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S.A.No.520 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 520 of 2017

M/s.Tamil Associates
Rep by E.V.Tamilarasu
106/8, A1, Thukkanampatti,
Mettur Dam,
Mettur Taluk,
Salem District

...Appellant

Vs.

S.Maria Arokiam,
Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Erode, residing at:
D.No.8, Sri Kandan Nagar,
Eranian 2nd street,
R.S.F.659/2,
Erode District

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 16.04.2015 made in A.S.No.21 of 2014 on the file of the learned Principal District Court, Salem reversal of the judgment and decree dated 09.10.2013 made in O.S.No.71 of 2010 on the file of the learned Sub Court, Mettur.

For Appellant : M/s.N.Manokaran

For Respondent : Mr.R.Prabhakar



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J U D G M E N T

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The unsuccessful plaintiff is the appellant before this Court. The appellant has filed a suit for recovery of money of Rs.4,00,000/- based on the construction contract between the appellant and the respondent. The suit was decreed by the Trial Court. The first appeal filed by the respondent was allowed by the First Appellant Court. Aggrieved by the same, the plaintiff is before this Court.

2. According to the appellant/plaintiff, there was a oral contract between the appellant and the respondent whereunder the appellant agreed to construct a residential house for respondent. The cost of construction was fixed at Rs.22 lakhs. The defendant paid a sum of Rs.18 lakhs to the appellant by way of cheque as well as cash. The remaining sum of Rs.4 lakhs was not paid by the defendant in spite of several demands. Therefore, the appellant issued a legal notice to defendant through his counsel on 10.02.2010 calling upon her to pay the balance amount of Rs.4 lakhs. The defendant came up with the reply that the appellant failed to complete the construction work within the agreed time. The respondent also averred in the reply notice that the appellant failed to complete the agreed work in Column Nos.13, 15, 22 to 25, 27 and 28 of



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estimate prepared by the parties. It was also averred by the respondent that the appellant failed to use quality building materials in the construction. As the respondent refused to pay the amount as demanded by the appellant, he was constrained to file a suit for recovery of money.

3. The respondent has filed a written statement wherein it was specifically averred by the respondent that appellant finished only 75 % of the work and stopped construction work abruptly. Therefore, the respondent finished the construction of the work by engaging third parties. Thus, the respondent incurred heavy expenses in completion of the incomplete works. Therefore, the appellant is not entitled for recovery of any amount as prayed for. It is also averred by the respondent that appellant received more amount than what he was legally entitled to in respect of the completed works.

4. Before the Trial Court, the proprietor of the appellant was examined as P.W.1 and yet another witness was examined as P.W.2. On behalf of the appellant, 7 documents were marked as Ex.A1 to Ex.A7. The respondent was examined as D.W.1 and on his behalf, 13 documents were marked as Ex.B1 to Ex.B13.



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5. The Trial Court, on appreciation of evidence available on record, came to the conclusion that appellant is entitled for recovery of Rs.4 lakhs and granted a decree. Aggrieved by the same, the respondent filed an appeal in A.S.No.21 of 2014 on the file of Principal District Court, Salem. The first Appellate Court reversed the findings of the Trial Court and dismissed the suit. Aggrieved by the same, the appellant/plaintiff is before this Court.

6. At the time of admission, this Court framed the following substantial questions of law :-

“1. Whether the Courts below have properly interpreted Ex.A5, Ex.A6 and Ex.A7 which were marked with the objections and whether such documents are admissible in nature and could have been considered during the course of the judgments by the Trial Court and in the First Appellate Court?

2. Whether as a fact, the appellant herein had abandoned construction or was justified in not doing further construction owing to the agreement between the two parties?”

7. The learned counsel for the appellant elaborated the substantial questions of law by submitting that Ex.B1, estimate prepared by the appellant



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is only an abstract estimate and the First Appellate Court ought not to have relied on Ex.B1 for coming into the conclusion that the appellant failed to complete certain works and the value of the incomplete work was Rs.4,00,000/-. The learned counsel further submitted that Ex.A5 is an agreement between the appellant and the respondent and the same should be the basis for construction of the residential house and the first Appellate Court erred in not taken into consideration the exhibits A5 to A7.

8. The learned counsel for the respondent by taking this Court to the findings of the First Appellate Court submitted that the First Appellate Court, based on the admissions of P.W.1 and Ex.B1, an estimate prepared by the appellant, came to the correct conclusion that appellant is not entitled to recover any money from the respondent.

9. It is the case of the appellant that there was an oral agreement with the respondent for construction of a residential house for a value of Rs.22 lakhs. Ex.B1 is the estimate prepared by the appellant. It is pertinent to mention that Ex.B1 was marked through P.W.1 during his cross-examination. Therefore, it is not open to the appellant to dispute the correctness of the



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particulars mentioned in Ex.B1. When the appellant was examined as P.W1, he admitted that the works mentioned in Column Nos.13, 15, 22 to 25, 27 and 28 of exhibit B1 were not completed by him. The learned counsel for the appellant submitted that there was an understanding between the parties that above mentioned work shall be completed only by the respondent. The Ex.B1 is the estimate prepared by the appellant. Only if the works mentioned in Column Nos.13, 15, 22 to 25, 27 and 28 are included, the appellant is entitled to a total amount of Rs.22 lakhs arrived at in Ex.B1. In the case on hand, P.W.1 himself in his evidence clearly admitted that the works mentioned in the above said columns are not completed by him. It was completed only by the respondent. In such case, the appellant is not entitled to claim that he is entitled to Rs.22 lakhs which is mentioned in Ex.B1. The appellant is entitled to claim the cost of the completed works only. The value of the incomplete work mentioned in Column Nos.13, 15, 22 to 25, 27 and 28 would come to Rs.4,15,113/- Therefore, based on evidence of P.W.1 coupled with Ex.B1, this Court can definitely come to the conclusion that the appellant failed to complete the construction work to the tune of Rs.4,15,113/- and the said sum has to be subtracted from the total value of Rs.22 lakhs mentioned in Ex.B1. Hence, the sum of Rs.18 lakhs paid by the defendant to the appellant is more



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than the value of the completed work. In such circumstances, the appellant is not entitled to recover a sum of Rs.4 lakhs as prayed for in the suit. The First Appellate Court, on appreciation of entire evidence and by taking into consideration the specific admission of P.W.1 with regard to the incomplete work mentioned in Ex.B1, correctly came to the conclusion that the suit deserved to be dismissed. Hence, I do not find any perversity in the findings of facts rendered by the First Appellate Court.

10. Accordingly, the substantial questions of law framed at the time of admission are answered against the appellant and the second appeal stands dismissed.

a) by confirming the judgment and decree dated 16.04.2015 made in A.S.No.21 of 2014 on the file of the learned Principal District Judge, Salem.

b) In the above facts and circumstances of the case, there will be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.

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To

1. The learned Principal District Judge, Salem.
2. The learned Sub Court, Mettur.

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10.10.2023