

(2024) 03 KAR CK 0004

In the Karnataka High Court

Case No : Regular First Appeal No. 1284 Of 2016 (MON)

Managing Director M/S Cauvery Neeravari Nigam Ltd., Coffee Board Building, 4th Floor, Bangalore-1 & Others

APPELLANT

Vs

A S Hegde Since Deceased Represented By Lr?s & Others

RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Citation : (2024) 03 KAR CK 0004

Hon'ble Judges : Krishna S Dixit, J;C.M. Poonacha, J

Bench : Division Bench

Advocate : M R.C Ravi, B.R. Prashanth, Chandranath Ariga K

Final Decision : Allowed

Judgement

1. The above appeal is filed by defendant Nos.2 to 5 challenging the judgment and decree dated 20.4.2016 passed in OS No.89/2009 by II Additional Senior Civil Judge JMFC, Tumakrur Hereinafter referred to as the 'Trial Court', whereunder the suit filed by the plaintiff for recovery of money has been partly decreed and the defendants have been directed to pay a sum of Rs. 2,10,53,864/- together with interest at 6% pa., from the date of suit till realization.

2. For the sake of convenience, the parties herein are referred as per their rank before the Trial Court.

3. The relevant facts necessary for consideration of the present appeal are that the plaintiff is a Class-I Contractor and he entered into an Agreement on 27.10.1989 (Ex.P24) with defendant No.5 for excavation and construction of an embankment. The approved tender was for Rs. 35,06,025/- and time for completion of the work was 24 months from the date of handover. It is the further case of the plaintiff that the entire land was not handed over and only a portion of the land was handed over to him for carrying out the work. Further, the plaintiff has averred with regard to various difficulties in carrying out the

work, as a result of which it is averred that the plaintiff sustained loss. That the plaintiff and defendant No.5 entered into a supplemental agreement on 3.8.1992 (Ex.D5) wherein the contracted amount was agreed to be Rs. 80,85,313.27 and the date of completion was 31.3.1993. That the plaintiff was forced to sign the supplemental agreement as a result of the intimidation of the defendants to rescind the original contract.

4. It is the further case of the plaintiff that he continued to face problems due to various other factors leading to stoppage of work. It is further averred that a second supplemental agreement was executed on 21.4.1994 at the rates of 1993-94. Despite the work not proceeding smoothly and the various hardships faced, the work was completed to the satisfaction of the defendants. However, payments in respect of the work were not made, as a result of which he continued to make representations to the various officials of the defendants. Subsequently, vide final bill dated 20.12.2006 the same payment was made. It is the contention of the plaintiff that his signature on the final bill cannot be termed as a voluntary acceptance and the plaintiff caused a legal notice dated 11.2.2007 demanding payment of amounts due. Since the amounts not having been paid in terms of the demand made by the plaintiff, he filed a suit for recovery of a sum of Rs.2,10,53,864/- together with interest at 18% pa., from the date of suit till realization.

5. Defendant Nos.2 to 5 entered appearance in the suit and contested the claim of the plaintiff. In the written statement, the defendants have in detail denied the allegations made in the plaint as also set out various details and particulars as to the manner in which the portion of the property was handed over to the plaintiff to carryout the work which he was contracted to do. It is the contention of the defendants that having regard to the various hurdles faced in carrying out the work due to variety of reasons including objections from the land owners, etc., and keeping in mind the hardship caused to the plaintiff, the defendants have adequately revised the rates and paid higher amounts substantially increasing the payments from what was originally agreed. Hence, the defendants sought for dismissal of the suit.

6. The Trial Court consequent to the pleadings of the parties framed the following issues:

"1. Whether the plaintiff herein above does prove that for want of acquisition of land which was subject matter of contract by and between the parties hereto the defendants for not handing over the land in question to the plaintiff-contractor well on time, thereby men and material collected by the plaintiff at the relevant time, so as to carryout and to execute the work order were remained unused for a length period of time and the same in turn has caused financial loss to the plaintiff contractor?

2. Whether the plaintiff-contractor does prove that on account of changes of embankment to homeogenous section subsequent to the work order, that on

account of non-cooperation of defendant authorities in the matter of fetching of water to the site area due to the non- clearance of trees which were in existence on the site area well on time and also on account of failure on the part of the defendants, the plaintiff contractor could not make use of men and material said to have been collected by him at the relevant time and also due to escalation in prices of costs of labour, the plaintiff contractor has sustained untold financial loss?

