



A.S.No.393 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 04.07.2025

Pronounced on: 21.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.393 of 2022
& C.M.P.No.15295 of 2022

Mr.R.G.Selvanarayanan,
Son of Mr.Gopalsamy,
residing at Door No.37, Thirukumaran Nagar,
Singanallur,Coimbatore 641 005.

... Appellant/Defendant

/versus/

Mr.R.N.Krishnakumar,
Son of Mr.R Nagaraj,
Proprietor of N S K Associates,
No.8/25B, R S Nagar,
Kavundampalayam,
Coimbatore 641 030.

... Respondent/Plaintiff

Prayer:- Appeal Suit has been filed under Section 96 of Civil Procedure Code, to set aside the Judgment and decree dated 11.06.2019 passed in O.S.No.177 of 2014 by the 1st Additional District Judge, Coimbatore.

For Appellant : Mr.V.Jeyachandran
For Respondent : Mr.M.Selvaraj.



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J U D G M E N T

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The appellant in A.S.No.393 of 2022 is the defendant in O.S.No.177 of 2014 on the file of the 1st Additional District court, Coimbatore.

2. The suit was filed for recovery of Rs.13,30,637/- with interest at the rate of 18% p.a., which is the alleged balance due and payable by the defendant in the construction contract between the plaintiff and the defendant. The suit was allowed by the trial Court *vide* judgement dated 11.06.2019. Hence, this appeal.

3. For the sake of convenience, the parties are referred to as “Plaintiff” and “defendant.”

4. The case of the plaintiff/ Respondent:-

The plaintiff, R.N.Krishnakumar, is the proprietor of M/s.N.S.K.Associates, Coimbatore. He is an Architect and builder by profession. The defendant approached the plaintiff for the construction of a godown main building with a plinth area of 12,445 sq.ft. On being satisfied with the plaintiff's work, the defendant also entrusted the construction work of Security shed, Labour



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Quarters, Ramp, Compound wall, Land Level Water Tank, Front platform and Borewell along with fittings as additional work. The plaintiff gave quotation for the said works and it was mutually agreed that the final payment will be decided on completion of the work.

5. As per the written agreement dated 20.03.2009, the time for completion of the work was one month. In case, the contractor (plaintiff) failed to complete the work within one month, the defendant was entitled to withhold 10% of the building cost. While so, after completion of 95% of the work, the defendant, without any valid reason, denied the plaintiff entry to the work site and stopped further the construction activities. The defendant is preventing the plaintiff from removing construction materials and equipments worth about Rs.8 lakhs, lying in the construction site.

6. The cost of the construction carried out by the plaintiff is worth Rs.72,69,900/-. So far, the defendant has paid only Rs.61,12,149/-. The defendant is liable to pay a balance sum of Rs.11,57,751/-. In this regard, the plaintiff lodged a criminal complaint against the defendant on 09/10/2009. The said complaint was closed in view of consumer complaint in C.C.No.367/2009 filed by the defendant



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against the plaintiff before the District Consumer Redressal Forum, Coimbatore.

WEB COPY Later, the consumer complaint C.C.No.367/2009 filed by the defendant was dismissed with costs. Thereafter, on 19.01.2011, the plaintiff caused a comprehensive legal notice to the plaintiff, calling upon him to (i) permit the plaintiff to remove the construction materials and equipments worth Rs.8 lakhs lying in the premises of the defendant and (ii) to pay the balance construction cost of Rs.11,57,751/- along with interest at the rate of 24% per annum.

7. Thereafter, the plaintiff filed suit in O.S.No.323 of 2012 for mandatory injunction directing the defendant to return back the construction materials and equipments lying in the construction site of the defendant. During the pendency of the suit, the defendant came forward to return the materials and agreed to pay the balance amount in four instalments. He paid a sum of Rs.50,000/- on 23.03.2013 as the first instalment and acknowledged the debt and making part payment. Based on this assurance, the plaintiff agreed to withdraw O.S.No.323/2012 on receipt of the balance payment. However, the defendant did not pay the balance payments as agreed. Hence, the plaintiff did not withdraw the suit in O.S.No.323/2012. Finally, the said suit, after trial, was decreed in favour of the plaintiff on 02.01.2014. The present suit has been filed for recovery of the



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balance construction costs.

