

O.S.A. No.203 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>RESERVED ON</i>	27.06.2025
<i>PRONOUNCED ON</i>	14.07.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

O.S.A.No.203 of 2018

K.Ashraf Ali
Sole Proprietor
M/s.A.K.Steels
No.9/B, M.K.N. Road
Guindy, Chennai - 600 032

.. Appellant

VS

Tamil Nadu Newsprint and Papers Ltd.,
Rep. by its Senior Manager (Legal)
Mr.A.Ponnambalam
No.67, Mount Road, Guindy
Chennai - 600 032

.. Respondent

Prayer : Appeal filed under Order XXXVI Rule 1 of O.S. Rules against the Judgment and Decree dated 17.02.2017 in C.S. No.705 of 2010.

For Appellant : Mr.V.Ramamurthy
for Ms.Kamachi D.

For Respondent : Mr.K.Balamurali
for M/s.Shivakumar & Suresh



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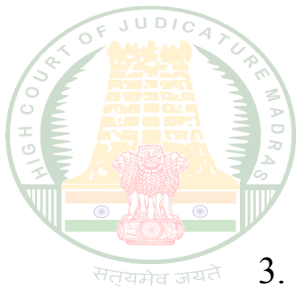
JUDGMENT

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N.SENTHILKUMAR, J.

The defendant, who lost his battle to the plaintiff, has preferred this intra-court appeal against the judgment and decree of the learned single Judge dated 17.02.2017 passed in C.S. No.705 of 2010. The plaintiff in the said suit is the respondent in this appeal. The parties are referred to in this appeal as per their original rankings in the civil suit.

2. The suit was filed by the respondent herein/plaintiff for recovery of a sum of Rs.79,11,378.84 with interest at the rate of 24% per annum on Rs.56,35,985/- from the date of filing of the suit. The plaintiff is a company promoted by the Government of Tamil Nadu for manufacture of newsprints, printing and writing papers. The equity of the plaintiff company is held by public and other financial institutions. Its Board of Directors consists of All India Service Officers of Tamil Nadu Cadre, representatives of IDBI and other persons including public and technical experts.



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3. The plaintiff has called for a tender in Tender No.TNPL MM SS 2008023 dated 03.04.2008 for the sale of boilers and auxiliaries at M/s.EID, Pugalur. The said tender was published in both Tamil and English newspapers on 12.04.2008 (Ex.P2 & Ex.P3) and the last date for submission of tender was 28.04.2008. The defendant had submitted the tender form on 28.04.2008 (Ex.P4) and paid a sum of Rs.3.25 Lakhs towards EMD.

4. The plaintiff called the defendant vide their letter dated 30.04.2008 for a discussion. On 03.05.2008, the defendant was found to be eligible for two lots of boilers, auxiliaries and conveyors. A meeting was held between the plaintiff and the defendant on 08.05.2008 and it was stipulated in the said meeting that the delivery period would be three months from the date of realisation of LOI/Sale Order. The same was accepted by the defendant. The minutes of the meeting was marked as Ex.P6. The defendant was agreeable to the payment terms of the plaintiff i.e. payment in three equal installments. This had been confirmed by the defendant vide letter dated 12.05.2008 (Ex.P5). Thereafter, the plaintiff sent a letter on 15.05.2008 (Ex.P7) calling upon the defendant for a discussion on 16.05.2008. The defendant had sent a letter on 16.05.2008 (Ex.P8) seeking postponement of the meeting. At the request of the



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defendant, the meeting was postponed to 20.05.2008. In the said meeting, the defendant sought clarification with regard to the payment of taxes and it was contrary to the terms and conditions of the tender. The minutes of the meeting was marked as Ex.P10. It was informed by the plaintiff to the defendant that if the defendant fails to comply with the terms, the EMD amount will be forfeited and further, the defendant would be blacklisted. The defendant refused to sign the minutes on 20.05.2008.

5. It is the further case of the plaintiff that a sale order was issued on 31.05.2008 for two lots of boilers and auxiliaries for a value of Rs.2,55,55,786/- and conveyors at the rate of Rs.30,13,786/- together with taxes. The terms and conditions clearly stipulated that the machineries shall be cleared and removed on or before 31.08.2008. In clause 2 of the sale order, it was stipulated that the EMD amount of Rs.2,25,000/- would be retained as security deposit as against the sale order. The defendant had failed to make advance payment as per the terms and conditions and therefore, the plaintiff issued a telegram on 06.06.2008 (Ex.P13). Vide his letter dated 09.06.2008 (Ex.P14), the defendant requested time to make payment. The defendant stated that he will make first installment in the first week of July, 2008 and the next



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two installments at the intervals of 20 days from the first installment. This was resisted by the plaintiff. Thereafter, another letter was issued by the plaintiff on 18.06.2008 (Ex.P16) calling upon the defendant to make payment immediately and clear the materials.

