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AS.No.71 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2025

CORAM:

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

A.S.No.71 of 2018

1. Arul Priya
2. Lawrence

... Appellants/defendants

-Vs-

Thangaraj

... Respondent/plaintiff

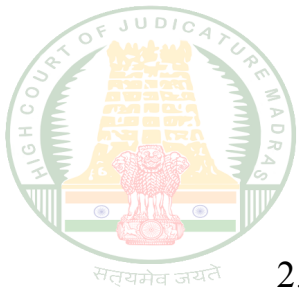
PRAYER: First Appeal filed under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 20.10.2017 passed in O.S.No.36 of 2015 by the First Additional District Judge, Coimbatore.

For Appellants : Mr.A.G.Rajan

For Respondent : Mr.R.Marudhachalamurthy

J U D G M E N T

The defendants and the plaintiff before the Trial Court are the appellant and the respondent respectively herein.



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2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts which give rise to the instant First Appeal is that, the plaintiff is an engineer and civil contractor. He used to do constructions for others. While so, he entered into an agreement with the defendants on 02.09.2013 to put up construction as per the requirement of the defendants in the suit property. According to the agreement, the payment is to be made stage by stage. It is the contention of the plaintiff that even after completion of the construction, the defendants did not make the payment, and also breached the contract. According to the plaintiff, as on July 2014, he put up construction to the tune of Rs.48,56,050/-. However, the defendants paid only a sum of Rs.33,86,000/-. Hence, the plaintiff preferred the suit for recovery of balance sum of Rs.14,70,050/-.

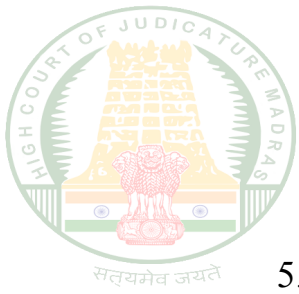
4. The said suit was resisted by the defendants, however admitted the written agreement dated 02.09.2013. But, it is the submission of the defendants that according to the above agreement, the total cost of entire construction is Rs.37,40,000/-, as the plaintiff agreed to construct the building



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at Rs.1,700/- per sq.ft for the total extent of 2,200 sq.ft. He further stated that, as per the oral agreement, the plaintiff agreed to put up construction thereon within a period of one month. According to the defendants, the written agreement dated 02.09.2013 was signed by the defendants innocently upon the trust reposed with the plaintiff. The defendants have also disputed certain calculation of construction cost. It is the submission of the defendants that after the construction, he occupied the building on 05.01.2014 and has been doing business thereon with the knowledge to the plaintiff. It is the specific submission of the defendants that, a total amount of Rs.35,86,000/- was received by the plaintiff, however, only Rs.33,86,000/- was recorded in the agreement. A sum of Rs.2,00,000/- paid on 23.07.2014 was not accounted for by the plaintiff. In his written statement, he has also narrated certain deviation in the construction. The defendants specifically dispute the total cost of construction as Rs.48,56,050/-. They would further submit that the instant suit was filed only as a counter blast to the criminal proceedings initiated against the plaintiff, as an after thought. Hence, the defendants prayed to dismiss the suit.



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5. Before the Trial Court, the plaintiff marked 9 documents as Exs.A1 to A9 and the defendants marked 15 documents as Exs.B1 to B15. On behalf of the plaintiff, he himself was examined as PW1 and on behalf of the defendants, both the defendants were examined as DW1 and DW2.

6. The Trial Court, after having considered the submissions made by either side, has concluded on the sole issue of “Whether the plaintiff is entitled for a suit claim” in favour of the plaintiff. While arriving at such finding, the Trial Court, relied upon the Commissioner's report, and found that the defendants are only liable to pay a sum of Rs.9,09,868/- instead of the suit claim of Rs.14,70,050/-. Aggrieved with the said order, the defendants are before this Court by way of this appeal.

7. Heard Mr.A.G.Rajan, learned counsel for the appellants and Mr.R.Marudhachalamurthy, learned counsel appearing for the respondent.

