IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2024

CORAM:
THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

APPEAL (CAD) NO.14 of 2023
and
C.M.P. NOS.14546/2023 AND C.M.P.NO.3277/2024

1. Syntel International Pvt. Ltd.
Administrative Office
SIPCOT IT Park
Navalur Post
Siruseri
Kancheepuram District 603 103

2. Syntel Pvt. Ltd.
'Arihant E-park'
Adyar
Chennai 600 020
Registered Office at:
Seepz
Andheri (East)
Mumbai 400 096 ... Appellants

vs.

Day 'N' Day Services Pvt. Ltd.
Ramakrishna Nagar
Chennai 600 028 ... Respondent

Appeal (CAD) filed under Section 13 of the Commercial Courts Act, 2015, challenging the judgment and decree dated 24.04.2023 passed in

C.O.S. No.2 of 2018 on the file of the Principal District Court, Kancheepuram District at Chengalpattu.

For appellants	Mr. Srinath Sridevan, Sr. Counsel for Mr. Surya Teja SS Nalla
For respondent	Mr. Perumbulavil Radhakrishnan

JUDGMENT

(delivered by the Hon'ble Chief Justice)

In this appeal, appellants are impugning an order and judgment dated 24.04.2023 passed by the Principal District Judge, Kancheepuram District at Chengalpattu. The respondent, who was the plaintiff in the suit, filed the suit for recovery of a sum of Rs.1,07,68,797.72. Claim against first defendant was Rs.1,05,44,505/- and against second defendant was Rs.2,24,292/- as payable towards Dearness Allowance arrears and consequential contribution to Provident Fund and Employees State Insurance pursuant to the periodical revision of minimum wages by the Government of Tamil Nadu. Plaintiff also claimed further interest thereon at 18% per annum from the date of plaint till the date of realisation plus costs.

2. Appellants and respondent, who, for ease of reference, will be referred to as defendants and plaintiff, respectively, entered into an agreement dated 09.06.2010 for security services (hereinafter is referred to as the said agreement). By the said agreement, plaintiff was to provide security services from 01.06.2010 for a period of 24 months ending on 31.05.2012. In consideration of providing security services, defendants agreed to pay a sum of Rs.10,96,950/- plus applicable service tax per month. Under the said agreement, as provided in Schedule III thereto, plaintiff was to provide Security Supervisor, Security Guard and Armed Gunmen. For the Security Supervisor, defendants were to pay a sum of Rs.1,03,176/-, for Security Guard, Rs.9,44,775/- and for Armed Gunmen, Rs.48,999/-, totalling to Rs.10,96,950/-. Plaintiff was to raise an invoice each month.

3. The payments for the invoices raised were to be paid within 5 days of the following month. The agreement also provided that the charges as specified in Schedule III, which are noted above, will be firm and applicable during the term of the agreement. The payment terms, *i.e.,* Part

VI, also provided that the charges in the invoices shall be exclusive of service tax (which are presently exempt) as applicable from time to time. Defendants were also to deduct applicable taxes at the time of making payment.

4. The agreement in Part -II provided the obligations of plaintiff. Clause 2 thereof provided that plaintiff shall be solely responsible to observe/comply with all the statutory obligations under various statutes/rules/regulations, as may be applicable to it, from time to time, including, but not limited to the payment of minimum wages under the Minimum Wages Act, all other statutory liabilities such as ESI, PF, Gratuity, Labour Welfare Fund, maternity, bonus, HRA, *etc*. Plaintiff was also to provide necessary proof of the payments and certificate of compliance of applicable laws on regular basis to defendants.

5. Part VIII of the agreement provided that subject to Part IX, the agreement shall remain in force from 01.06.2010 and unless renewed by the parties in writing, the agreement would expire on 31.05.2012. Defendants were given an option to renew the agreement on mutually

agreeable terms on the expiry of the agreement. Part IX provided for termination of the agreement.

6. Disputes arose and plaintiff filed the suit claiming a sum of Rs.1,07,68,797.72 against defendants together with further interest thereon at 18% from the date of plaint till realisation. Paragraph 13 of the plaint reads as follows:

> "13. The plaintiff thus makes a claim against the defendants in all for a sum of Rs.1,07,68,797.70 p detailed as under:

I	**1st defendant's Siruseri office:**		
	Principal outstanding	Rs.46,99,475.00	
	18% compound interest	Rs.45,41,622.15	
			Rs.92,41,098.23
II	**1st Defendant's Thirunelveli office:**		
	Principal outstanding	Rs.3,19,068.37	
	18% compound interest	Rs.4,84,338.92	
			Rs.8,03,407.29
III	**2nd Defendant's Adyar office:**		
	Principal outstanding	Rs.1,17,188.77	
	18% compound interest	Rs.1,07,103.40	
			Rs.2,24,292.17

IV Arbitration Expenses	Rs.5,00,000.00
Total claim	**Rs.1,07,68,797.72**

as per the statement of accounts of the plaintiff filed herewith receivable from the defendant towards arrears of DA revisions as per the Government Orders on minimum wages, which the defendant is liable to payable/reimburse to the plaintiff, besides to other payment on other invoices as traversed above, together with further interest at 18% per annum from the date of plaint fill the date of realisation, besides arbitration expenses."

