocopy of a letter from the Plaintiff to the 2nd Defendant requested to appoint an Arbitrator as per clause 7.8 of Agreement dated 21.06.2011.

Ex.P.24 - is the photocopy of a letter from 2nd Defendant to the Plaintiff stating that the appointment of Arbitrator dose not arise dated 20.07.2011.

Ex.P.25 - is the photocopy of a letter from the Plaintiff to the 2nd Defendant duly enclosing a copy judgment stating that the claims are within the stipulated period for consideration by Arbitration dated 26.08.2011.



Ex.P.26 - is the photocopy of a letter from 2nd Defendant to the plaintiff denying appointing an Arbitrator as it is time barred dated 23.11.2011.

Ex.P.27 - is the photocopy of Resolution passed by corporation of Chennai foreclosing the major portion of work allotted to Plaintiff dated 11.05.2012.

Ex.P.28 - is the office copy of the petition in O.P No.700/2012 High Court, Madras dated August, 2012.

Ex.P.29 - is the certified copy of order in O.P.No.700/2012 dated 30.10.2017

List of witness on the side of the Defendants:

D.W.1 - Mr. P.Arivazhagan

List of Exhibits marked on the defendants' side:

Ex.D.1 - Letter from Superintending Engineer to plaintiff dated 16.05.2005

Ex.D.2 - Site Handing over letter dated 04.07.2005.

Ex.D.3 - Bill dated 06.07.2005.

Ex.D.4 - Letter from Superintending Engineer to plaintiff dated 20.04.2006.

Ex.D.5 - Letter from Superintending Engineer to plaintiff dated 28.04.2006



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Ex.D.6 - Letter from Superintending Engineer to plaintiff dated 17.05.2006.

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Ex.D.7 - Letter from Superintending Engineer to plaintiff dated 27.03.2006

Ex.D.8 - Bill dated 08.03.2007.

Ex.D.9 - Bill dated 13.08.2007.

Ex.D.10 - Bill dated 13.08.2007.

Ex.D.11 - Authorisation letter dated 09.12.2021.



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