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8. Case of the Defendant/Appellant:-

The defendant contested the suit, stating that there is no amount is due payable to the plaintiff towards the cost of construction. In fact, the plaintiff failed to complete the work within the time prescribed. Hence, the defendant was put to loss. Even according to the plaintiff, he had completed only 95% of the work and thereafter, he was not allowed to enter the construction site. As per the quotation given by the plaintiff, the total value of the construction work is Rs.64,96,250/-. However, the defendant had already paid Rs.60,56,694/-. Since the work was not completed within one-month period as agreed, the defendant is entitled to deduct 10% of the cost. Therefore, the defendant had paid Rs.2,10,069/- over and above what he is liable to pay. Further, since the plaintiff abandoned the work, the defendant was forced to engage a different contractor to complete the remaining work at an additional cost of Rs.10 lakhs.

9. The present suit for recovery of money, filed in 2013 for the alleged work admittedly stopped in the year 2009, hence it is hopelessly barred by limitation. The alleged compromise while O.S.No.323/2012 pending and the

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payment of Rs.50,000/- on 23.03.2013 are false and denied. It is a false creation of plaintiff to save limitation.

10. The trial Court framed the following issues for consideration:

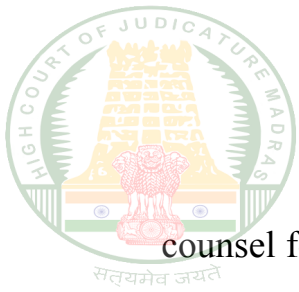
- a) Whether the suit is barred by limitation ?
- b) Whether the plaintiff is entitled for recovery of the suit claim?
- c) Whether the plaintiff is entitled to any other relief?

11. On the side of the plaintiff, the plaintiff was examined as PW-1.

On the side of the defendant, the defendant was examined as DW-2 and one G.Ravindran was examined as D.W-1. Ex.A1 to Ex.A16 were marked as documents on behalf of the plaintiff placed before the Court for consideration.

12. The Trial Court passed money decree for Rs.13,30,637/- with interest at the rate of 9% per annum interest for Rs.11,07,751/- from the date of plaint (06/05/2014), till the date of decree (11/06/2019) and thereafter at the rate of 6% per annum till the date of realisation.

13. The appeal is mainly on the ground of limitation. The learned



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counsel for the appellant submitted that the trial Court erred in holding that the suit was within the period of limitation, based on Ex.A5 and Ex.A14. It was argued that the account book of the plaintiff and the receipt issued by the plaintiff are documents created by the plaintiff. These are self-serving documents and not emanated from the defendant to consider it as acknowledgement of a time-barred debt. In the absence of proper authorisation, the alleged initial by the Manager of the defendant will not bind the defendant.

14. The trial Court, based on Ex.A3 and Ex.A4 erred in holding that the value of the work done by the plaintiff was Rs.54,33,000/- and Rs.18,36,900/- respectively, ignoring the fact that these two exhibits namely, Ex.A3 and Ex.A4 are only quotations even according to the plaintiff and it is not the valuation of the work done by the plaintiff. In the absence of expert opinion about the value of the work actually done by the plaintiff, the trial Court ought not to have relied on Ex.A3 and Ex.A4 as the value of the work done by the plaintiff. Particularly, when the plaintiff himself in the plaint admits that he had done only 95% of the work.

15. He further contended that, if really there was compromise between the parties pending suit in O.S.No.323 of 2012, the matter would not have gone for



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trial. In that suit, both parties contested and adduced evidence and only thereafter, the decree in favour of the plaintiff herein was passed on 05.09.2023. In that suit, the plaintiff herein contented that he had stocked construction materials worth Rs.8 lakhs to complete the contract, however the defendant is not permitting him to complete the work nor allowing him to take back the material. In such circumstances, the trial Court, while considering Ex.A11 the plaint in O.S.No.323 of 2012 and Ex.A15, the decree passed in O.S.No.323 of 2012 ought to have dismissed the present suit (O.S.No.177/2014) as devoid of merit, holding that the plaintiff himself admits the work worth about Rs.8 lakhs not completed by the plaintiff. Hence, the plaintiff cannot claim the total cost of construction without completing the work.

16. Per contra, the Learned Counsel for the Plaintiff/Respondent submitted that the trial Court, relying upon the admission of the defendant in the cross examination that at times his Manager used to pay the plaintiff had held that Ex.A5 (statement of account) and Ex.A14 (receipt) are genuine and prove the payment of Rs.50,000/- on 23/03/2013. Hence, the suit was filed within the period of limitation. It was further submitted that the defendant had not placed any evidence to show that the plaintiff had not done work worth Rs.72,69,900/-.

