

(1997) 11 MAD CK 0187
In the Madras High Court
Case No : Appeal No. 940 of 1982

The Town Panchayat of Ariyalur

APPELLANT

Vs

R. Paramasivam

RESPONDENT

Date of Decision : 08-11-1997

Acts Referred:

Contract Act, 1872 — Section 70
Government of India Act, 1935 — Section 175(3)

Citation : (1997) 11 MAD CK 0187

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : S. Parthasarathy, for the Appellant; T.R. Rajaraman, for the Respondent

Judgement

P. Sathasivam, J.—The unsuccessful defendant in O.S.No.2 of 1981 on the file of Subordinate Judge, Ariyalur is the appellant in the above appeal. The case of the plaintiff/respondent herein is briefly stated hereunder:- The plaintiff is a contractor at Ariyalur. The defendant Town Panchayat prepared an estimate for the construction of bus stand. The estimate was prepared on the basis of Basic Standard Rates prevailing in 1970 and the contract value was Rs.1,10,500/-. The plaintiff submitted his tender at 19.77 per cent over and above the contract value i.e., at Rs.1,32,151.50. His tender was accepted and the contract was entered into between the parties on 15.6.74. As per the terms, the work has to be completed by 15.12.1974. It is also contended that there are special conditions attached to the contract, namely, cement and steel would be supplied departmentally at site for which the department will deduct certain amount named in the contract. Though the plaintiff was given the agreement, the plans were not handed over to him. He addressed the Assistant Engineer, Highways and Rural Works and also the Divisional Engineer. Highways and Rural works at Tiruchirapalli for the plans. He wrote several letters to both of them and also to the Executive Officer of the defendant panchayat on 17.7.74. He also requested them to supply cement and steel rods as per the agreement. The Divisional

Engineer, Tiruchirapalli replied him that they would give only the technical advice as and when necessary. On 16.9.74 the plaintiff wrote a letter to the defendant that the price of raw materials had increased along with labour charges due to taxes levied and, therefore, his tender rate must correspondingly be increased. For the work, not mentioned in the agreement, he must be given extra rates according to the Basic Standard Schedule Rates then prevailing plus percentage mentioned in his tender. He had also requested the defendant to supply the basic materials to complete the work as per the programme. By his letter dated 26.7.74, he had informed the defendant that due to lack of supply of cement and steel rods, work had come to a standstill, He had also addressed the Collector and various other officers, and also made representation to the Minister also.

2. It is further contended that considering the request of the plaintiff, the defendant Panchayat passed a Resolution on 11.4.75 revising the rates mentioned in the agreement and expressing to give middle rate and asking the plaintiff to continue and complete the work. The plaintiff received the materials and was prepared to abide by the resolution of the Panchayat for the middle rate and completed the construction in the last week of October, 1975 and the bus stand was opened on 14.11.75. The Basic Schedule Rates of works for preparation of estimates was increased by 37-1/2% by the Government on 1.11.73 and it was increased by another 7-1/2% with effect from 1.4.74. Again it was increased by 17-1/2% from 1.4.75. The estimate for the work was prepared with reference to the Basic Standard Schedule Rates prior to 1.11.73. Hence when the Panchayat decided to pay at the middle rate, thereby meaning the rate prevailing in the year 1974-75, the plaintiff had accepted the same. In that case, the plaintiff will be entitled to claim 25.23% i.e., 45% minus 19.77 above the estimated rate. The plaintiff is entitled to the interest for the balance amount. Since the amount as claimed by him has not been settled in spite of repeated demands, he has filed the above suit.

3. The defendant filed a written statement wherein it is contended that the agreement entered into between the parties on 15.6.74 governs the rights of the parties in respect of the work done and as such, any claim apart from and de hors the same, the plaintiff cannot lay any claim in a court of law. The agreement expressly refers that the percentage of the tender is only 19.77% above the estimated rate. Hence the plaintiff's claim for higher rate on any basis whatsoever is untenable. The plaintiff's reliance on a resolution for the increased rate passed by the panchayat cannot help him in any way. It is not binding on technical authorities who are to decide the rates as per the rules. Regarding the claim for Rs.11,286.63 for the extra work done, the new items of works are not covered by the original agreement and therefore, they are governed by the provisions in para 104 and 105 of the Madras Highways Manual. Regarding the supply of cement and steel the delay on the part of the defendant is neither wanton nor wilful. Even if it is admitted that the plaintiff incurred loss due to delay in the supply of basic materials, the defendant cannot be fastened with liability in any way for the same. The claim for interest is not maintainable. The

delay in the settlement was due to the attitude of the plaintiff. As regards the last claim of earnest money deposit, it was paid on 29.8.77.