Therefore, the amount of Rs.1,07,68,797.72 claimed by plaintiff included interest of 18% per annum compounded plus expenses of Rs.5 lakhs.

7. Disputes were referred to arbitration and the arbitration was terminated as the Arbitrator had allowed first defendant's application under Section 16 of the Arbitration and Conciliation Act, 1996, with liberty to plaintiff to approach the competent forum for its claim. Hence, the suit.

8. Defence was filed and issues were framed as under:

1) Whether the plaintiff is entitled for the relief of recovery of a sum of Rs.1,07,68,797/- from the defendants as prayed for?

2) Whether plaintiff is entitled for interest at the rate of 18 % per annum?

3) To what other relief?

9. Subsequently, parties led evidence of one witness each and after the completion of trial, the impugned judgment and order was passed.

10. Shri. Radhakrishnan submitted that though under clause 2 of Part II of the agreement, it was the obligation of the plaintiff to be solely responsible to observe/comply with all the statutory obligations, including but not limited to payment of minimum wages under the Minimum Wages Act, etc., the agreement having come to an end on 31.05.2012 and subsequent service provided was pursuant to purchase orders issued by defendants, the obligation under the agreement of plaintiff to be responsible for statutory obligations towards the workmen, did not continue. Since, in law, defendants were to be treated as the principal employer obligation to pay the Dearness Allowance increase was on the defendants. Hence, plaintiff was entitled to claim that difference in Dearness Allowance from

defendants.

11. But, when we considered the plaint as amended, this was not plaintiff's claim. Plaintiff has proceeded on the basis that the agreement dated 09.06.2010 continued. Paragraph 5 of the plaint reads as under:

> "5. The plaintiff submits that in the course of its business *inter alia* in the field of providing security services of Human Resource to its customers mostly corporate, the 1st defendant had engaged the services of the plaintiff for providing security services and supply of manpower designated as (i) Security Supervisor, (ii) Security Guard; (iii) Armed Gunmen, (iv) Security helpdesk, (v) Security Manager, (vi) Skilled manpower, (vii) Drivers, (viii) Housekeeper, and (ix) Caretaker, *etc*. to its office at Plot No.H7 & H8, SIPCOT IT Park, Navallur Post, Siruseri, Kancheepuram District – 603 103. Accordingly, an agreement "contract for security services" dated 09.06.2010 (which got determined w.e.f. 31.03.2015) was entered into between the plaintiff and the defendant, for providing services at the defendant's place of business at Siruseri, Kelambakkam alone, initially, for a period of two years w.e.f. 01.06.2010 to 31.05.2012, which was periodically renewed/extended by June 2012 to September 2012; October 2012 to September 2014; and thereafter, on monthly basis October 2014; November 2014; December 2014; January 2015; February 2015 and March 2015."
>
> (emphasis supplied)

12. Therefore, what is required to be ascertained is whether the agreement continued and what was defendants' liability under the said agreement.

13. Clauses 2 and 3 of Part I of the agreement read as under:

> "2. Service Provider shall provide Security Services as described below with effect from 1st June 2010 for a period of twenty four (24) months, ending on 31st May 2012.
>
> 3. In consideration of the provision of Security Services and adherence to the terms and conditions mentioned hereunder, Syntel agrees to pay a sum of Rs.10,96,950/- (Rupees Ten lakh Ninety Six Thousand Nine Hundred and Fifty only) plus applicable service tax per month, as indicated in Schedule – III (the "charges") under this agreement. Any changes in terms and conditions of this agreement including the consideration for the same shall be subject to both the parties agreeing to such changes in writing."
>
> (emphasis supplied)

14. Clause 2 of Part II of the agreement reads as under:

> "2. The Service Provider will provide Security Services as per the assignment instructions through its uniformed and trained personnel for the performance of its services as mentioned hereunder. The security personnel deployed by the Service Provider at Syntel premises will be employees of the Service Provider at all the times and in no event shall there be any claim of employment or deemed employment or agency of any type by the Service Provider or by its employees. The Service Provider shall be solely responsible to observe/comply with all the statutory obligations under various statutes/rules/regulations, as may be applicable to it from time to time, including but not limited to the payment of minimum wages under the Minimum Wages Act, all other statutory liabilities such as ESI, PF, Gratuity, Labour Welfare Fund, maternity, other statutory liabilities such as ESI, PF, Gratuity, Labor Welfare Fund, maternity, Bonus, HRA, *etc.* The Service Provider shall provide the necessary

> proof of above payments and certificate of compliance of applicable laws on regular basis to Syntel and in case of non-receipt of the same along with the bills raised by the Service Provider, Syntel shall have right to withhold the payments on its reasonably believing that Service Provider has not complied with all/any of its statutory obligations."
>
> (emphasis supplied)

15. On a plain reading of clause 3 of Part I quoted above, it is obvious that in consideration of the provision of security services by plaintiff, the obligation of defendants was to pay a sum of Rs.10,96,950/- plus applicable service tax per month and not a penny more. In fact, as provided in Part VI of the agreement, when the agreement was entered into, no service tax was payable, because, clause 2 of Part VI – Payment Terms reads as under:

> "2. The charges in the invoices shall be exclusive of service tax (which are presently exempt) as applicable from time to time."

