
(2012) 10 MAD CK 0144
In the Madras High Court
Case No : Appeal Suit No. 458 of 2008

P. Annadurai

APPELLANT

Vs

Chief Engineer, National Highways and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Contract Act, 1872 — Section 70

Citation : AIR 2013 Mad 83

Hon'ble Judges : R. Subbiah, J; R. Banumathi, J

Bench : Division Bench

Advocate : R. Subramanian, for the Appellant; Pasupatheeswaran, Sp. G.P., Manivasagam and P. Wilson Associates, for the Respondent

Judgement

R. Banumathi, J.—Challenging the order of dismissal (12-12-2007) of the suit in O.S. No. 64 of 2005 on the file of Additional District Judge (Fast Track Court No. 2), Salem, Plaintiff has filed the present appeal. Appellant is plaintiff and respondent's are defendants. Appellant filed the suit for recovery of Rs. 39,96,800/- with subsequent interest at 24% per annum on Rs. 24,00,000/-. According to the appellant, he is a registered Contractor and had been awarded with a contract work with a periodical renewal of the National Highways Road No. 7 between K.M. 66/0 to 61/0, 62/0 to 64/0 on Bangalore to Salem Madurai Section by the 2nd respondent. For the said purpose, an Agreement dated 14-2-2001 for the contractual value of Rs., 38,55,299/- had been entered into between the parties. As per the terms of Agreement, appellant had to complete the work within four months from the date of handing over the road to him on 7-3-2001. Accordingly, appellant had completed the entire work satisfactorily on 1-7-2001 and the road was duly handed over to the department on 1-7-2001. The final bill was also submitted by him on the same day. But the 4th respondent had failed to arrange settlement of the final bill. Appellant had sent reminders to the respondent requesting to settle a total sum of Rs. 24,00,000/- including 21-1/2% withheld amount by the department. Appellant had completed the contract work by borrowing amount at huge interest from financing agencies and

tilt now he had paid more than Rs. 7,00,000/- by way of interest alone for the amount that is illegally withheld by the department. Being a commercial transaction, from 1-9-2001 i.e. after expiry of two months from the date of submission of final bill dated 1-7-2001, Appellant is entitled to interest at 24% per annum on Rs. 24,00,000/-. Hence, the suit.

2. Resisting the said suit, 4th respondent 4th defendant filed a written statement, admitting the Agreement of contract entered into between them. According to him, duration of period for completing the work commenced from 14-2-2001 and not from the date of 7-3-2001. Appellant had completed the work on 28-7-2001 only. Further, appellant did not submit the final bill on 1-7-2001. It is not the duty of appellant to submit bill to the respondents but it is the duty of Assistant Divisional Engineer to prepare the bill and to forward the same to the Divisional Engineer, National Highways. Actually the contract work is not a commercial transaction. It is a public work done by the Government for public road transport convenience, Hence, Appellant is not entitled to claim any interest at the rate of 24% per annum. Thus, he prayed for the dismissal of the suit.

3. Fifth respondent filed a written statement stating that there is no clause for payment of interest, much less at 24% per annum. This defendant is not a necessary party; however, this defendant had released a sum of Rs. 44.25 lakhs on 7-10-2004 towards the work in favour of the 4th respondent, who, in turn, had paid the same to the appellant in full and final settlement of the work. Thus, he prayed for the dismissal of the suit.

4. On the said pleadings, the trial Court framed necessary issues and in support of his claim, Appellant had examined himself as P.W. 1 and marked Exs. A-1 to A-4. On the side of the respondents, one Selvaraj, Assistant Divisional Engineer, National Highways, was examined as R.W. 1 and Exs. B-1 and B-2 were marked. The trial Court, after analysing the evidence both oral and documentary, has dismissed the suit holding that appellant has committed breach of the Agreement dated 14-2-2001 since he had not completed the contract work within the stipulated time and also failed to prove the plea with regard to interest. Aggrieved over the said finding, present appeal has been filed.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. Suit was filed claiming a sum of Rs. 39,96,800/- consisting principal of Rs. 24,00,000/- and interest amount and also for further interest at 24% per annum in respect of the contract work done by the appellant. It is the case of appellant that he was awarded with a contract by Agreement dated 14-2-2001 and the site road was handed over to him on 7-3-2001 and as per the terms of the Agreement, he had completed the work and handed over the road to the department on 1-7-2001, within the contractual period. On the same day, he sent a final bill claiming Rs. 24,00,000/- payable by the Department including 21 1/2% withheld amount. The Department ought to have made payment within the

period of two months from the date of final bill. They have not paid the amount in spite of repeated reminders, which necessitated him to file the suit.