4. The plaintiff himself was examined as P.W.1 and he has marked Exs.A-1 to A-52 in support of his claim. On the other hand, one Srinivasan in the office of the defendant was examined as D.W.1 and Exs.B-1 to B-17 were marked in support of their defence. The learned Subordinate Judge, after framing necessary issues and in the light of oral and documentary evidence, accepted the case of the plaintiff and granted decree for Rs.26,025-15 less a sum of Rs.2800/- paid after the suit with proportionate costs and interest at 6% per annum from the date of plaint till realisation. Aggrieved against the said judgment and decree, the defendant has filed the above appeal.

5. I have heard Mr. S. Parthasarathy, learned counsel for the appellant and Mr. T.R. Rajaraman, learned counsel for the respondent.

6. Learned counsel for the appellant submitted that in view of Ex.B-1 dated 25.2.74, letter written by the plaintiff to the defendant, the plaintiff is bound by the Highways Manual and if the same is applied, the claim of the plaintiff is liable to be rejected. He further submitted that when there is a subsisting contract, Section 70 of the Contract Act will not apply. He also contended that the plaintiff is not entitled to rely upon Resolution of the defendant Panchayat under Ex.A-25 dated 11.4.1975. In any event, according to him, even for the "middle rate", the plaintiff has not proved his case by positive evidence.

7. On the other hand, learned counsel for the respondent submitted that in the absence of any clause in the agreement Ex.A-4, on the basis of a letter written by the plaintiff to the defendant under Ex.B-1, no additional condition can be imposed. In other words, according to him, both the parties are governed by the terms and conditions in Ex.A-4 only. In as much as the plaintiff had constructed the bus stand and the defendant is also getting sizable revenue from and out of it, on the principle of equity and in law, the defendant is bound to pay the amount spent by the plaintiff for the construction of the said bus stand. He also contended that in as much as the court below on the basis of the acceptable, oral and documentary evidence, granted decree in favour of the plaintiff, there is no merit in the appeal and prayed for dismissal of the same. I have carefully considered the rival submission.

8. At the foremost the learned counsel for the appellant by relying on Ex.B-1 submitted that the plaintiff is bound by the provisions in the Highways Manual. He has very much relied on the following passage in Ex.B-11:

For this, learned counsel for the respondent brought to my notice that there is no such clause or condition in the agreement Ex.A-4 (B-5). A perusal of Ex.A-4 agreement shows that there is no such clause or condition in it. No doubt, as per the provisions in the Highways Manual, the contractor is not entitled to any interest on any guarantee fund or payments in arrear nor upon any balance which may, on the final settlement of his accounts, be found to be due to him. As

rightly pointed out, in the absence of any specific clause in the agreement, merely on the basis of Ex.B-1, it is not open to the defendant to say that the plaintiff is bound by the articles in the Highways Manual. As rightly concluded by the court below, the plaintiff has nothing to do with the said Manual unless if there is specific clause incorporated in the agreement (Ex.A-4) that the parties are governed by the Rules and Regulations contained in the Highways Manual. Hence, I reject the first contention of the learned counsel for the appellant.

9. With regard to the second contention, it is seen that as per the agreement, the work was to commence on 15.6.74 and construction should be completed within six months from the date of commencement. It is the specific case of the plaintiff that after handing over the agreement on 29.6.74, the plaintiff wrote a letter Ex.A-6 on 17.7.74 to the Executive Officer of the defendant to supply him necessary plan for commencing the work and carry out the programme of work, chalked out by him under Ex.A-7 dated 25.7.74. As agreed, the plan was not given to him and the bills were also not paid duly then and there. It is seen from Ex.A-4 mat cement and iron rods are to be supplied by the Department and the same were not supplied in time. For the repeated requests by the plaintiff, the Divisional Engineer sent a reply under Ex.A-8, dated 5.8.74 stating that he would give technical advice only. A perusal of Exs. A-11, A-13, A-15, A-17, A-18, A-23, A-31, A-35 and other letters to the Divisional Engineer as well as to the Executive Officer of the defendant Panchayat clearly shows the plight of the plaintiff in order to secure site plan as well as the required materials, namely, cement and iron rods. It is also seen from Ex.A.14 that plaintiff had addressed a letter to the Collector. A perusal of those letters further shows that all these letters were written immediately after the execution of agreement, Ex.A-4 and within the period mentioned therein. As a matter of fact, under Ex.A-20, the plaintiff had requested the Collector to relieve him from the contract in view of the non-co-operation by the Division Engineer and the defendant Panchayat. However, under Ex.A-22, the Executive Officer long after the expiry of the contract period informed the plaintiff that his request for increased rate cannot be complied with and bills would be paid only after the loan was received from the Government. He had also informed the plaintiff that payments would be made from the Panchayat funds. After realising that there was real necessity for the Panchayat to consider the request and claim of the plaintiff as seen from various letters written by him, the defendant Town Panchayat passed a resolution on 11.4.75 under Ex.A-25 agreeing to pay the "middle rate" and asking P.W.1 to continue and complete the work failing which a tender has to be called for after preparing a fresh estimate at the current rate.