6. The defendant vide letter dated 20.06.2008 (Ex.P17) requested the plaintiff to give a copy of the minutes of the meeting and promised that they would make payment within a week's time. Thereafter, the plaintiff sent another letter dated 02.07.2008 (Ex.P18) and the defendant, sent a reply, which was marked as Ex.P19. It was stated in the said letter that they would make payment in three installments. The plaintiff had sent two more letters dated 15.07.2008 and 18.07.2008 (Exs.P21 & P22) requesting the defendant to make payment on or before 23.07.2008. On 23.07.2008, a discussion was held between the plaintiff and the defendant. In the said discussion, the defendant agreed that they would pay the first installment on or before 04.08.2008. A letter was issued by the plaintiff on 06.08.2008 (Ex.P27) to this effect and by letter dated 12.08.2008 (Ex.P29), the defendant sought further time. The plaintiff issued another letter dated 14.08.2008 (Ex.P30) and again on 20.08.2008 (Ex.P31) reiterating the same. Since the defendant had not



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performed their part of the agreement, another tender was floated on 30.08.2008 (Ex.P33), against which a new contractor quoted Rs.1.97 Crores as against defendant's bid of Rs.2,55,55,786/- which caused a loss of Rs.55,30,786/- to the plaintiff and a further sum of Rs.1,05,199/- towards re-tendering charges. The plaintiff issued a legal notice dated 11.12.2008 (Ex.P35) and another notice dated 14.10.2009 (Ex.P36). The defendant did not reply to the said notices and hence the plaintiff has filed the above suit.

7. The suit was resisted by the defendant by filing a written statement wherein they had denied the claim of the plaintiff. The defendant had further stated that merely because the defendant signed in the minute book, it does not amount to accepting or admitting the liability and that they are not liable to pay any amount as claimed by the plaintiff.

8. Based on the above pleadings, the learned single Judge has framed the following issues for determination in the suit:

"1. Whether there was any breach of contract on the part of the defendant in not making payment of any one of the installments towards payment of the amount quoted in the tender submitted by him and accepted by the plaintiff?"



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2. *Whether the plaintiff, besides forfeiting Rs.3,25,000/- paid as EMD and blacklisting the defendant, can claim the shortfall in the re-tender submitted by M/s.Asad Steel Corporation as damages?*

3. *Whether the plaintiff is entitled to claim a sum of Rs.1,05,199/- as re-tendering charges?*

4. *Whether the plaintiff is entitled to a decree for sum of Rs.79,11,378.84 as damages with interest on the said amount till the date of plaint?*

5. *Whether the plaintiff is entitled to future interest? If so, at what rate?*

6. *To what relief, the plaintiff is entitled?"*

9. To prove the case of the plaintiff, one Mr.V.K.Parameswaran, authorised representative of the plaintiff company was examined as PW1 and 36 documents were marked as Exs.P1 to P36. On the side of the defendant, the sole proprietor of the defendant was examined as DW1 and no document was marked.

10. The learned single Judge, while answering all the issues in favour of the respondent herein/plaintiff, answered issue No.4 in the following terms:



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"In view of the aforesaid discussion, the plaintiff having suffered loss is entitled for a decree for a sum of Rs.79,11,378.84 as damages with interest on the said amount till the date of the plaint. It is seen that this loss of the plaintiff is a direct result of the non-payment made by the defendant. Consequently, I hold that the plaintiff is entitled for the amount as claimed in the plaint together with interest. This issue is held in favour of the plaintiff."

Accordingly, the learned Judge decreed the suit in favour of the respondent herein/plaintiff.

11. Aggrieved by the above judgment and decree of the learned single Judge, this intra-court appeal has been filed by the defendant.

12. Mr.V.Ramamurthy, learned counsel appearing for Ms.Kamachi.D, counsel on record for the appellant/defendant contended that though the tender was called for and the appellant had taken part, the tender was never notified and the tender conditions were not acted upon. The next contention raised by the learned counsel is that the respondent herein/plaintiff has not quantified the actual loss incurred by them and the learned single Judge has not evaluated the

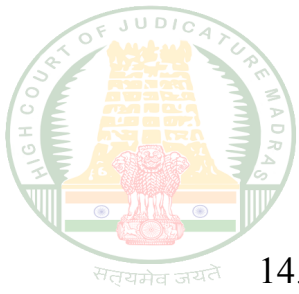


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evidence in terms of the exhibits marked by the respondent herein/plaintiff and has delivered the judgment contra to the facts and law.

