

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CITY CIVIL COURT APPEAL Nos.69 of 2015 and 88 of 2016

COMMON JUDGMENT:

Defendant No.1/The Government of Andhra Pradesh, represented by District Collector, Hyderabad District, Hyderabad has preferred CCCA No.88 of 2016 whereas defendant No.2/Quli Qutub Shah Urban Development Authority, represented by its Administrator, Darul Shafa, Hyderabad has preferred CCCA No.69 of 2015 assailing the judgment and decree dated 30.10.2013 in O.S.No.148 of 2002 on the file of the XIV Additional Chief Judge, City Civil Court, Hyderabad. Accordingly, it is proposed to dispose of both the appeal suits together as under.

2. The deceased/plaintiff No.1 has filed Original Suit in O.S.No.148 of 2002 against the defendant Nos.1 and 2 for recovery of suit claim of Rs.12,15,990.92 paise with costs and interest. The trial Court, after full length of trial and upon consideration of the rival contentions and material available on record, decreed the suit of the plaintiffs for an amount of Rs.9,48,625/- with interest @ 12% per annum before filing the

suit and from the date of filing of the suit till the date of decree and thereafter at the rate of 6% per annum till the date of realization holding that as per record defendant No.1 has paid Rs.4,00,000/- to the plaintiff No.1 and hence, the plaintiffs are entitled only for balance of suit claim and also entitled for recovery of Rs.2,000/- towards legal notice charges. Feeling aggrieved by the said findings, the defendant Nos.1 and 2 have preferred these two appeal suits, as stated above.

Pleadings in the plaint and written statements before the trial Court:

3. Initially the sole plaintiff/deceased plaintiff No.1 has filed the suit for recovery of Rs.12,15,990.92 paise against defendant Nos.1 and 2 alleging that as per the Administrative Sanction of 1st defendant, the 2nd defendant, under Nandanavanam Project, has taken up construction work of Central Water Channel in Musi River and it was divided into eight reaches for speedy construction and entrusted to different agencies. The contract for reach No.VII from Chadarghat Bridge to Railway Over Bridge admeasuring 500 meters was awarded to 1st plaintiff, who is father of plaintiff Nos.2 and 3 and the work was executed to the satisfaction of the defendants by 31.12.1999, bill was also paid to that effect

by the defendants. Since the plaintiff No.1 has completed construction of reach No.VII to the satisfaction of the concerned authorities, they have also entrusted the work to fill up the gap of 200 meters left-out between reach Nos.VI and VII near Imlibun Bus Stand for an estimated cost of Rs.12,20,000/-. Accordingly, as per the oral direction of the defendants, plaintiff No.1 has executed the work within the stipulated time, except some portion which could not be completed in view of heavy floods in Hyderabad City and heavy flow of water in Musi River. Plaintiff No.1 has borrowed huge amount of loan from financial institutions and Bank of India, Malakpet Branch, Hyderabad for execution of this work. The Chief Engineer of defendant No.2 has inspected the work completed by plaintiff No.1 as per the revised orders. As such, plaintiff No.1 is entitled for Rs.9,00,000/- towards work done. Plaintiff No.1 has also deposited an amount of Rs.48,625/- as earnest money, deposited at the time of awarding original work order for reach No.VII but it was not refunded. The defendants are liable to pay the said amount also. As such, the plaintiff No.1 has claimed Rs.9,00,000/- amount due together with earnest deposit amount of Rs.48,625/- and interest at 16.25%

per annum as Rs.2,65,365.92 paise and legal notice charges of Rs.2,000/- totalling to an amount of Rs.12,15,990.92 paise. Accordingly, prayed to decree the suit.

4. Defendant No.2 has filed the written statement denying the plaint averments. Defendant No.1/Andhra Pradesh represented by District Collector, Hyderabad District, Hyderabad failed to file written statement and was set ex-parte. However, subsequent to ex-parte decree, defendant No.1 has filed CRP No.5326 of 2007 before this Court and as per the orders of this Court, the trial Court was directed to give one more opportunity to defendant No.1 to contest the suit by filing written statement. As such, the suit was re-opened, defendant No.1 was permitted to file written statement.

