



A.S.No.287 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.287 of 2014

and

M.P.No.1 of 2015

Judgment reserved on 29.02.2024	Judgment pronounced on 03.06.2024
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Erode Municipal Corporation,
Represented by its Executive Authority
The Commissioner,
Erode Town

....Appellant

Vs.

1.M/s.E.R.Rangasamy and Brothers
By its Partner E.R.Rangasamy (Died)
2. K.R.Karthikeyan
3.E.R.Mohan
4.E.R.Sakthivel

... Respondents

Prayer: This First Appeal is filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 27.01.2012 made in O.S.No.16 of 2006 on the file of the learned Additional District Judge (Fast Track Court - I), Erode.



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For Appellant : Mr.P.Srinivas
For R2 to R4 : Mr.A.K.Kumarasamy,
Senior Counsel
For Mr.S.Kaithamalai Kumaran
For R1 : Died

J U D G M E N T

The suit value is Rs.80,36,793/- and appeal suit value is Rs.16,43,450/-

2. The defeated defendant is the appellant herein.

3. The respondents/plaintiffs was a successful bidder for the completion of the certain work given by the Erode Municipal Corporation and while he was doing the part of the job, the contract was terminated by a communication dated 24.08.1993 and hence, the respondents/plaintiffs filed a suit in O.S.No.642 of 1993 on the file of the Sub-Court, Erode, subsequently, transferred to District Munsif Court, Erode and re-numbered as O.S.No.309 of 1999.

4. Based upon the documentary evidence produced by the plaintiff and the defendants, the trial Court have rendered a factual finding that under



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different heads of accounts, the respondents/plaintiffs claimed a sum of Rs.80,36,793/- and the suit was decreed for a sum of Rs.16,43,450/-

5. After detailed discussion based upon the documentary evidence adduced by the plaintiff side, a sum of Rs.2,65,516/- along with 6% interest from 24.08.1993 to 23.08.2003 was granted and Rs.60,000/- towards the amount of **tevani**, 6% interest was awarded from 18.10.2003 to 17.10.2011 and the amount of Rs.57,000/- paid by the plaintiff to the defendants in which, Rs.3,000/- is balance to be paid carries 6% interest from 18.10.2003 to 17.10.2011 and after the cancellation of the tender in the middle of the work being done, the construction materials was seized by the defendant. In such extent of Rs.3,17,000/- was granted which was admitted by Ex.B13 by the defendants and the same shall carry interest of 6% from 25.08.1993 and for the work already done by the plaintiff, a sum of Rs.1,50,000/- has to be paid with interest of 6% from 24.08.1993 and accordingly, decreed the suit for Rs.16,43,450/- and ordered.

6. Heard both sides and perused the records.

7. After elaborate trial in the first round of litigation, the trial Court at the first instance has gone into the question of whether there is a delay in



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executing the work as per the agreement is due to the failure on the part of the defendants and other factual matters have also been gone into and accordingly, after full fledged trial, the suit filed by the very same plaintiff. Challenging the termination of the contract was held to be arbitrary. However, since the subsequent work has been given to another company and also been completed, the Permanent Injunction restraining the Municipality from entrusting the work to the other person for completion of the balance of the work has been rejected. As against the same, it appears that the Erode Municipal Corporation filed in A.S.No.148 of 2001 and the judgment of the trial Court was confirmed by the learned Principal District Judge, Erode by a judgment dated 27.02.2002 as could be seen from Exs.A3 and A4.

8. The judgment of the learned District Munsif in O.S.No.309 of 99 is Ex.A1 and decree thereto is Ex.A2. Thereafter, the present suit in O.S.No.16 of 2006 was filed claiming compensation for arbitrary termination of the tender in the middle of the work being carried on claiming compensation of Rs.18 lakhs under the various heads along with interest.



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9. The appellant/defendant filed a written statement inter-alia contending that there is no cause of action and also disputed that the suit claim is barred by limitation.