10. Since both the counsel referred to Ex.A-25 Resolutions of the defendant Town Panchayat, I hereby extract the same:-

"11.4.75 Copy of Resolution No.229 of the defendant:

As per the resolution of the defendant Town Panchayat the plaintiff had completed the work on 14.11.75 and the bus stand was opened on that date.

11. With regard to the actual claim, the plaintiff in his plaint has clearly stated that upto 14.12.74, he had done the work of the value of Rs.75,698/-. The value of work done after 14.12.74 was Rs.74,711-99. The total value of extra work done by him was Rs.27,875-31. In this regard, the learned trial Judge has commented that the above particulars were not disputed by the defendants in their written statement. Since the learned counsel for the appellant contested the above observation of the learned Subordinate Judge, I have carefully perused the averments in the written statement. After doing so, I am in entire agreement with the observation of the learned trial Judge since the defendant has merely denied the averment of the plaintiff. It is settled law that mere denial is not sufficient to reject the case of the plaintiff or to accept the defence of the defendant.

12. The following observation in *Mulamchand Vs. State of Madhya Pradesh*, has been pressed into service by the learned counsel for the appellant:-

"The provisions of S. 70 can be invoked by the aggrieved party to the void contract. The first condition to be satisfied under the Section is that a person should lawfully do some thing for another person or deliver something to him, the second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third condition is that the other person for whom some thing is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied S. 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore the thing, so done or delivered."

Even though the learned counsel has cited the above decision, inasmuch as the plaintiff has fulfilled the three conditions enumerated in that decision, Section 70 of the Contract Act certainly would come to the rescue of the plaintiff. The other decision referred by the appellant is in the case of *State of Madras Vs. Madras Electric Tramways (1904) Ltd. and Another*, wherein it is held that the principle of quantum meruit has no applications to cases where there are specific contracts in operation, and has only application to cases where there is no contract in operation.

13. In *Puran Lal Sah Vs. The State of U.P.*, their Lordships of the Supreme Court have observed that where work is done under a contract pursuant to the terms thereof no amount can be claimed by way of quantum meruit. The following observation in that decision is also relevant for the disposal of the case in our hand:-

Head Note:

"The remedy under quantum meruit is available when the original contract has been discharged by the Defendant in such a way as to entitle the plaintiff to regard himself as discharged from any farther performance and he must have elected to do so. The remedy is however, not available to the party who breaks the contract even though he may have partially performed part of his obligation.

The remedy is a recompense for the value of the work done by the plaintiff in order to restore him to the position which he would have been in if the contract had never been entered into. In this regard it is different to a claim for damages which is a compensatory remedy aimed at placing the injured party, as near as may be in the position which he would have been in had the other party performed the contract."

14. I shall now consider the decisions referred by the learned counsel for the respondent. In Hyderabad Municipal Corporation Vs. M. Krishnaswami Mudaliar and Mudaliar and Another, have observed that "Contractor on completion of work can be granted extra payment of increased rates." The case before the Supreme Court is some-what identical to our case. In a similar situation, their Lordships have observed thus:

"Under Ex.A-1 drainage works for CSIR Laboratory at Uppal was entrusted to the respondent-plaintiff and under the terms of the contract the work has to be completed by the plaintiff within a period of one year, i.e., from 26th March 1951 to 25th March 1952. Admittedly at the instance of the Executive Engineer, P.W.D due to financial difficulties less budget having been provided for in the year 1951-52 the plaintiff was requested to spread over the work for two years more, that is to say, to complete the same in three years but the respondent-plaintiff was agreeable to spread over the work for two years more as suggested on condition that extra payment will have to be made to him in view of increased rates of either material or wages. The Government did not intimate to the respondent-plaintiff that no extra payment on account of increased rates would be paid to him or that he will have to complete the work on the basis of original rates. In fact no reply was sent by the Government and a studied silence was maintained by the Government in regard to the respondent-plaintiff's demand for extra payment, in spite of several reminders in that behalf, till the plaintiff actually completed the work during the spread over period and only when after completion of work the plaintiff-respondent submitted his final bill claiming 20 per cent extra over and above the rates originally agreed upon between the parties, the Government stated that he was not entitled to increased rates. After considering the correspondence exchanged between the parties and the other material on record the High Court has taken the view that the Government was liable to make extra payment for the work done as there was no dispute that the rates of material, etc, had increased during the extended period of two years and the plaintiff was entitled to such extra payment. After considering the relevant material on record we are of the view that both in equity and in law the plaintiff contractor is entitled to receive the extra payment and the High Court was right in deciding the question in respondent-plaintiff's favor"

The conclusion in that case is directly applicable to our case and the Court below is justified in granting decree in favour of the plaintiff.