3. Whether the defendant/authorities do prove that subsequent to the admitted contract and work order, two supplementary agreements/contracts were entered into by and between the parties hereto and said supplementary contracts were entered at the instance of plaintiff-contractor himself and by virtue of the said supplementary contracts, all payments were made by the defendant-authorities well on time not only in accordance with the terms and conditions of main as well as supplementary contracts but also in accordance with law and therefore, the question of incurring of any loss as pleaded by the plaintiff-contractor does not arise at all?

4. Whether the plaintiff contractor is entitled to the relief of recovery of Rs.2,10,53,864/- together with current as well as future interest @ 18% per annum as sought for?

5. What order or decree?"

7. The plaintiff examined himself as PW.1 and examined a Civil Engineer and Chartered Valuer as PW.2. Exs.P1 to P42 were marked in evidence. Defendant No.5 has been examined as DW.1. Exs.D1 to D8 were marked in evidence. The Trial Court by its judgment and decree dated 20.4.2016 decreed the suit of the plaintiff. Being aggrieved, the present appeal is filed.

8. Learned Senior Counsel for the appellants – defendants vehemently contended that the plaintiff has not proved his claim and the Trial Court, without noticing the various aspects of the manner in which the work was carried out and the defendants having adequately from time to time revised the rates and paid higher amounts, has erroneously decreed the suit of the plaintiff. Hence, he seeks for allowing of the appeal and setting aside of the judgment and decree passed by the Trial Court.

9. Per contra, learned counsel for the first respondent –plaintiff justifies the judgment and decree passed by the Trial Court and seeks for dismissal of the above appeal.

10. The submissions of the learned Senior counsel for the appellants and learned counsel for the respondent No.1 have been considered and the material on record including the records of the Trial Court have been perused. The questions that arise for consideration in the present appeal are:

i) Whether the plaintiff has proved that the defendants are liable to pay the suit claimed amount?

ii) Whether the findings recorded by the Trial Court on the claim made by the plaintiff are just and proper?

Re. question Nos.(i) and (ii)

11. It is forthcoming that although in the plaint, the plaintiff has elaborately averred with regard to the transaction between the parties and the various details and particulars as to the manner in which the work was carried out as well as the difficulties faced by the plaintiff in carrying out the work, as also the extensive correspondences exchanged between the parties, it is relevant to note that in the plaint, the plaintiff has not made any specific plea as to the nature of claim in respect of which the suit claimed amount has been sought, as also the details, particulars and the basis for making the claim.

12. In the examination-in-chief of PW.1 also the plaintiff has merely reiterated the plaint averments and has not set out the details/particulars as to the basis of the claim made by him in the plaint. PW.1 has marked in evidence a calculation sheet as Ex.P38 wherein the amounts mentioned are as follows:

"49. Direct the defendants to pay Plaintiff (as per Document No. 74)

A) A sum of Rs.14,95,000/- (Fourteen Lakhs Ninety Five Thousand only) towards revised rate of S.R. 92-93 for work executed as per supplemental agreement as per Annx. 74-A.

B) A sum of Rs.9,97,088/- (Nine Lakh Ninety Seven Thousand and Eighty-Eight only) towards lead charges for conveying excavated stuff of base stripping of embankment as per Annx. 74-B.

C) A sum of Rs.23,77,800/- (Twenty Three Lakhs Seventy Seven Thousand and Eight Hundred only) towards lead charges for conveying water for embankment as per Annx. 74-C.

D) A sum of Rs.42,81,809/- (Forty-Two Lakhs Eighty One Thousand Eight Hundred and Nine only) towards lead/lift charges considering the standard swell factor for embankment material as per Annx. 74-D.

E) A sum of Rs.17,79,312/- (Seventeen Lakhs Seventy Nine Thousand Three Hundred and Twelve only) towards idle machineries as per Annx. 74-E.

F) Interest on the delayed payments as per Annx.74-F an amount of Rs.1,49,972/- (One Lakh Forty Nine Thousand Nine Hundred and Seventy Two only) for the actual number of days.

G) Towards the total amount of the above claims the principle amount is Rs.1,09,31,009/-+ 1,49,972/- 1,10,80,981/-, the interest on this principle amount at 12% per annum for 15 years and 10 months (i.e. from 20.01.1994 to 20.11.2009) works out to Rs.1,10,80,981/- x 12% x 190 months 2,10,53,864/- (Two Crore Ten Laths Fifty Three Thousand Eight Hundred and Sixty Four only). This may kindly be granted.