5. The main averments of the written statement filed by defendant No.1 are that the suit against the defendant No.1 is not maintainable, defendant No.1 is wrongly impleaded, the suit is filed for recovery of amount with interest for construction of Central Water Channel in Musi River under Nandanavanam Project, there is no privity of contract between plaintiff No.1 and defendant No.1. In-fact, only contract for

reach No.VII from Chadarghat Bridge to Railway Over-bridge, admeasuring 500 meters was sanctioned to the plaintiff No.1 under the Administrative Sanction of the 1st defendant and the rest of the work as per the revised work order was not issued under the Administrative Sanction of the 1st defendant, as such, 1st defendant is not a necessary party and it is the responsibility of defendant No.2 to defend the case by filing documentary evidence in respect of actual work done. As per the report of the Chief Engineer, Quli Qutub Shah Urban Development Authority, Hyderabad the plaintiff No.1 has not completed the gap portion of work of net value of Rs.5,01,618/-. Though the work is completed in the year 2000, very recently defendant No.2 brought to the notice of defendant No.1 about the actual work done and it is only to a tune of Rs.5,01,618/-. The plaintiff No.1 has made correspondence with defendant No.2 to settle the matter. In fact, after receiving the warrant of attachment from the Court in E.P.No.11 of 2005 this defendant has deposited an amount of Rs.4,00,000/- vide Cheque No.094478 dated 31.08.2006 but defendant No.1 is no way concerned with the suit claim. Accordingly, prayed for dismissal of the suit.

6. Defendant No.2 has filed additional written statement alleging that as per the oral instructions of the District Collector and Secretary, Municipal Administration, defendant No.2 has sent proposals for Administrative Sanction and on the advice of the then District Collector and Principal Secretary the proposals were sent to defendant No.1 but before actual Administrative Sanction was granted, the then District Collector was transferred however, as per the instructions of defendant No.2 plaintiff No.1 was directed to continue the work. As such, defendant No.1 is wholly responsible for release of the funds. It is further mentioned in the additional written statement that since both the organizations of defendant Nos.1 and 2 belonged to the Government, it is the defendant No.1, who is the sanctioning and disbursing authority, to pay the said amount and the defendant No.2 is only an executing authority, not liable to pay any amount. Accordingly, prayed for dismissal of the suit against defendant No.2.

7. The above pleadings give rise to frame the following issues and additional issues.

Issues:

1. Whether the defendant No.1 is liable to pay the suit amount?
2. To what relief?

After filing written statement by defendant No.1 and additional written statement by defendant No.2, the following additional issues were framed:

Additional Issues:

1. Whether the defendant No.1 is not a party to the contract?
2. Whether the value of the work done by plaintiff No.1 is only Rs.5,01,618/- as contended by defendant No.1?
3. Whether the suit is not maintainable against the defendant No.2?
4. Whether the plaintiffs 2 and 3 are entitled to suit claim as legal representatives of the plaintiff No.1?

Evidence and findings of the trial Court:

8. During trial, on behalf of plaintiffs, PWs.1 to 3 are examined, Exs.A1 to A9 documents are marked and after closure of plaintiffs' evidence, inspite of granting ample opportunity, no witness is examined on behalf of defendant

Nos.1 and 2 and no document is exhibited on behalf of these defendants. Accordingly, defendants' evidence was closed by the trial Court.

9. The trial Court has answered all the issues in favour of the plaintiffs holding that plaintiffs are entitled for an amount of Rs.9,48,625/- with interest @ 12% per annum before filing the suit and from the date of filing of the suit till the date of decree and thereafter at the rate of 6% per annum till the date of realization. However, as per the records, defendant No.1 has paid an amount of Rs.4,00,000/- to the plaintiff No.1 and as such, the plaintiffs are entitled for the balance of suit claim and also entitled to recover the charges of legal notice amounting to Rs.2,000/-, rest of the claim of the plaintiffs was dismissed.

10. Feeling aggrieved by the findings recorded by the trial Court, the defendant No.1 has filed CCCA No.88 of 2016 and whereas, defendant No.2 has filed CCCA No.69 of 2015.

11. Heard learned counsel for appellant in CCCA No.88 of 2016 and learned counsel for respondents in both the

appeals. However, there is no representation on behalf of appellant in CCCA No.69 of 2015, filed by defendant No.2.

12. In the light of rival contentions and evidence available on record, the following points would arise for consideration.

- (1) Whether the plaintiffs are entitled for recovery of suit claim, as prayed for?
- (2) Whether the impugned judgment and decree dated 30.10.2013 is sustainable?

Point Nos.(i) and (ii):

The parties hereinafter referred as plaintiffs and defendants, as arrayed in the Original Suit.

For the sake of brevity and convenience, point Nos.(i) and (ii) are answered as under:

13. The admitted and undisputed facts of the case are that plaintiff No.1 is a civil contractor, the defendants have entrusted the work of construction of reach No.VII from Chadarghat Bridge to Railway Over Bridge admeasuring 500 meters and the work was completed by the plaintiff No.1 as per

the schedule to the satisfaction of the defendants by 31.12.1999 and the plaintiff No.1 has also received amount for execution of the said work. However, it is the case of the plaintiffs that since the plaintiff No.1 has executed the work to the satisfaction of the concerned authorities, they have again asked him to attend the work of filling the gap of 200 meters left-out between reach Nos.VI and VII for an estimated cost of Rs.12,20,000/-. Accordingly, plaintiff No.1 has completed the work but the defendants have failed to pay the said amount hence, the suit was filed for recovery of Rs.12,15,990.92 paise.