10. On perusal of the written statement as well as the evidence of D.W.1, there is no plea of order II Rule 2 of C.P.C as it is raised in the appeal is found in the written statement assumes significance, will be discussed infra.

11. During the trial, the plaintiff examined himself as P.W.1 and judgment and decree passed by the competent Civil Court in the first round of litigation challenging the cancellation of the tender work was marked as Exs.A1 and A2 and the appeal preferred by the Erode Municipal Corporation was also dismissed as could be seen from Exs.A3 and A4 and Ex.A7 - Reply notice issued by the Erode Municipal Corporation by its Commissioner through the Advocate on 30.05.2003, it appears that they have admitted the liability. In respect of the same, there is no dispute between the parties.

12. Legal Notice Exchange between the parties is Exs.A7 to A10 and orders of P.W.3 and the Collectors and other communications are Exs.A11 to Ex.A21. Exs.A22 to 25 are the receipts for certain amount work done by the person. Ex.A33 is the written statement filed by the Erode Municipal



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Corporation in I.A.No.753 of 1993 in O.S.No.309 of 99 and resolution passed by the Municipal Corporation is Ex.A34. On behalf of the defendants, official from the Municipality examined as D.W.1. Ex.B1 is the Municipality Deposits Register and bill paid to the plaintiff is Ex.B2. Tender details are Ex.B3 and payment made to the labourers is Ex.B4.

13. On consideration of both oral and documentary evidence, the trial Court has held that a sum of Rs.2,65,516/- along with 6% interest from 24.08.1993 to 23.08.2003 was granted and towards amount of **tevani** Rs.60,000/- 6% interest was awarded from 18.10.2003 to 17.10.2011 and the amount of Rs.57,000/- paid by the plaintiff to the defendants in which Rs.3,000/- balance to be paid carries 6% interest from 18.10.2003 to 17.10.2011 and after the cancellation of the tender in the middle of the work being done. The construction materials was seized by the defendant in such extent of Rs.3,17,000/- was granted which was admitted by Ex.B13 by the defendants and the same was carried interest of 6% from 25.08.1993 and for the work already done by the plaintiff, a sum of Rs.1,50,000/- has to be paid with interest of 6% from 24.08.1993 Rs.2,65,000/- and accordingly, decreed the suit only for an extent of Rs.16,43,450/- and ordered.



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14. Aggrieved against the finding granted by the learned Additional District Judge, Erode, the present appeal has been filed by the appellant-Erode Municipal Corporation.

15. The learned counsel appearing for the appellant contended that the suit is barred by limitation and the suit is barred by principles of constructive res judicata as enshrined under Order II Rule 2 of C.P.C.

16. Mr.A.K.Kumarasamy, learned Senior Counsel appearing for the respondents 2 to 4 made submissions in support of the judgment of the trial Court.

17. The earlier legal proceedings in declaring the termination of work assigned to the plaintiff and subsequent declaration relief in Exs.A1 and A2 in O.S.No.309 of 99 as confirmed in A.S.No.148 of 2009 are not in dispute and hence, I have no hesitation to hold that the termination of the work given to the respondents/plaintiffs is bad-in-law as it was confirmed by the appellant as could be seen from Exs.A1 to A4.

18. With regard to the various amounts due till the such termination, the learned District Judge has dealt in detail and taken into the entire aspects and awarded a sum of Rs.16 lakhs. Now, the appeal has been filed



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challenging on the above two grounds.

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19. Points for determination in this appeal are (i) whether the suit claim is barred by limitation; and (ii) whether the suit is barred under Order II Rule 2 of C.P.C.

20. The plaint was amended as per the order dated 25.09.2008 in I.A.No.511 of 2008. The plaintiff and the defendant entered into a contract for the construction of fruit market, vegetable market, shopping complex and circular toilet on 24.08.1993.