13. The learned counsel appearing for the appellant took us through Ex.P4, the tender notification, which reflects five columns with regard to description of equipments. By citing Ex.P6, the learned counsel referred to the discussion which took place between the appellant and the respondent regarding two items, namely 1 and 3 i.e. Condemned boiler & auxiliaries and conveyors. The learned counsel by referring to Ex.P33, the re-tender notice issued by the respondent herein, drew our attention to Ex.P34, the sale order dated 24.10.2008, which was issued in the name of the subsequent contractor in the re-tender. As per the sale order, the tender was floated only for sale of boiler & auxiliaries (2 Nos) from Pugalur Offsite. By referring to the above documents, the learned counsel contended that the appellant has participated in a tender for five items, whereas the re-tender reflected only one item. Therefore, the respondent herein/plaintiff has not suffered any loss at the instance of the appellant herein/defendant and prayed that the appeal be allowed.



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14. Per contra, Mr.K.Balamurali, learned counsel appearing for M/s.Shivakumar & Suresh, counsel on record for the respondent herein, contended that the appellant was a successful bidder and thereafter, the appellant was called for a discussion with regard to the sale of boilers and auxiliaries. The said meeting took place on 08.05.2008. The respondent herein/plaintiff has written many letters, which were marked as Exs.PP15, P16 P18 and P20 to P22 calling upon the defendant to execute the tender in the above terms. At every instance, the appellant, constantly and consistently sought more time to make payment and had not paid a single penny towards the sale order. Thereafter, the plaintiff was forced to call for re-tender.

15. Heard both sides and perused the materials available on record in the form of typed set of papers.

16. It is not in dispute that the appellant has taken part in the tender and emerged as the successful bidder. As per the sale order, the appellant ought to have made the total payment before 10.06.2008 and cleared the equipments, machinery and accessories from the site on or before 20.06.2008. The tender amount was fixed as Rs.2,55,55,786/- for condemned boiler & auxiliaries and



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Rs.30,13,786/- for conveyors. The EMD amount was Rs.3.25 lakhs towards the tender amount. The appellant has also taken part in the meetings held between the respondent and the appellant. The appellant, despite several reminders failed to make payment towards the sale order.

17. It is to be noted that all the communications exchanged between the appellant and the respondent would only reflect that the respondent had taken all earnest steps requesting the appellant to execute the tender as per the terms and conditions whereas the appellant without making single payment as per the terms and conditions of the tender had evaded by giving false promises to deposit the amount. After affording several opportunities as stated supra, the respondent had called for the second tender. A sum of Rs.55,30,786/- was the differential amount between the value quoted by the appellant herein/defendant and the second tenderer. Therefore, there was a loss of Rs.55,30,786/- and a further loss of Rs.1,05,199/- towards re-tendering charges and hence the suit for recovery of money was filed.

18. The learned single Judge upon hearing the arguments advanced on either side and after perusing the plaint and the written statement filed by the



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parties had framed six issues. It is relevant to see the written statement filed by the appellant in the suit, wherein the ground raised by the appellant before this court was not raised in the written statement. It is fundamental that there cannot be a new plea in the arguments without that being placed by the plaintiff in the plaint and the defendant in his written statement. The facts which were not adduced by the appellant in his written statement, has now been pleaded for the first time in this appeal, which has no legal force to take into consideration. That apart, the arguments advanced by the appellant do not substantiate the case of the appellant with regard to any of the documents marked on the side of the respondent herein/plaintiff.

19. In the absence of any document to disprove the case of the plaintiff for damages as determined by the learned single Judge, the contention of the appellant that the respondent had made an unreasonable claim without any calculations, cannot be the basis to interfere with the judgment of the learned single Judge. In the absence of any substantial material produced before the learned single Judge, we do not find any reason to interfere with the judgment rendered by the learned single Judge. There is no merit in the appeal. Accordingly, the original side appeal fails and the same is dismissed



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confirming the judgment and decree of the learned single Judge dated 17.02.2017 passed in C.S. No.705 of 2010. No costs in the appeal.

[A.S.M., J] [N.S., J]
14.07.2025

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes
Asr

To

Tamil Nadu Newsprint and Papers Ltd.,
Rep. by its Senior Manager (Legal)
Mr.A.Ponnambalam
No.67, Mount Road, Guindy
Chennai - 600 032



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DR. ANITA SUMANTH.,J.
and
N.SENTHILKUMAR.,J.

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Dated : 14.07.2025