14. It is the specific case of defendant No.1 that the first work with regard to contract of reach No.VII from Chadarghat Bridge to Railway Over-bridge, admeasuring 500 meters, was assigned to plaintiff No.1 under the Administrative Sanction of defendant No.1 but the defendant No.1 is nothing to do with the second work of filling the gaps between reach Nos.VI and VII for an estimated cost of Rs.12,20,000/- and that the defendant No.1 is not a proper party to the suit, the work was only entrusted and executed as per the directions of defendant No.2, which is liable to pay the said amount.

15. Whereas, the specific case of defendant No.2, as per the pleadings and written statements, is that as per the oral instructions of the District Collector, Hyderabad (1st defendant) and the Secretary, Municipal Administration, proposals were submitted, in the meanwhile, as directed by the District Collector, work was entrusted to plaintiff No.1 to fill up the gaps between reach Nos.VI and VII with an estimated cost of Rs.12,20,000/- but unfortunately, the District Collector was transferred, Administrative Sanction could not be granted, however, defendant No.2 is only an executing authority and it is for the defendant No.1 to disburse the amount.

16. With these pleadings, the parties, on the above issues, led their evidence, as stated above. On behalf of plaintiffs, the 2nd plaintiff himself got examined as PW1 and filed his evidence affidavit in lieu of chief-examination. In his evidence Exs.A1 to A9 documents are marked. Exs.A8 and A9 are the Death Certificates of plaintiff No.1 and his wife whereas Ex.A4 is the legal notice under Section 80 of Civil Procedure Code (for short 'CPC'). Exs.A5 and A6 are the postal acknowledgment cards of defendant Nos.1 and 2 respectively. Ex.A7 is the letter from plaintiff No.1 to the defendant No.2

claiming the amount. Exs.A2 and A3 are the similar letters from plaintiff No.1 to the Chief Engineer. Ex.A1 is the letter from the Chief Engineer to the plaintiff No.1, this is the crucial document basing on which the plaintiff No.1 has started attending the work between reach Nos.VI and VII. In Ex.A1 the office of the Chief Engineer of defendant No.2 on 31.03.2000 requested plaintiff No.1 to take up the work of filling up of gap of 200 meters left out between reach Nos.VI and VII (weir to near Imlibun Bus Stand and starting point of reach No.VII).

17. It is categorically mentioned in paragraph No.2 of Ex.A1 that the revised work amount will be paid as per the agreed rates of reach No.VII. Pursuant to proceedings under Ex.A1 only, it appears, plaintiff No.1 has started the work and completed. In the cross-examination PW1 has stated that his father plaintiff No.1 has filed the suit, he has executed the work of construction of Central Water Channel in Musi River under Nandanavanam Project and the work done by his father is reflected in M Books. He admitted that the subject matter of contract work was carried away by the plaintiff No.1 under the instructions of defendant No.2 and defendant No.1 is only an administrative sanctioning authority. It is also admitted by

PW1 that the said agreement was executed between plaintiff No.1 and defendant No.2. Further, admitted that during pendency of the suit an amount of Rs.4,00,000/- vide Cheque No.094478 dated 31.08.2006 was deposited by 1st defendant to the credit of the Original Suit.

18. PWs.2 and 3 are the independent witnesses examined on behalf of plaintiffs. Though these two witnesses were cross-examined at length, on behalf of defendant No.1, nothing worth mentioning is elicited to doubt the credibility of these witnesses. PW2 has stated that plaintiff No.1 is his own brother but he has no personal knowledge of the contract work. However, he visited the contract site along with plaintiff No.1. Whereas, PW3 has stated that he had acquaintance with plaintiff No.1 and during his life time plaintiff No.1 has borrowed money from him for contract works and also informed about the suit contract and denied all other suggestions given to him.

19. Be it stated that plaintiff No.1 died and plaintiff Nos.2 and 3 were brought on record during pendency of the suit. Plaintiff No.2 is examined as PW1, two other independent

witnesses are examined as PWs.2 and 3. The evidence of PWs.1 to 3 remained consistent throughout the cross-examination. The oral evidence of PWs.1 to 3 coupled with the contents of Ex.A1 and the demands made by plaintiff No.1 for payment of the amount through the legal notice and the letters as in Exs.A2 to A4 would establish that as per the instructions from defendant No.2 and as per the revised orders under Ex.A1 the deceased plaintiff No.1 has carried out the work of filling the gaps between reach Nos.VI and VII to an extent of 200 meters, however, he could not complete the entire work, accordingly, he has restricted the claim only to the extent of Rs.9,00,000/-. Defendant No.1 though denied their liability, has categorically stated in the pleadings and written statements as well as in the cross-examination by way of suggestions that it is only the Administrative Sanctioning Authority, it is nothing to do with the payment of the amount.