Thus the total claim made as above is Rs.2,10,53,864/- (Two Crore Ten Laths Fifty Three Thousand Eight Hundred and Sixty Four only)."

13. It is forthcoming from the testimony of PW.2 that he has stated that he is working as a Civil Engineer and Chartered Valuer in Tumakuru for 26 years and that he has visited the spot along with the plaintiff and conducted personal enquiry. Further he has stated with regard to the non availability of hearting material so as to cover the embankment and that delay in handing over the land to the plaintiff and that the same increased the cost of work due to increase of price, etc. It is further stated in his testimony that the plaintiff was fetching water to the work spot from 22 kms. That the material removed had to be disposed of and due to insufficient and non availability of dumping yard, the plaintiff incurred additional cost of transportation and dumping and hence has stated that the plaintiff is entitled to addition of 22%. Further, he has stated that he has verified the calculation list which is set out at para 5 of the affidavit evidence of PW2 which is as follows:

Sl.No.

Description

Amount (in Rupees)

01.

Claim-A

14,95,000=00

02.

Claim-B

9,97,088=00

03.

Claim-C

23,77,800=00

04.

Claim-D

42,81,809=00

05.

Claim-E

17,79,312=00

06.

Claim-F

1,49,973=00

Total=

1,10,80,982=00

14. It is relevant to note that in the chart/table set out in para 5 of the examination-in-chief of PW.2, the plaintiff has not furnished the details, particulars and basis for the claims made. The total of the claims made at (a) to (f) at para 5 of the examination-in-chief of PW.2 is Rs. 1,10,80,982/-, and PW.2 has stated that as on the date of completion of the work by the plaintiff he was entitled to claim the said amount. There is no plea of the plaintiff with regard to the said claim of Rs. 1,10,80,982/-. The claim made by the plaintiff in the plaint is in a sum of Rs. 2,10,53,864/- and there is no correlation between the testimony of PW.2 and the claim of the plaintiff.

15. It is further necessary to note that the Trial Court at para 34 of the judgment has noticed that the plaintiff has made a claim at Ex.P38 and has extracted the said claims. Further, the Trial Court has merely stated that it has perused the contents of Ex.P38 and the oral evidence of PWs.1 and 2 and has recorded a finding that with regard to the claim made by the plaintiff that he has claimed 22% over and above the schedule rates of SR 1990-91. Further, it merely notices the nomenclature of the claims made and recorded a finding that the plaintiff is entitled to an amount of Rs.2,10,53,864/-. The Trial Court has not even discussed the separate claims made by the plaintiff in Ex.P38.

16. It is clear and forthcoming from the aforementioned that the findings recorded by the Trial Court in decreeing the suit of the plaintiff are ex facie contrary to the pleadings of the parties and without any basis and are liable to be interfered with.

17. It is forthcoming from a perusal of first page of Ex.P38, that claims (a) to (g) are made and in justification of claims (a) to (f), Annexures 74A to 74F which are annexed along with Ex.P38 have been produced. The said annexures have not been separately marked. In Annexures 74A to 74F of Ex.p38 various calculations are placed on record. However, the plaintiff has not adduced any evidence to justify the details, particulars and the basis of the claims made vide Ex.P38 and its annexures. It is further relevant to note that there is no averment in the plaint nor in the evidence of PW.1 or PW.2 as to the basis of the claim made in Ex.P38.

18. In the case of LIC v. Ram Pal Singh Bisen (2010) 4 SCC 491, the Hon'ble Supreme Court has held as follows:

"5. We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in

accordance with law.”

(emphasis supplied)

19. It is further relevant to note that the plaintiff has merely pleaded regarding the extensive correspondence that was exchanged with the defendants. The plaintiff also seeks to draw justification to his claim from the fact that in response to the correspondences that the plaintiff has addressed to the defendants, various spot inspections and various recommendations have been made by the officials of the defendants to consider the claims made by the plaintiff for enhanced payments to the plaintiff. Although there is extensive correspondence that has been placed on record by both the parties, the same only leads to justification to the contention of the defendants, that having regard to various factors that were faced by the plaintiff in the manner of carrying out the work entrusted, the defendants have revised the rates and paid additional amounts to the plaintiff much higher than the rates that were originally contracted by the defendants.

