(2017) 04 MAD CK 0195

In the Madras High Court

Case No : 457 of 2013C S No 457 of 2013

M/s.PTK Architects, APPELLANT

Vs

Rockman Industries Chennai Private Limited, RESPONDENT

Date of Decision : 05-04-2017

Acts Referred:

Partnership Act, 1932, Section 69(2) - Effect of non-registration

Citation : (2017) 04 MAD CK 0195

Hon'ble Judges : T.Ravindran

Bench : SINGLE BENCH

Advocate : T.Ravindran

Judgement

1. The suit has been laid by the plaintiffs for recovery of money.

2. The averments contained in the plaint are briefly stated as follows: The first plaintiff is a Firm of reputed Architects carrying on professional practice as Architects, Engineers, Planners, Designers, Consultants & Supervisors and rendering all connected and allied services in Chennai. The defendant is engaged in the business of manufactures of Aluminum Alloys & High Pressure Die Castings. The defendant had proposed to put up a Machine shop, foundry building etc. at Cheyyar for the defendant''s business. The plaintiffs vide its letter dated 11.01.2011 as well as further letter dated 09.03.2011 offered to provide their services and after negotiations, the defendant vide letter dated 01.04.2011 confirmed the plaintiffs as the Architect for the Project at Cheyyar.

3. The letters dated 11.01.2011 & 09.03.2011 of the plaintiffs and the letter dated 01.04.2011 of the defendant constituted the contract between the parties. As per the contract above mentioned, the payments for the services were to be released to the plaintiffs as envisaged in the contract and the same being a commercial transaction, in the event of non-payment of the plaintiffs'' invoices on time, interest thereon at 18% per annum was liable to be paid on the unpaid value of the invoices from the date of each such invoice was raised by the

plaintiffs. As per the contract, the plaintiffs have complied with their obligations for the defendant''s project, however, not been paid for their professional services as per the invoices described in the plaint and thus, a sum of Rs.21,61,925/- is liable to be paid by the defendant towards the principal along with interest thereon at 18% per annum, in all amounting to Rs.26,43,234/-. That apart, the defendant has also not remitted the TDS in respect of the amount paid under the other invoice nor issued necessary TDS certificates and therefore, the plaintiffs have been necessitated to pay the amount to the competent authority towards the TDS, which remained unpaid by the defendant. As such, a sum of Rs.1,92,155/- had remained under the "deducted" but unpaid TDS account and the same when calculated with the interest, amount to Rs.2,43,940/-. In all, the defendant is liable to pay a sum of Rs.28,87,174/- to the plaintiffs for the service rendered by the plaintiffs for the project of the defendant as on 07.03.2013. The defendant vide various letters as well as the e-mail had acknowledged the liability to pay the sum due to the plaintiffs for the services rendered by them and thereafter, as promised, the defendant did not make the payment and after repeated requests, the defendant issued a cheque dated 01.12.2012 drawn on the State Bank of India, SME Branch, Guindy, Chennai for a sum of Rs.7,50,000/- in favour of the plaintiffs. However, the said cheque had been returned unpaid and therefore, left with no other alternative, except to claim the amount due to them, the plaintiffs issued the legal notice on 19.01.2013 and despite the receipt of the same, the defendant neither replied nor made any payment and the plaintiffs again caused a notice dated 19.03.2013 calling upon the defendant to make the payment and to the same, the defendant has sent a reply dated 05.04.2013 raising untenable grounds and hence, the plaintiffs have been necessitated to lay the suit for recovery of the suit amount.