16. Therefore, it is obvious that during the negotiations, parties have agreed that no service tax is payable, but, if and when service tax becomes payable, defendants would be liable to pay that component. It is for that reason, clause 3 of Part I provides *"............plus applicable service*

tax per month..........". Hence, the only obligation of defendants was to pay to plaintiff Rs.10,96,950/- per month plus whatever would be the service tax payable in accordance with law.

17. Clause 2 of Part II of the agreement quoted above expressly provides that it is the sole responsibility of plaintiff to pay minimum wages, as also other statutory liabilities such as Employees State Insurance, Provident Fund, Gratuity, Labour Welfare Fund, *etc*.

18. Now, let us consider Shri. Radhakrishnan's submission that original contract came to an end on 31.05.2012 and the new arrangement was as per the purchase orders issued by defendants. According to us, more so in view of averments of plaintiff in plaint itself at paragraph no.5 quoted above, the agreement dated 09.06.2010 never came to an end. It was continuing till March 2015. The purchase orders only modified the rates payable for the security guards, or the kind of services to be provided or the personnel to be deployed. Rest of the conditions remained unaltered.

19. The Trial Court has gone entirely incorrect in its conclusions

that the defendants assumed responsibility of all statutory payments which are fixed by the Government from time to time under the Minimum Wages Act. The agreement does not provide for that anywhere. Plaintiff, even before us, was unable to show to us, that the terms and conditions provided for in the agreement dated 09.06.2010 got altered at any stage. As noted earlier, the terms and conditions remained unaltered except to the extent of kind of service to be provided and the amount that was payable. On this ground alone, the impugned judgment and order has to be quashed and set aside.

20. Moreover, paragraph nos.23 and 24 of the judgment and order of the Trial Court read as under:

> "23. Issues No.2 and 3:
>
> The plaintiff claimed interest at the rate of 18% from the date of plaint. The rate of interest is exorbitant and usurious. There is no agreement for payment of interest, however, for the delayed payment, the plaintiff is entitled for reasonable interest. The plaintiff contended that he convened an Arbitration at Bombay, but the defendant went to Court and obtained an order under Ex.A.29 not to proceed with the Arbitration, thereby, the plaintiff states the Arbitration was dissolved, consequently, the plaintiff has no other option except to approach the Court. The Arbitration application filed by the defendant is marked as Ex.A.27 and the counter filed by the plaintiff is marked as Ex.A.28. Therefore, it is proved that the defendant has delayed the payment by somehow or the other which

he lawfully liable to pay. The defendant having utilised the service of the plaintiff has to make payment as per the agreement and the statute. Therefore, the plaintiff is entitled for a reasonable interest at the rate of 6% from the date of plaint till realisation with cost.

24. As the result, the plaintiff is entitled to recover a sum of Rs.1,07,68,797/- from the defendants (a sum of Rs.1,05,44,505/- from the 1st defendant and Rs.2,24,292/- from the 2nd defendant) with interest at the rate of 6% per annum from the date of plaint till realisation, with costs."

21. In our view, this reflects nonapplication of mind, inasmuch as, the Trial Court has observed that the rate of interest of 18% claimed is exorbitant and usurious and there was no agreement for payment of interest, but has proceeded to grant 18% compounded interest, as claimed. We say this because, from paragraph 13 of the plaint as quoted earlier, the sum of Rs.1,07,68,797.72 claimed, includes 18% compound interest amounting to Rs.45,41,622.15 + 4,84,338.92 + 1,07,103.40 totalling to Rs.51,33,064.47.

22. In the circumstances, in our view, the impugned judgment and order dated 24.04.2023 cannot be sustained. The same is quashed and set aside.

23. At this stage, learned counsel for defendants prays for return of the amount of Rs.1,05,44,505/- deposited in this Court pursuant to order dated 17.07.2023.

24. Registry is directed to return the same together with accumulated interest without deduction, within a period of four weeks from today. Accordingly, C.M.P.No.3277 of 2024 stands ordered.

This appeal is allowed. No costs. Connected interim application for stay stands closed.

(K.R.SHRIRAM, C.J.) **(SENTHILKUMAR RAMAMOORTHY, J.)**
09-12-2024

Index : Yes/No
Neutral citation : Yes/No
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THE HON'BLE CHIEF JUSTICE

and

SENTHILKUMAR RAMAMOORTHY, J.

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