20. Whereas defendant No.2, who failed even to cross-examine PWs.2 and 3, has put-forth its case to the effect that as per the oral instructions of the then District Collector, Chief Engineer of defendant No.2 has issued revised proceedings under Ex.A1 asking plaintiff No.1 to execute the work of filling

up gaps between reach Nos.VI and VII, as such the proceedings were issued requesting plaintiff No.1 to execute the work on the same terms and conditions of reach No.VII. It is further stated that defendant No.2 is only an executing authority, the drawing and disbursing authority is only defendant No.1. At this stage, the admissions made by defendant No.1 in the written statement and the suggestions given to PW1 that an amount of Rs.4,00,000/- was deposited by the 1st defendant to the credit of the suit, in view of the orders in E.P.No.11 of 2009, gains importance. If really the 1st defendant is not liable to pay any amount to the plaintiffs, what made him to deposit an amount of Rs.4,00,000/- in E.P.No.11 of 2005 to the credit of this suit in O.S.No.148 of 2002 is not explained, as such considering the entire evidence the trial Court has ordered that after deducting the said amount of Rs.4,00,000/- the plaintiffs are entitled for the remaining claim out of Rs.9,48,625/-.

21. Defendant No.1 initially failed to file written statement and was set ex-parte and whereas, defendant No.2 has filed written statement simply stating that the drawing and disbursing authority is defendant No.1 and that the defendant No.2 is only an executing authority for execution of the work as

per the instructions of the District Collector and Secretary, Municipal Administration. However, defendant No.1, having filed CRP No.5236 of 2007 before this Court, filed written statement denying its liability stating that the revised work was not executed as per the Administrative Sanction of the defendant No.1 and it is not liable for payment of any amount. However, pursuant to the orders in E.P.No.11 of 2005 an amount of Rs.4,00,000/- was deposited to the credit of the Original Suit in O.S.No.148 of 2002.

22. It is pertinent to note that the defendants, having pleaded so in their written statements, did not choose to enter into the witness box to speak the contents of the written statements filed by them on oath. They did not even choose to examine any of its authorized employee/officer in support of the pleadings in the written statement. This by itself is sufficient to draw an adverse inference under Section 114 (g) of Indian Evidence Act against both the defendants holding that the defence set up by them is not correct. To arrive at this

conclusion I am supported by the principles laid by the Hon'ble Supreme Court in **Vidyadhar Vs.Manikrao and another**¹.

23. That apart, the oral evidence of PWs.1 to 3 and contents of Exs.A1 to A9, admissions made by defendants as to payment of Rs.4,00,000/- and pleadings in the written statement of defendant No.2 clinches the issue to the effect that it is only pursuant to the directions of the Chief Engineer of defendant No.2 under Ex.A1 revised work was executed by plaintiff No.1 thereafter, it appears, the District Collector was transferred, Administrative Sanction could not be issued by defendant No.1, consequently, amount was not disbursed to the extent of revised work executed by the plaintiff No.1 between reach Nos.VI and VII to the extent of 200 meters for filling up gaps. Nowhere in the written statement of defendant No.2 it is denied that plaintiff No.1 has failed to execute the work as per the revised work order under Ex.A1. It is only the contention of defendant No.2 that they are only executing authority and that the amount has to be disbursed by defendant No.1.

¹ AIR 1999 SC 1441

24. That as per the orders in E.P.No.11 of 2005, Rs.4,00,000/- was deposited by defendant No.1, and the remaining amount has to be paid out of the suit claim of Rs.9,48,625/- as awarded by the trial Court. Therefore, for the reasons stated above, point Nos.(i) and (ii) are answered in favour of the plaintiffs and against the defendants/appellant Nos.1 and 2 holding that there are no infirmities or irregularities in the findings recorded by the trial Court and the judgment and decree impugned is sustained.

25. In the result, both the appeal suits in CCCA Nos.69 of 2015 and 88 of 2016 are dismissed with costs confirming the impugned judgment and decree dated 30.10.2013 in O.S.No.148 of 2002 on the file of the XIV Additional Chief Judge, City Civil Court, Hyderabad in its entirety. Miscellaneous applications, if any pending, shall stand closed.

A.VENKATESWHARA REDDY, J

Dated : 19-01-2023
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