4. The averments contained in the written statement filed by the defendant are briefly stated as follows:

The suit is not maintainable either in law or on facts. At the out set, this Court has no territorial jurisdiction to try the suit as the offer made by the plaintiffs had been accepted by the defendant by letter dated 01.04.2011, which had been issued from its administrative office and works at Thoraipakkam and further, as the services rendered by the plaintiffs were in respect of the defendant''s factory situated at Cheyyar, Thiruvannamalai District SIPCOT, this court has no territorial jurisdiction to entertain the suit laid by the plaintiffs. Further, this Court has also no pecuniary jurisdiction to entertain the suit, as even, according to the plaintiffs'' case, the principal amount is only Rs.21,61,925/- and the payment of interest on delayed payments is not a privy to the contract entered into between the plaintiffs and the defendant. The plaintiffs have been granted leave to sue without notice to the defendant and hence, the leave granted to the plaintiffs has to be revoked. The plaintiffs suit is not legally maintainable and inasmuch as the first plaintiff is not a registered firm and the plaintiffs 2 & 3 are not shown to be the partners of the first plaintiff firm with the registrar of firms, the suit laid by the plaintiffs is barred under Section 69(2) of the Indian Partnership Act. The plaintiffs have to strictly prove that the amount claimed in various invoices are still due from the defendant. The plaintiffs have incompetently delayed the execution of the project causing severe and unbearable loss to the defendant and thereby, the defendant was unable to carry out its delivery details to its regular customers. The plaintiffs have not taken steps to clarify the discrepancies as pointed out in the communications between the parties and on the failure on the part of the plaintiffs to fulfill their promise, caused heavy loss to the defendant and therefore, the defendant was constrained to negotiate the service of a new contractor to finish the works left unfinished by the plaintiffs and hence, the suit is liable to be dismissed.

5. On the basis of the above pleadings, the following issues are framed for determination.

" 1. Whether the defendant vide letter dated 01.04.2011, had confirmed that the plaintiff''s professional fees for its services as the '' Architect for the Project'' at Cheyyar was 3% of the cost of the project inclusive of all taxes, levies, duties of civil sanitary works and other buildings utilities which are part of the Architect''s scope of work?

2. Whether the suit is barred under Section 69(2) of the Partnership Act as the plaintiffs have not disclosed that the first plaintiff, a partnership firm, is registered and that the plaintiffs 2 and 3 were the partners of the first plaintiff as on the date of filing the suit?

3. Whether a further sum calculated at 1.5% of the cost of external services such as road works, land development, landscaping, surface drainage, compound wall, external water supply, sewerage & storm water drains was also agreed to be paid in addition to Rs.75,000/- per month towards the plaintiff''s deputing a fulltime site engineer at Cheyyar?

4. Whether this Court has the territorial jurisdiction to entertain the suit when admittedly the services rendered by the plaintiffs were in respect of the factory of the defendant at Cheyyar, Thirvannamalai, and the offer of the plaintiffs to provide their services was accepted by the defendant only at its administrative office and works at Thoraipakkam?

5. Did the defendant pay the plaintiffs'' professional fees as per the agreement between the parties? If no, what sum is the defendant liable to pay the plaintiffs?

6. Whether this Court has the pecuniary jurisdiction to entertain the suit when admittedly the plaintiffs have claimed only Rs.21,61,925/- towards principal amount alleged to be due from the defendant, when interest is not a privy to the contract?

7. Is the defendant liable to pay interest on the sum due to the plaintiff? If so, at what rate of interest?

8. Whether the claim of the plaintiffs to a sum of Rs.5,84,844/- under Bill No.563/

Electrical/1F dated 15.02.2012 is sustainable when the plaintiffs by their eMail dated 30.01.2012 refused to support the defendant henceforth?

9. Is the defendant liable to pay the costs of the suit to the plaintiffs?

10. Whether the claim of the plaintiffs to a sum of Rs.1,92,155/- and interest of Rs.51,785/- thereupon alleging that the defendant had not remitted the TDS is sustainable when the defendant had indeed remitted the TDS accordingly?

11. Whether the plaintiffs, after admitting the incomplete and unsatisfactory work of the Builder/Contractor, could have certified the work done by the Builder/ Contractor?

12. Whether the plaintiffs can claim to be remunerated on the basis of the estimated cost of the project, when the work done by the Builder/Contractor is incomplete? and

13. To what other reliefs are the parties entitled to?"

6. In support of the plaintiffs'' case, PW1 has been examined and Exs.P1 to 18 were marked. On the side of the Defendant''s, DW1 has been examined and Exs.D1 to D15 were marked.