20. In this context it is relevant to note that under the original agreement dated 27.10.1989 (Ex.P24) the contracted amount was Rs.35,06,025/- and the basis for the said amounts is SR rate of 1988-89. In the supplemental agreement dated 3.8.1992 (Ex.D5) the contracted amount is a sum of Rs. 80,85,313.27 and the basis for the same is CSR rate of 1990-91 and 1991-92. It is further forthcoming that the parties had entered in to a second supplemental agreement dated 21.4.1994. Further it is relevant to note that consequent to every grievance that was addressed by the plaintiff, the officials of the defendants have periodically looked in to the same, conducted spot inspections and have adequately addressed the issues raised by the plaintiff. Subsequently, vide the final bill dated 20.12.2006 a sum of Rs. 8,64,611/- was paid to the plaintiff.

21. It is the contention of the plaintiff that the entire land was not handed over and only parts of the lands were handed over. That the construction of the embankment was required to be done in one stretch and the construction of the embankment could not be done in parts and the said aspect contributed to the delay and increase in the cost. However, the plaintiff has not placed any material on record to prove the fact that the construction of the embankment could not be done in parts. Hence, the said contention of the plaintiff is liable to be rejected.

22. The plaintiff has contended that the second supplemental agreement was executed on 21.4.1994 at the SR rate of 1993-94 three months after the completion of the work which was on 20.1.1994. DW.1 has specifically deposed regarding the same that when the quantity of the first supplemental agreement was completed, for the extra quantity, the second supplemental agreement was executed.

23. DW.1 has further deposed that since the plaintiff approached the Hon'ble Chief Minister, consequent to which the Chairman of the Technical Accounts Committee of Defendants Sri K.C.Reddy was asked to look in to the matter and

pursuant to the submission made in this regard, the Board of Defendants approved payment of Rs. 8,64,611/- which was the final bill, which specifically noticed that the payment was being made as a swell factor amount to the plaintiff.

24. Another contention that is averred by the plaintiff in the plaint is that he has signed the first supplemental agreement dated 3.8.1992 out of force and coercion and not out of his free consent. However, the said contention is made for the first time in the plaint in the year 2009 nearly 17 years after the document was signed. In none of the correspondences exchanged by him with the defendants from the date of signing of the agreement till the filing of the suit, he has not indicated regarding the same.

25. It is the further contention of the plaintiff that the acceptance of the final bill dated 20.12.2006 cannot be termed as voluntary acceptance. The plaintiff having voluntarily entered in to various contracts with the defendants, carried out the works under the same, as also having accepted payments which were enhanced from time to time, the said averment of the plaintiff regarding compulsion and coercion is ex facie untenable and liable to be rejected.

26. In the case of *Grasim Industries Ltd., v. Agarwal Steel* (2010) 1 SCC 83, the Hon'ble Supreme Court has held as follows:

"6. In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular, businessmen, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence it is difficult to accept the contention of the respondent while admitting that the document, Ext. D-8 bears his signatures that it was signed under some mistake."

(emphasis supplied)

27. The plaintiff has miserably failed in proving that he is entitled to various amounts from the defendants by making necessary averments as to the details, particulars and the basis for such claim. The relevant plea not having been made, the plaintiff has also not adequately proved regarding the basis for the claims made by him. The only document where some details are furnished is Ex.P38 which are not supported by any other material on record. The plaintiff has miserably failed to aver as also adduced oral or documentary evidence to justify the claim made by him in the suit.

28. The Trial Court merely on assumptions and presumptions without adequately appreciating the basis of the claim, has decreed the suit of the plaintiff which is erroneous and liable to be set aside.

29. In view of the discussion made above, question Nos.(i) and (ii) are answered in the affirmative.

30. Hence, the following:

ORDER

i) The above appeal is allowed;

ii) The judgment and decree dated 20.4.2016 passed in OS No.89/2009 by the II Additional Senior Civil Judge JMFC, Tumakuru, is set aside;

iii) The suit in OS No.89/2009 filed by the plaintiff on the file of the II Additional Senior Civil Judge JMFC, Tumakuru, is dismissed;

iv) The deposit made by the appellants in compliance with the order dated 7.4.2017 passed in the above appeal be refunded to the appellants.

No costs.