7. Admittedly, pending suit, 5th respondent had paid Rs. 44.25 lakhs to the 4th respondent on 7-10-2004, who, in turn, paid the same to appellant in full and final settlement of the work. But, appellant had prosecuted the suit for interest amount stating that there was a delay of four years in making payment and therefore, from 1-9-2001 i.e. after the expiry of two months from the date of submitting final bill, transaction being a commercial one, he is entitled for 24% interest. For which, it is the reply of the Department that as per the clauses in the Agreement, appellant is not entitled for any interest. In this regard, learned Additional Government Pleader invited the attention of this Court to Exs. B-1 - Tender Agreement and B-2 - Preliminary Specifications to Standard Specifications to Road and Bridges submitted that Ex. B-2 is inseparable to the conditions of the Agreement of Contract entered into between the Contractor and the Department.

8. Clause 110.10 of Ex. B-2 deals about the interest on dues, which reads as follows:

110.10 Interest on dues:--

The Contractor shall not be entitled to interest upon any guarantees bond, or payments in arrear, nor upon any balance which may, on the final settlement of his accounts, be found to be due to him.

Whenever the withhold amount reaches Rs. 1,000/- or a multiple thereof, the Contractor may, at his option deposit with the Engineer and equal amount in sums of Rs. 1,000/- or a multiple thereof, in any of the forms of interest bearing securities recognised for the purpose and the equivalent with hold amount shall be paid to him forthwith. The Contractor will be permitted to exercise the option in this clause, subject only to the condition that the rate of progress stipulated in the contract is properly maintained.

Admittedly, as per the said clause, Contractor is not entitled to interest in respect of the amount due by the Department; but it is the submission of the learned counsel for the appellant that the delay was not ordinary but inordinate. Therefore, he is entitled for interest since the transaction is a commercial one.

9. At this stage, Appellant has relied upon Section 70 of Indian Contract Act, which says as follows:

70. Obligation of person enjoying benefit of non-gratuitous act:-- Where a person, lawfully does anything for another person, or delivers anything to him, not intending to-do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

By relying upon the said section, it is submitted by the appellant that when the

Department enjoyed the benefit of work done by the appellant-Contractor, he is liable to be compensated by way of interest since there was a delay of 4 years in making payment.

10. In view of the submission made on either side, the issue that has to be decided in this case is, whether the Department is liable to pay interest since it enjoyed the benefit of work done by the appellant?

11. It is not in dispute that there is a clause in Ex. B-2, which says that Contractor is not entitled to interest for payments in arrear. But, we are of the opinion, as contended by the learned counsel for the appellant, if the delay is ordinary in nature, there cannot be any justification in claiming interest by the Contractor, but, in the instant case, there was an inordinate delay of four years. Taking assistance with the clause for non-payment of interest, the Department cannot take its own time to settle the final bill. It is pertinent to point out that the department has chosen to make payment only after initiation of the suit. Therefore, irrespective of the clause, we are of the opinion, appellant has to be compensated by way of interest for the delayed payment, particularly when the Department had enjoyed the benefit of work done by the appellant; however, the claim of interest at 24% per annum, in our view, is exorbitant. Considering the facts and circumstances, we are of the view that appellant is entitled for interest at 9% per annum from 1-9-2001 i.e. after the expiry of two months from the date of submission of final bill, to 7-10-2004, the date on which the principal amount was released by the Department.

In fine, Appeal is partly allowed and the judgment and decree of the trial Court are set aside. Respondents are directed to pay interest at 9% per annum on Rs. 24,00,000/-from 1-9-2001 to 7-10-2004, within a period of eight weeks from the date of receipt of a copy of this judgment; however, there is no order as to costs.