15. In Haji Abdulla Haji Adam Sait Dharmasthapanam Vs. T.V. Hameed, , a Division Bench of Kerala High Court has observed in the following manner:-

"The learned counsel for the respondent further submitted that in the circumstances of the case, particularly in view of the fact that the appellant-plaintiff has voluntarily accepted the benefit of the work done by the defendant on the building, the defendant is entitled to lay his claim on the doctrine of "unjust enrichment" also. This principle presupposes three things, first, that the defendant has been enriched by the receipt of a benefit; secondly, that such enrichment has occurred at the expense of the plaintiff: thirdly, that it would be unjust for the defendant to retain the benefit; (Ansons's Law of Contract, 25th Edition, Page 649). We are of the opinion that above principles squarely apply to the facts of the case."

16. In the case of *The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI)*, a contract entered into by A with the Government of India for the supply of coal to the Railway Administration in contravention of the provisions of Section 175(3) of the Government of India Act, 1935 is void and unenforceable, But if in pursuance of the said void contract, A has performed his part and the Government of India has received the benefit of the performance of the contract by A, in such a situation, the Supreme Court has held that Section 70 of the Contract Act would apply and the Government of India was bound to make compensation to A in the form of the value of the said coal under that Section.

17. In *R. Gangapathi Pillai Vs. P.A. Irudayasamy Nadar*, it is observed thus :-

"While, no doubt these decisions do appear to support such a view, a recent decision of the Supreme Court in *Subramanyam v. B. Thayappa* 1961 1 Mad. L.J. 30 (SC) would suggest that the reasoning underlying the above decisions cannot any longer be regarded as applicable to this class of cases In this case, their Lordships say:

"If a party to a contract has rendered service to the other not intended to do so gratuitously, and the other person has obtained some benefit, the former is entitled to compensation for the value of the services rendered by him. Evidently, the respondent made additional constructions to the building and they were not done gratuitously. He was therefore entitled to receive compensation for the work done which was not covered by the agreement. The respondent claimed under an oral agreement compensation at prevailing market rates for work done by him; even if he had failed to prove an express agreement in the behalf, the court may still award him compensation under S. 70 of the Contract Act. By awarding a decree for compensation under the statute and not under the oral contract pleaded, there was in the circumstances of this case no substantial departure from the claim made by the respondent."

The conclusion of the learned Judge which is based on the decision of the Supreme Court referred therein, is applicable to our case.

18. The above principles enunciated in the various decisions undoubtedly support the claim of the plaintiff. I have already observed that there is no dispute with regard to the completion of the bus stand as per the specifications by the plaintiff

and the same was opened for public on 14.11.1975. It is also not disputed that from that date onwards the defendant Town Panchayat is getting sizable revenue from various stalls and from the buses stationed there. As rightly observed by the court below, the defendant is getting benefit out of the work done by the plaintiff, he cannot grudge to pay him the amount which is necessitated on account of various lapses pointed out on the part of the defendant. The plaintiff has also proved by positive evidence by placing acceptable documentary evidence to show that the lapse was only on the part of the defendant. In addition to this, the defendant Town Panchayat itself has agreed to pay the "middle rate" which I have already extracted from the resolution of the Town Panchayat in the earlier portion of this order.

19. The Court below has also rightly rejected the interest claimed for the belated payment. Regarding award of interest at 6 per cent for the belated payment of E.M.D., there is no serious dispute. Likewise, the decree in other respects has not been seriously disputed or agitated by placing the relevant material. Finally in view of the fact that the plaintiff had constructed the bus stand and spent money over and above the contractual amount and in the light of the resolution of the defendant-Town panchayat under Ex.A-25 and of the fact that the defendant is getting revenue from the said bus stand, I am of the view that both in equity and in law, the plaintiff-contractor is entitled to receive the amount claimed by him and I am in agreement with the conclusion arrived by the trial Court granting decree in favour of the plaintiff for Rs.26,025-15 less the sum of Rs.2,800/-which was paid after the suit, with interest at 6 per cent per annum from the date of the plaint till the realisation. Not result, for the reasons stated above, the appeal fails and the same is dismissed with costs.