



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

REGULAR FIRST APPEAL NO.1537 OF 2015 (MON)

BETWEEN:

1. THE MANAGING DIRECTOR
CAUVERY NEERAVARI NIGAMA LIMITED,
AMBEDKAR BEEDI,
COFFEE BOARD BUILDING,
BANGALORE-560 001
2. THE CHIEF ENGINEER
IRRIGATION DEPARTMENT,
(SOUTH) MYSORE,
PALACE BUILDING,
MYSORE-570 024
3. THE EXECUTIVE ENGINEER
II V.C.C. DIVISION,
CAUVERY BHAVAN COMPLEX,
GOKULAM 4TH STAGE,
YADAVAGIRI
MYSORE-570 001

...APPELLANTS

(BY SRI K S BHEEMAIHAH, ADVOCATE)

AND:

1. SRI N NARAYANA
AGED ABOUT 45 YEARS,
S/O LATE NAGA GOWDA,
RESIDING AT DEVARASANAHALLI
KASABA HOBLI,
NANJANGUD TALUK,
MYSORE DISTRICT-570 001





2. THE STATE OF KARNATAKA
VIDHANA SOUDHA,
(VIKASA SOUDHA),
DR. AMBEDKAR ROAD,
BANGALORE -560 001
BY ITS
(A)CHIEF SECRETARY AND
(B) SECRETARY TO IRRIGATION DEPARTMENT

...RESPONDENTS

(BY SRI T.P.MALIPATIL, AGA FOR R2;
R1 SERVED AND UNREPRESENTED)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41
RULE 1 OF CPC., AGAINST THE JUDGMENT AND DECREE
DATED 10.04.2015 PASSED IN O.S.No.240/2007 ON THE FILE
OF THE II ADDL. SENIOR CIVIL JUDGE, MYSORE, PARTLY
DECREEING THE SUIT FOR RECOVERY OF MONEY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri K.S. Bheemaiah, learned counsel for the
appellants and Sri T.P. Malipatil, learned Additional Government
Advocate for the second respondent. First respondent though
served remained absent.



2. Defendant Nos.2 to 4 are the appellants, challenging the validity of judgment and decree passed in O.S.No.240/2007, on the file of II Additional Senior Civil Judge and CJM., Mysore.

3. Facts in brief which are utmost necessary for disposal of the appeal are as under:

Plaintiff has been awarded the contract to carry out the work as per Ex.P.2 work order. Ex.P.3 is the tender agreement executed by the plaintiff.

4. Plaintiff did not commence work as agreed purportedly on the ground that there was a strike by the engineers. In that regard, several communications took place between the plaintiff and defendants. Ultimately, without properly cancelling the contract of the plaintiff, the work got completed by employing some other contractor. Plaintiff laid claim in a sum of Rs.15,93,726/- for the work that he had carried out which was agreed upon as per the work order Ex.P.2.

5. Suit was resisted by the defendants by filing detailed written statement, contending that there was a huge



delay in completing the contractual work, resulting in terminating the contract and forfeiting the remaining amount to be paid to the work that has been carried out by the plaintiff and sought for dismissal of the suit.

6. Based on the rival contentions of the parties, Trial Court raised the following issues:

- (i) Whether the plaintiff proves that he has completed the cement concrete lining for chainage in the month of February 1999 and he has spent Rs.24,97,726/-?*
- (ii) Whether the plaintiff proves that the defendants are liable to pay balance sum of Rs.15,93,726/-?*
- (iii) Whether the plaintiff proves that the Tender Notification No.20/2005-06 dated 23.01.2006 issued by the 2nd defendant is null and void?*
- (iv) Whether the plaintiff proves that he is entitle to resume the construction work to complete the unfinished work?*
- (v) Whether the plaintiff is entitle for the relief claimed in the suit?*
- (vi) What order or decree?*

7. In order to prove the case of the plaintiff, plaintiff got examined himself as P.W.1 and placed on record as many as 39 documents which were exhibited and marked as Exs.P.1



to P.39 comprising of SPA at Ex.P.1, work order at Ex.P.2, tender agreement at Ex.P.3, AEE letter at Ex.P.4, photos at Exs.P.5 to 13, letter copy at Ex.P.14, letter at Ex.P.15, tender notification at Ex.P.16, notice copy at Ex.P.17, postal acknowledgments at Ex.P.18 to 21, Postal Receipt at Ex.P.22 to 26; Caveat copy at Ex.P.27, Inspection tippani at Ex.P.28, Letter copy at Ex.P.29, Application at Ex.P.30, Letter at Ex.P.31, Postal acknowledgment at Ex.P.32, Letter at Ex.P.33, Postal receipts at Ex.P.34 and 35, Postal acknowledgment at Ex.P.36 and 37; Tender Notification at Ex.P.38, Copy of Inspection report at Ex.P.39.

