

(2014) 09 TP CK 0021
In the Tripura High Court
Case No : R.S.A. 63 of 2005
The State of Tripura VsRanjon Majumder

Date of Decision : 11-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Contract Act, 1872 — Section 55

Citation : (2014) 09 TP CK 0021

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : A. Ghosh, Advocate for the Appellant; P. Dutta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—This second appeal, u/s 100 of the Code of Civil Procedure, is directed against the appellate judgment and decree dated 30.06.2005, passed by learned Addl. District Judge, West Tripura, Agartala in Title Appeal 34 of 2003 where-under the judgment and decree dated 21.07.2003 passed by learned Civil Judge, Jr. Division, Agartala, in Title Suit No. 97 of 2002 was upheld.

2. The second appeal has been admitted for hearing on the following substantial question of law:

"Whether it is within the jurisdiction of the court to take a decision beyond the terms of the contract about the compensation/penalty to be imposed in the event of failure of the contractor to strictly go by Clause 2 of the agreement, which provides that time shall be the essence of contract?"

3. Heard learned counsel Mr. A. Ghosh for the appellants and learned counsel Mr. P. Dutta for the respondent.

4. The respondent as plaintiff (hereinafter mentioned as plaintiff) instituted Title Suit No. 97 of 2002 in the Court of Civil Judge, Jr. Division, Court No. 1, Agartala, against the appellants (hereinafter mentioned as defendants) seeking declaration and consequential relief alleging that the plaintiff entered into a contract with the

defendants for execution of a construction of three storied building at Pandit Nehru Complex, Kunjaban, Agartala and the agreement was signed on 19.02.2000. As per agreement, the plaintiff was supposed to start the work from 15th day of signing the agreement and the stipulated period of completion of work was 12 months. The total estimated value of the work was Rs. 26,84,750/- and the accepted value of the tender was Rs. 28,99,530/-. It is the case of the plaintiff that though he was supposed to start the execution of the work in time but he could not take up the work within the time schedule because of delay in supplying the design, drawing and government material etc. as well as for the execution of extra work valued Rs. 3,55,938/- and as a result, 130 days delay was caused in the process and the total delay was 190 days. The plaintiff approached in writing to the defendants for extension of time and the work was completed on 25.08.2001 and the defendants took over the constructed building on 27.08.2001. After the entire process was complete, to the surprise of the plaintiff, he received a notice dated 03.10.2001 issued by the defendant No. 2 to show cause as to why penalty should not be imposed for the delayed execution of the work and thereafter a penalty of Rs. 13,424/- was imposed by issuing Memo dated 20.10.2001 alleging that 174 days delay was caused in the process of execution of the work by the plaintiff. The plaintiff challenged the Notice dated 03.10.2001 by filing the suit.

5. Defendants contended that the plaintiff failed to execute the work within the stipulated period of 12 months and defendant No. 2 was the only authority to extend the time and such extension of time was not made by defendant No. 2 within the stipulated period and therefore, since there was a delay of 174 days in execution of the work, penalty was rightly imposed on the plaintiff.

6. The trial Court framed 5 issues namely--

- (i) Is the suit maintainable in its present form and nature?
- (ii) Is the order No. F.20(218)/SE-II/Divn-III/10735-36, dated 20/10/2001 issued by the defendant no-2 is liable to be declared void?
- (iii) Is the plaintiff entitled to get extension of time for the over run period w.e.f. 5/3/01 to 25/8/2001 with the benefit of Price Escalation as per agreement?
- (iv) Is the plaintiff entitled to the decree as prayed for?
- (v) To what other reliefs the parties are entitled?

7. Both side adduced evidence in course of trial and after hearing, the trial Judge decided all the issues in favour of the plaintiff and decreed the suit.

8. Aggrieved, the defendants preferred Title Appeal No. 34 of 2003 in the Court of the District Judge, West Tripura, Agartala and learned Addl. District Judge by impugned judgment dated 30.06.2005 dismissed the appeal.

9. Hence, this second appeal.

10. It is an admitted position that under Clause 2 of the agreement, it was stipulated that time is the essence of the contract and hence, the plaintiff was bound to execute the work within the stipulated period of 12 months. Learned counsel Mr. Ghosh in course of his argument submitted that as per the Clause-29.21 of the agreement defendant No. 2 was entitled to impose penalty for failure of the plaintiff in executing the work within the stipulated time.

11. Learned counsel Mr. Dutta has submitted that the agreement consists a Clause for extension of time and he referred to Clause 5 of the agreement as contended in Para 6 of the plaint.

12. Learned counsel Mr. Ghosh fairly admitted that there was a clause in the agreement for extension of time. The plaintiff, as I find, in course of trial, brought on record the hindrance register and there is a clear finding of the trial Court that as per the hindrance register, there was 55 days delay due to non availability of drawing and design; 18 days delay due to shortage of steel materials in PWD Store; 30 days delay due to non availability of structural design of the roof of ground floor; 8 days delay due to non availability of the structural design of the roof of first floor; 19 days delay due to non availability of structural column (floor three level upto floor four level). It has been clearly mentioned that there was 130 days delay recorded in the hindrance register thereby. The plaintiff also stated that there was 60 days delay for execution of extra work of the construction valued Rs. 3,55,938/-. This delay as recorded in the hindrance register has amply proved that it was because of the reasons attributable to the defendants. Delay of 60 (sixty) days was for execution of extra work and that is not disputed. It is also brought on record that the plaintiff made application for extension of time assigning reasons to defendant No. 3, the Executive Engineer who was In-charge of the work and it is the case of the defendants that the Executive Engineer forwarded the same to the Superintending Engineer (defendant No. 2) who was the competent authority to extend time. During the period of execution of the work the defendant No. 2 i.e. the Superintending Engineer did not refuse the further execution of the work by the plaintiff and allowed the plaintiff to continue the work and complete it. After the plaintiff completed the work and handed over the constructed building to the defendants, admittedly, thereafter the defendant No. 2 issued the notice to the plaintiff asking him to show cause as to why penalty should not be imposed. Since the plaintiff was allowed to continue the work after the stipulated period and was further allowed to complete the work and to hand over the completed building to the defendants, the argument made on behalf of the defendants that the plaintiff was bound to execute the work within the stipulated time, in view of Section 55 of the Indian Contract Act, is not acceptable. The third effect as stipulated in Section 55 of the Contract Act is applicable in the facts and circumstances of the present case. Since the plaintiff was allowed by the defendants to continue the work and to complete the work after the expiry of the stipulated period of time, the principle that time is the essence of the contract is not applicable in the facts of the present case.

13. I find nothing wrong in the judgment passed by the trial Court and affirmed by the Appellate Court and hence, the second appeal is found to be devoid of any merit and therefore, stands dismissed.

14. Send back the L.C. Records along with a copy of this judgment.