8. The learned counsel for the appellants would vehemently contend that the Trial Court even without considering the objections to the Commissioner's report, has erroneously decreed the suit partly. The Trial



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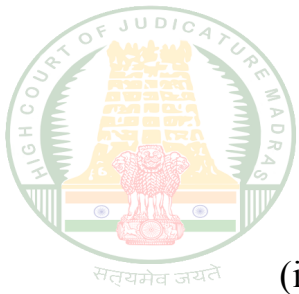
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Court did not take into consideration of the payment of Rs.2,00,000/- made by the defendants. It was the further submission of the defendants that there was no agreement between the parties to pay interest upon the unpaid amount. The learned counsel would further contend that the plaintiff has come up with a false claim, which is evident from the Commissioner's report. But, the Trial Court without considering the Commissioner's report in its proper perspective has relied on it's face value, without any appreciation of evidence.

9. Per contra, the learned counsel for the respondent/defendant would contend that the Trial Court has rightly appreciated all the facts and circumstances of the case. It was further contended that the defendants did not file any objection to the valuation submitted by the learned Commissioner and his report. He would further contend that the transaction, being commercial in nature, prayed for the interest. Hence, prayed to dismiss the appeal.

10. I have given my anxious consideration to either side submissions.

11. From the submissions made by either side, the point arises for determination in this appeal is,



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(i) Whether the reliance of Commissioner's report by the trial Court is in order?

(ii) To what other reliefs?

Point No.1 & 2:

12. Before we delve into the merits of the matter, it is appropriate to refer the admitted position of acceptance of the written agreement dated 02.09.2013, which is marked as Ex.A1. According to the above Agreement, certain stipulations were made and evidencing payment to the tune of Rs.33,86,000/-. It is the submission of the defendants that they made a sum of Rs.35,86,000/- qua an addition of Rs.2,00,000/- over and above mentioned in Agreement [Ex.A1], which according to the defendants paid on 23.07.2014. As rightly observed by the Trial Court, the defendants did not submit any receipts or documents to substantiate their contention on the alleged payment of Rs.2,00,000/-. The only ground urged by the defendants is that they believed the word of the plaintiff that he would make entry in Ex.A1-agreement. The Trial Court has gone into this defence elaborately and has appreciated the facts that, even in the pre-suit notice, the defendants did not mention the payment of Rs.2,00,000/-. It is in this background, the Trial



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Court disbelieved the case of the defendants. Therefore, the findings rendered by the Trial Court that the defendants have made payment of Rs.33,86,000/- only, is perfectly in order and does not require any interference.

13. Coming to the excess work, over and above Ex.A1-Agreement, the plaintiff and the defendants made respective pleadings. However, the Trial Court, in order to appreciate their contention, thought fit to appoint a Commissioner along with an Engineer. The Engineer has filed a report, which was marked as Ex.A9. In the said report, the Engineer after having taken into consideration of all the constructed areas, and after allowing necessary deduction for pending work, ultimately arrived that the total cost of existing construction is Rs.42,95,868/-.

14. Though the defendants filed an objection to the report, the said objection, as rightly observed by the Trial Court, is very much vague and elusive. Therefore, the Trial Court had rightly taken into consideration of the value arrived by the Commissioner as total cost of construction qua Rs.42,95,868/-. If that being the case, the payment made by the defendants is only Rs.33,86,000/-. Therefore, the balance would be at Rs.9,09,868/-. This



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Court could not find any infirmity in the above reasoning and the reliance upon the Engineer's report-Ex.A9. Therefore, the findings rendered by the Trial Court that the plaintiff is only entitled for a sum of Rs.9,09,868/- is perfectly in order, which does not require any interference.

15. However, considering the objections regarding interest, as rightly contended by the defendants, there is no clause in the agreement to pay the interest and both the parties could able to resolve the issue only through the appointment of Advocate Commissioner. Therefore, in these peculiar circumstances, this Court would like to modify the decree by awarding interest @ 6% per annum from the date of the decree, while confirming the other part of the decree.

16. In the result, this Appeal is partly allowed, confirming the direction to pay a sum of Rs.9,09,868/- and costs to the plaintiff. However, the defendants are directed to pay interest @ 6% per annum only from the date of Trial Court decree. No costs awarded for this appeal.

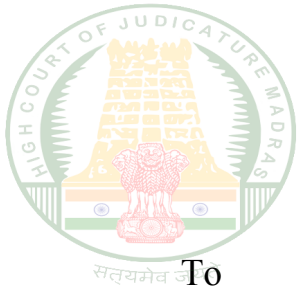
26.02.2025

kmi

Index : Yes/No

Speaking Order/Non Speaking order

NCC: Yes/No



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To
The First Additional District Judge,
Coimbatore.



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C.KUMARAPPAN, J

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