
(2014) 09 MAD CK 0226

In the Madras High Court

Case No : W.A. (MD) No. 1089 of 2014 and M.P. (MD). No. 2 of 2014

S. Karuppiah

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 MAD CK 0226

Hon'ble Judges : R. Mahadevan, J;M. Jaichandren, J

Bench : Division Bench

Judgement

R. Mahadevan, J.—This Writ Appeal is filed seeking to set aside the order, dated 19.09.2013, in W.P. No.15746 of 2013. The petitioner in W.P.(MD).No.15746 of 2013 is the appellant herein.

2. The short facts, in a nutshell, are as follows:-

The appellant herein is the Contractor. He filed a Writ Petition in W.P. (MD).No.15476 of 2013 praying for a Writ of Mandamus, directing the respondents therein to pay interest at 18% per annum from the date of completion work in respect of the work done, till date of payment of the total amount of Rs.46,95,663/-. Prior to that, he had filed another Writ Petition in W.P. (MD) No. 8687 of 2009, seeking for a Writ of Certiorarified Mandamus, to call for and quash the order passed by the 2nd respondent in his proceedings, dated 09.07.2009 and further direct the respondents therein to pay a sum of Rs.1,20,00,000/- (Rupees one crore and twenty lakhs only) for the additional work done by the petitioner (40,000 per cum x Rs.300 = 1,20,000/-) and further direct the respondents to release the balance 50% of the amount as well as withheld amount to the petitioner with interest at 18% p.a. from the date of completion of work (i.e.) November 2008 and till date of payment.

2.1. This Court, by an order dated 06.01.2010, had passed the following order in W.P.(MD).No.8687 of 2009, wherein, in paragraph Nos. 11 & 12, it is stated as

follows:-

11. In the light of the above undisputed facts, I am of the view that the contractor is entitled to get the payment of Rs.18,00,189/- and Rs.30,23,712/- only. The petitioner's additional claim at the enhanced rate cannot be decided in this writ petition under Article 226 of the Constitution of India and the petitioner will have to work out his remedy before the appropriate Forum.

12. Therefore, while rejecting the additional claim made by the petitioner, on the basis of the enhanced rate, which was not accepted by the respondent, I direct the respondents to sanction the balance amount due to the petitioner, viz., Rs.18,00,189/- together with the security deposit of Rs.30,23,712/- agreed to be paid by the respondent, and pay the same to the petitioner within a period of three months from the date of receipt of a copy of this order. With regard to the additional amount at the enhanced rate of Rs.250 or Rs.300 per cu.m, it is open to the petitioner to claim the same in the appropriate Forum.

2.2. Since there was delay in settling the amount to this appellant, this appellant sought for a direction, as stated above, in W.P.(MD).No.15476 of 2013 to pay interest at the rate of 18% per annum for the amount settled to him. However, the learned Judge had rejected the claim of the appellant on the premises that this appellant had not challenged the order dated 06.01.2010, in W.P.(MD).No.8687 of 2009, with regard to the payment of interest part either by filing an appeal or by moving an appropriate application before the same learned Judge. Therefore, it was not open to the appellant to move or maintain the Writ Petition in W.P.(MD).No.15476 of 2013, by splitting the cause of action. By stating so, he dismissed the Writ Petition in W.P.(MD).No.15476 of 2013, dated 19.09.2013. Aggrieved over the same, the appellant is before this Court.

3. The learned counsel appearing on behalf of the appellant submitted that unless the interest portion of the amount in question is neither discussed in the order dated 06.01.2010, in W.P.(MD).No.8687 of 2009 nor any findings given to that effect, the appellant is entitled to challenge the cause of action arose in W.P.(MD).No.8687 of 2009, at any point of time. He further submitted that though the prayer was made to the effect that the respondents should pay with interest in the Writ Petition in W.P.(MD).No.8687 of 2009, the learned Judge failed to consider the same. He also submitted that even the contractual amount was paid to this appellant, after filing two contempt petitions. In any event, the respondents are liable to pay interest at the rate of 18% for the belated payment made to this appellant.

4. The learned Special Government Pleader submitted that once the prayer of the appellant was rejected in the order made in W.P.(MD).No.8687 of 2009 vide its order dated 06.01.2010, there is no question of considering the same in an another Writ Petition in W.P.(MD).No.15746 of 2013. More over, his claim is a belated one and that can never be entertained at all. Therefore, this Writ Appeal is liable to be dismissed.

5. Heard the submissions on either side.

6. Before dealing with this case, it is worthwhile to refer the prayer made in W.P. (MD).No.8687 of 2009, which reads as follows:-

"Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent in his proceedings Letter No.B1/6925/2008 dated 09.07.2009 and quash the same and further direct the respondents to pay a sum of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakhs Only) for the additional work done by the petitioner (40,000 per cum x Rs.300= Rs.1,20,00,000/-) and further direct the respondents to release the balance 50% of the amount as well as withheld amount to the petitioner with interest at 18% per annum from the date of completion of work. (i.e.) November 2008 and till the date of payment."

7. On hearing both sides, the learned Judge had disposed of the said Writ Petition in W.P.(MD).No.8687 of 2009, dated 06.01.2010. Pursuant to the order passed by this court in W.P.(MD).No.8687 of 2010 dated 06.01.2010, the respondents seem to have settled the amount to the tune of Rs.46,95,663/-, but with some delay. The contention of the learned counsel for the appellant to the effect that the interest portion was not considered by the learned Single Judge in his order dated 06.01.2010, made in W.P.(MD).No.8687 of 2009 could not be accepted for more than one reason. As rightly pointed out in the order dated 19.09.2013, in W.P.(MD).No.15476 of 2013, if the appellant is aggrieved over the order made in W.P.(MD).No.8687 of 2009, he could have filed a review petition before the very same learned Judge or he could have filed an appeal. Curiously, he had filed another Writ Petition in W.P.(MD).No.15476 of 2013, that too in the year 2013. Therefore, it is clear that what he could not achieve in W.P. (MD).No.8687 of 2009, dated 06.01.2010, cannot be achieved in the order dated 19.09.2013 made in W.P.(MD).No.15476 of 2013. More over, the order was passed in W.P.(MD).No.8687 of 2009 as early as 06.01.2010. Again, he approached this Court by way of another Writ Petition in the year 2013.

7.1. We are at a loss to understand that as to why the petitioner has not taken any steps either to file a review or file an appeal, in time. It is true that in spite of the order dated W.P.(MD).No.8687 of 2009, the respondents did not settle the amount and after initiation of contempt proceedings, the respondents paid the amount to this appellant. However, it does not mean that he can challenge the order made in W.P.(MD).No.8687 of 2009, only in the year 2013, that too, by filing an another Writ Petition. Therefore, prima facie, we negate the contention of the learned counsel for the appellant.

8. We are of the view that the findings of the learned Judge of the order, dated 19.09.2013, made in W.P.(MD).No.15476 of 2013 does not warrant any interference, at the hands of this Court. We do not find any merit in the present Writ Appeal.

9. In the result, the Writ Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.