8. As against the evidence placed on record on behalf of the plaintiff, officer of the defendants namely A.J. Shankara and M.S. Bhagavan were examined as D.W.1 and D.W.2. Defendants also placed on record as many as 40 documents which were exhibited and marked as Exs.D.1 to D.40, comprising of Tender notification copy at Ex.D1, Copy of letter at Ex.D2, Copy of letter at Ex.D3, Letter copy at Ex.D4, Letter copy at Ex.D5, Letter copy at Ex.D6, Acknowledgment letter at Ex.D7, copy of letter at Ex.D8, Letter copy at Ex.D9, Letter copy at Ex.D10, Final notification letter at Ex.D11, copy of



report at Ex.D12, copy of letter at Ex.D13, Order of Executive Engineer copy at Ex.D14, Representation copy at Ex.D15, Application copy at Ex.D16, Representation copy at Ex.D17, Copy of report at Ex.D18, Phonogram copy at Ex.D19, Notice Copy at Ex.D20, Notice copy at Ex.D21, Inspection report copy at Ex.D22, Notice copy at Ex.D23, Notice copy at Ex.D24, Notice copy at Ex.D25, Reply copy at Ex.D26, Report copy at Ex.D27, Report copy at Ex.D28, Report copy at Ex.D29, Final Notice copy at Ex.D30, copy of cancellation agreement at Ex.D31, Tender documents copy at Ex.D32, copy of report at Ex.D33, copy of IRL at Ex.D34, Calculation statement copy at Ex.D35 to Ex.D39, Copy of drawing sheet at Ex.D40.

9. Learned Trial Judge heard the parties in detail and decreed the suit of the plaintiff in part by granting an amount in a of Rs.4,41,000/- with interest at 9% p.a., from the date of completion of the work till realization from the defendants.

10. Being aggrieved by the same, defendant Nos.2 to 4 are in appeal on the following grounds:

- *The impugned Judgment and Decree passed by the Trial Court is wrong, contrary to law, weight of evidence and probabilities of the case.*



- *The learned Judge of the Trial Court has not applied correct principles of law to the facts of the case. Further the learned Judge of the Trial Court has not properly appreciated the documentary evidence on record, and the findings given by the Trial Court against the Defendants are not correct and the same are contrary to law.*
- *The learned Judge of the Hon'ble Trial Court strongly erred in answering issue No.1, 2 and 5 partly affirmative in favour of the Plaintiff, though the Plaintiff had failed to complete the project as per the terms and conditions of the tender agreement.*
- *The learned Judge of the Hon'ble Trial Court not considered the oral and documentary evidence of the Defendants that the Plaintiff has not only failed complete the work assigned to him, but also the part of work done by the Plaintiff was not satisfactory and further the Defendants have proved that whatever the work done by the Plaintiff is fully paid and nothing remains to be paid. Despite, all this the learned Judge of the Hon'ble Trial Court has partly decreed the suit of the Plaintiff, which is not sustainable in law and as such the finding given by the learned Judge of the Hon'ble Trial Court is liable to be reversed by this Hon'ble Court.*
- *The learned Judge of the Trial Court has strongly erred in coming to the conclusion that as per E.D34, the extra work costs was originally at Rs.4,41,000/-, but the same was corrected as Rs.3,29,585/- which was not explained properly, when the Plaintiff himself has signed the Ex.D34 and agreed for the same, but while giving find to the same at Para-21, at Page 25 of the Judgment the learned Judge of the Trial Court has given wrong finding and at the end also the learned Judge*



of the Hon'ble Trial Court has directed the Defendants to pay a sum of Rs.4,41,000/-, along with interest from the date of completion of the work and as such the said finding is liable to be reversed by this Hon'ble Court.