21. For the reasons, the appellant-Erode Municipal Corporation by a letter on 24.08.1993 cancelled the above contract of work. The respondents-plaintiffs made a demand through Advocate notice on 11.02.1995, 03.11.1999 and 23.05.2023.

22. Admittedly, the Erode municipality by a communication dated 30.05.2003 admitted the liability that the balance of pay amount will be taken to settle and steps for being taken to pay the amounts due to the plaintiff. Again the Directorate of Municipal Administration - defendant on 23.01.2004 admitted that steps for payment of amount due claimed by the plaintiff will be given after the final disposal of the auction and based upon the admission of



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liability in letter dated 30.05.2003 and 23.01.2004, the suit was filed. The letter of the Erode Municipality dated 30.05.2003 admitting the liability is marked as Ex.A7. The letter of admissibility of liability by the Director of the Municipal Administration at Chennai dated 23.01.2004 is marked as Ex.A8. P.W.1 in the witness box had admitted Ex.A7 and Ex.A8. Suit was filed on 17.09.2004 as could be seen from the endorsement in the decree.

23. Furthermore, the demand by the plaintiff through his Advocate was made on 11.02.1995 (Ex.A9) and 23.05.2003 (Ex.A10). Under Ex.A7 and Ex.A8, the Municipal Corporation and the Director of Municipal Administration at Chennai have admitted the liability and hence, I find that the suit has been filed by the plaintiff within 3 years of the admission of liability by the Municipal Authorities and hence, the suit is held to be in time the reasons assigned by the learned District Judge is on factual background and admitted position documentary evidence as admitted by the D.W.1 and hence, the points raised by the appellant side on the point of limitation stands rejected.

24. Point No.II:-



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The plea of constructive res judicata has been raised in the appeal.

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On an close perusal of the written statement, no such plea has been raised in the written statement filed before the trial Court assumes significance.

25. Yet another point is that in the first round of litigation, the challenge was made by the plaintiff as to the termination of the work assigned by the Municipal Corporation for the construction of Fruit shop, vegetable shop and circular toilet and also a relief of Permanent Injunction was passed not to assign the work for any other person and hence, the suit was filed for declaration declaring the communication by the Municipality dated 24.08.1993 is illegal and also for Permanent Injunction for giving effective. Since there was no injunction order, they terminated and the defendant have seized the materials available at the site that was left over by the plaintiff and they have revised the work. Progress of the work was stopped and defendant-Municipality preferred the revised design and got it approved and gave the work to some other person and therefore, on the date of filing of the earlier suit claim of compensation or cause of action for compensation does not arise and furthermore, the claim was admitted by the defendant in the above



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document Exs.A7 and A8 and therefore, I find that the present suit is not hit by the order II Rule 2 of C.P.C and hence, both the points raised by the learned counsel for the appellant stands rejected.

26. On the finding of the fact as observed earlier, both are all the finding of the fact with regard to grant of 16 lakhs based upon the documentary evidence given by the defendant-Municipality admitted by the D.W.1 and hence, I find that the grant of said amount is well considered and well merited does not require any interference at the appellate stage and the trial Court have also granted only 6% interest from the respective date and hence, award of interest by the trial Court cannot be termed as excessive or exorbitant and hence, both the compensation amount awarded and interest levied thereon are inconsonance with the settled principles of award of compensation and interest and hence, all the points are answered in negation against the appellant - Erode Municipal Corporation and the appeal suit is devoid of merits.

27. In the result, the **Appeal Suit is dismissed** and the judgment and



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decree passed in O.S.No.16 of 2006 on the file of the learned Additional District Judge (Fast Track Court - I), Erode, dated.27.01.2012 are confirmed.

No costs. Consequently, connected M.P is closed.

03.06.2024

Index : Yes / No

Neutral Citation : Yes/No

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To

- 1.The Additional District Judge (Fast Track Court - I), Erode.
- 2.The Section Officer,
VR Section, High Court,Madras.

RMT.TEEKAA RAMAN, J.

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