7. Issue No.2. The first plaintiff M/s.PTK Architects is described as a partnership firm. The second plaintiff P.T.Krishnan is described as the Managing Partner of the first plaintiff firm. The third plaintiff R.Suresh Babu, is described as the partner of the first plaintiff firm.

8. Therefore, it could be seen that the first plaintiff as a partnership firm and the second and third plaintiffs as the managing partner and partner of the first plaintiff firm had instituted the suit against the defendant and the suit has been laid for recovery of the amount which remained unpaid by the defendant for the Architects service rendered by the plaintiffs in respect of the project of the defendant at Cheyyar, Thiruvannamalai District.

9. Inter alia, the main defence raised by the defendant is that the suit laid by the plaintiffs is barred under Section 69(2) of the Indian Partnership Act.

10. In such view of the defence raised by the defendant, it is for the plaintiffs to establish at the outset that their suit is not barred under Section 69(2) of the Indian Partnership Act.

11. Section 69(2) of the Indian Partnership Act reads as under:- " No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

12. A reading of the above Section would go to show that the suit cannot be maintained by a firm unless it is registered as per law and the persons suing are or have been shown in the register of firms as partners in the firm. It has to be,

therefore, seen whether the first plaintiff is a partnership firm, which had been registered in accordance with law and whether the plaintiffs 2 & 3 are the partners of the first plaintiff firm and their names are reflected in the register of firms as mandated under Section 69 (2) of the Indian Partnership Act. In this connection, it is found that the plaintiffs have failed to establish that their suit is not barred under Section 69(2) of the Indian Partnership Act. The third plaintiff examined as PW1 during the course of cross examination has clearly admitted that the first plaintiff partnership firm is not registered by the Registrar of firms and he has further admitted that the first plaintiff is not a registered firm and it is therefore seen from the clear admission of PW1 that the first plaintiff firm is not a registered firm. Equally, it is also found that there is no material placed on the part of the plaintiffs that the second and third plaintiffs are shown as partners in the register of firms as mandated under Section 69(2) of the Indian Partnership Act. In conclusion, it can be held that the plaintiffs have failed to establish that their firm falls outside the scope of Section 69(2) of the Indian Partnership Act.

13. In such view of the matter, according to the defendant''s counsel, when the suit laid by the plaintiffs is clearly barred by law. i.e. under Section 69(2) of the Indian Partnership Act, the plaintiffs are not entitled to maintain the suit any further and in this connection, reliance is placed upon the decisions reported in 1977 (1) SCC 379 (Seth Loonkarar Sethiya and others Vs. Ivan E.John and others) and AIR 1989 SC 1769 (Shree Ram Finance Corporation Vs. Yasin Khan and others) and following the above said decisions, our High Court, in the decision dated 23.11.2016 rendered in application Nos.4437 to 4439 of 2015 and other applications have held that an unregistered firm cannot bring a suit to enforce the right arising out of the contract falling within the ambit of Section 69 of Act. The suit laid by the plaintiffs being the suit for the benefit and in the interest of the firm and the same being filed on behalf of the firm, it could be seen that the firm not being registered in accordance with law and the partners not being shown as partners in the register of firms in accordance with law, it is found that the suit laid by the plaintiffs is clearly hit by Section 69(2) of the Indian Partnership Act.

14. In the light of the above discussions, I hold that the plaintiffs'' suit is barred under Section 69(2) of the Indian Partnership Act as the plaintiffs have not established or disclosed that the first plaintiff is a registered partnership firm and that the 2nd & 3rd plaintiffs are the partners recorded in the register of firms on the date of the filing of the suit. Accordingly, Issue No.2 is answered against the plaintiffs.

15. Issues 1, 3 to 12 Inasmuch as under issue No.2, it has been held that the plaintiffs'' suit is barred under law i.e. hit by Section 69(2) of the Indian Partnership Act and consequently, held that the plaintiffs cannot maintain the suit legally, it is found that as regards the other issues formulated in the suit, there is no need to answer the said issues and accordingly, issues 1, 3 to 12 are not

answered.

16. Issue No.13. The suit is dismissed with costs.