- *It is submitted that the learned Judge of the Hon'ble Trial Court has further strongly erred in granting interest to the Plaintiff when there is no specific prayer to that effect and also further the Plaintiff has not proved that he is entitled for any interest for the said amount, when the Plaintiff himself is not entitled for any amount the question of granting interest does not arise. In view of the matter the granting interest from the date of Completion of the work.*
- *The learned Judge of the Trial Court has heavily relying on the Cross examination of DW2, instead of Documentary evidence has come to the conclusion that the Plaintiff is entitled for a sum of Rs.4,41,000/- along with interest at the rate of 9% p.a from the date of completion of the work till the dated of realisation from the Defendants for the extra work done by the Plaintiff, though the Ex.D34 is very clear that the amount fixed was at Rs.3,29,585/ and that too the Plaintiff is the signatory to the Ex.D34. Despite the same the learned Judge of the Hon'ble Trial Court given the wring finding that the Plaintiff is entitled for a sum of Rs.4,41,000/- along with interest and as such the finding given by the learned Judge of the Hon'ble Trial Court is liable to be reversed by this Hon'ble Court.*
- *It is submitted that though the Defendants had taken a specific stand in their written statement that the Defendants agreed to pay any interest in the event of payment is delayed for the work done by the Plaintiff. But despite the said contention the Trial Court without applying the judicial mind has wrongly held*



that the Plaintiff is entitled for 9% interest from the date of completion of the work by the Defendant till the date of realisation.

- *The finding given by the Trial Court on issue No. 1, 2 and is wrong and the reasons assigned by the Trial Court for answering issue. No.1, 2 and 5 in favour of the Plaintiff are not tenable. Further the learned Judge of the Hon'ble Trial Court has not based its finding on any acceptable materials. Therefore, the findings of the Trial Court on Issue No.1. 2 and 5 are requires to be set-aside and in the consequence Judgment and Decree passed by the learned Judge of the Hon'ble Trial Court is liable to be set aside by this Hon'ble Court.*
- *It is submitted that the learned Judge of the Hon'ble Court strongly erred in decreed the suit of the Plaintiff. The Trial Court erred in Decreeing the suit of the Plaintiff and the Trial Court ought to have appreciated the matters in controversy in a proper perspective on proper appreciation of the materials on record, ought to have dismissed the suit of the Plaintiff."*

11. Sri K.S. Bheemaiah, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum contended that, even though there is no specific time limit fixed under the work order vide Ex.P.2, the tender agreement executed by the plaintiff would go to show that the work was to be completed in a time bound manner. But, there was no commencement of work at all as agreed by the plaintiff.



Defendants wrote a letter vide Ex.P.4 where under there was a direction to the plaintiff to conclude the work in a time bound manner. When all the efforts were made by the appellants were not heeded the desired result, the work order was terminated by the defendants and the remaining work was got executed by some other contractor and therefore, defendants were not bound to pay any amount, much less the amount of Rs.4,41,000/- with interest at 9% and sought for allowing the appeal.

12. Learned Additional Government Advocate representing the second respondent submits that when once the earmarked funds were given to the appellants and work is to be completed, the Government has no other role except to supervise the work and therefore, suitable orders are to be passed.

13. Plaintiff is served and unrepresented before this Court.

14. In the light of the above contentions, this Court perused the material on record meticulously.

15. On such perusal of the material on record, it is crystal clear that there is no dispute that the work as per the



work order Ex.P.2 was entrusted to the plaintiff who is the successful bidder.

16. As per the requirement of the appellants, he has also executed a tender agreement vide Ex.P.3. Admittedly, there is a delay in commencing the work as agreed by the plaintiff between the parties.

17. However, the reasons assigned by the plaintiff is that there was a strike of engineers for a period of three months and therefore required designs and other specifications were not furnished in a time bound manner which ultimately resulted in non completion of the project. Despite the same, plaintiff has contended that he completed the project. As such, the contentions urged on behalf of the appellants is incorrect is the stand taken by the plaintiff.

18. In view of the above, following points would arise for consideration:

- 1) Whether the plaintiff has successfully established that he is entitled for the suit claim?*
- 2) Whether the plaintiff further established that he was also entitled for the interest at 9% p.a., for the suit claim?*



- 3) *Whether the defendants/opponents have made out a case that on account of inordinate delay in completing the project, the defendants were justified in terminating the work order and plaintiff is not entitled for the relief as prayed for?*
- 4) *Whether the impugned judgment and decree is suffering from legal infirmity and perversity and thus calls for interference?*
- 5) *What order?*

19. In the case on hand, there is not much dispute as to the work order and delay in completing the work. The cement concrete lining for chainage channel had been completed by the plaintiff to a major extent. However, commencement of the work was delayed according to the plaintiff because of the strike of the engineers. The strike that occurred at the relevant point of time of the engineers is not in dispute.