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Contrarily, the plaintiff by placing Ex.A2 (Agreement), Ex.A3 and Ex.A4 (invoices/quotations), which establish that the work worth Rs.72,69,900/- executed by the plaintiff and was duly acknowledged by the defendant.

17. Point for determination:-

(i) Whether Ex.A5 and Ex.A14 are proof for acknowledgement of debt so as to save limitation ?

(ii) Whether Ex.A3 and Ex.A4 are documents to ascertain the value of the work done by the plaintiff/respondent?

18. Ex.A5 is the ledger account sheets of the plaintiff, maintained by him in the course of his business. The last four entries are worth examining for the purpose of deciding whether these entries in the ledger sheet will save the limitation. On 20/03/2009, there is an entry receipt of Rs.3,00,000/- by cash, against this entry only the plaintiff has signed. On 06/04/2009, we find receipt of Rs.50,000/-, against this entry also only the plaintiff has put his initial. Then receipt of Rs.25,000/- is entered without date mentioning within bracket Rs.61,12,149/-. Finally, there is an entry dated 23/03/2013 for Rs.50,000/- by cash,



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mentioning within bracket Rs.61,62,149.00/-. In this, the Manager of the defendant and the plaintiff had put their respective initials. The last two entries are not as all other previous entries. The entry dated 23/03/2013 has to be seen along with Ex.A14, dated 23/03/2013. This is a stamped receipt in the letter pad of the plaintiff. In this receipt also only the Manager of the defendant had put his initial. This receipt is witnessed by Thiru.Dinesh Kumar. He is not examined. The defendant denies any authorisation to his Manager to acknowledge the debt. The trial Court erred by referring the judgments of the Hon'ble Supreme Court in ***Hiralal and others vs. Dadku Lal and others*** reported in ***AIR 1953 SC 225*** and the Bombay High Court in ***Sureshchandra Co. vs. Vadneree Chemical Works and others*** reported in ***AIR 1991 (Bom) 44***, wherein Courts have held that promise to pay a time-barred debt is valid acknowledged for reckoning limitation.

19. These judgments can be relied only in case if the acknowledgement is proved to be true and genuine. In the case in hand, the acknowledgement is not by the defendant but by his Manager. The Ex.A5 and Ex.A14 are from the custody of the plaintiff. The defendant denies knowledge about the execution of these documents by his Manager and also denies any authorisation to his Manger to acknowledge the time-barred debt.

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20. There is force in the submission of the appellant Counsel in this regard. If really there was a compromise and if Ex.A5 and Ex.A14 were in existence during the trial in O.S.No.323 of 2012, the plaintiff herein who also instituted a previous suit in O.S.No.323 of 2012 with an overlapping cause of action, ought to have placed these documents in those suit, which was pending on the date of these two documents came into existence. These documents are very much relevant for that suit because, this part payment been allegedly made on condition that O.S.No.323 of 2012 will be withdrawn by plaintiff on payment of remaining amount.

21. The alleged entries in the plaintiff's books of account and the alleged receipt issued by the plaintiff will not carry the character of an acknowledgement of debt. Acknowledgement of debt must be from the debtor himself or his authorised representative. A stray statement in the cross-examination to the effect that the Manager of the defendant also used to tender payments to the plaintiff, is not proof of authorisation. A self-serving document by the plaintiff cannot be an evidence to save a time-barred debt and to fasten liability on the defendant.

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22. That apart, it is evident that the trial Court has miserably been misled by the captions in Ex.A3 and Ex.A4. The learned trial Judge has construed these two documents as invoices. In fact, Ex.A3 is dated 07.03.2009 and Ex.A4 is dated 30.05.2009, while the agreement between the plaintiff and the defendant in Ex.A2 is dated 20/03/2009. Ex.A3, dated 07.03.2009 which is prior to the agreement can never be the bill amount payable for the work to be done in future. Likewise, Ex.A4 also can only be a quotation as Ex.A3 and not a final bill for the work done. Therefore, the trial Court holding that the plaintiff is entitled for Rs.11,57,751/- based on these two documents captioned as invoices is clearly erroneous and unsustainable.

23. For the reasons stated above, ***the Appeal Suit is allowed.*** The judgement and decree passed by the trial Court in O.S.No.177 of 2014 is hereby set aside and the suit in O.S.No.177 of 2014 stands dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes.
Neutral citation :Yes/No.

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To,

1.The 1st Additional District Judge, Coimbatore.

2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
Appeal Suit No.393 of 2022

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