20. It is crystal clear that work order also does not specifically mention as to when the work is to be commenced. On account of delay in handing over the designs and other related documents, the work could not be commenced as



agreed between the parties. As such, plaintiff cannot be held liable for the said delay.

21. However, material on record would also establish, especially the admissions obtained by the defendants in the cross-examination of P.W.1 that even after relevant supply of designs and other materials as agreed under the contract, there was a delay in completing the work by the plaintiff. The plaintiff in his cross-examination has admitted so.

22. So also admission obtained by plaintiff in cross-examination of D.W.2 shows that there was delay on the part of defendants. The said aspect of the matter is discussed by the learned Trial Judge in detail in paragraph 19 of the impugned judgment which reads as under:

"19. In order to establish the contentions taken by the defendants that the plaintiff has failed to commence the work in time, the counsel appearing for the defendants has argued vehemently and brought to the notice of the court with regard to the notice issued by the defendants to the plaintiff. The notice produced before the court are marked as Ex.D2 and D3. Perusal of Ex.D2 and 3 clearly shows that the defendants have directed the plaintiff to commence the work immediately, but the admission made by DW2 in the cross- examination with regard to the handing over possession of the land to the plaintiff for commencement of the work, are quite



contrary to the Ex.D2 and D3. As already discussed above in detail, unless and until the possession of the land was handed over to the plaintiff for commencement of work, notice issued by the defendants to the plaintiff is totally unsustainable. Therefore, Ex.D2 and D3 will not help the defendants in any way to establish their contention with regard to the delay caused for commencement of the work by the plaintiff at the spot. It is also important point to be noted that the Asst.Executive Engineer has written a letter to the Executive Engineer on 5.8.1998, the said document is produced before the court and marked as Ex.D4. The contents of Ex.D4 reads as under:-

“ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಡಿ.ದೇವರಾಜ ಅರಸು ನಾಲೆಯ ಸರಪಳಿ 61.00 ರಿಂದ 62.00 ಕೆ.ಮೀ. ವರೆಗೆ ಇರುವ 62ನೇ ಕೆ.ಮೀ. ನಲ್ಲಿ ಸಿಮೆಂಟ್ ಕಾಂಕ್ರೀಟ್ ಹೊದಿಕೆಯನ್ನು ಗುತ್ತಿಗೆ ಆಧಾರದ ಮೇಲೆ ಶ್ರೀ ಎನ್ ನಾರಾಯಣ ಎರಡನೇ ದರ್ಜೆ ಗುತ್ತಿಗೆದಾರರು ದೇವರಸನ ಹಳ್ಳಿ ನಂಜನಗೂಡು ತಾಲೋಕು ಮೈಸೂರು ಜಿಲ್ಲೆ ಇವರಿಗೆ ಕಾಮಗಾರಿ ಆದೇಶದ ಸಂಖ್ಯೆ 90-97-98 ದಿನಾಂಕ 15-1-1998ರಂದು ನೀಡಲಾಗಿದೆ. ಸದರಿ ಕಾಮಗಾರಿಯನ್ನು ದಿನಾಂಕ 8-6-1998ರಂದು ಗುತ್ತಿಗೆದಾರರಿಗೆ ವಹಿಸಿಕೊಡಲಾಗಿದೆ.”

Ex.D4 clearly establishes and proves beyond reasonable doubt that the possession of the land was handed over on 8.6.1998 to the plaintiff for commencement of the work. If really, there was no such procedure with regard to the handing over the possession of the land to the contractor for



commencement of the work, where was the necessity for the defendants to follow said procedure with regard to the handing over of the land. It is also pertinent to note that it is not the case of the defendants that there was no procedure for handing over possession of the land to the plaintiff for commencement of work as per terms and conditions of the contract. Therefore, Ex.D4 proves the contention of the plaintiff rather than the defendants. Therefore, except certain suggestions in the cross-examination of PW1, nothing has been elicited from the mouth of PW1 that there was a fault on the part of the plaintiff to commence the work within the time and caused loss to the defendants by the plaintiff. In fact, all the suggestions made in the cross-examination with regard to the commencement of the work have been denied by the PW1 emphatically. Similarly, the defendants have not at all placed any other material evidence to establish and prove the contentions taken by the defendants with regard to the same."

23. However, it is also found from the records that D.W.2 while deposing before the Court had stated that between the distances from 61,000 to 62,000 kilometers earth excavation work was over. He also admits that the earth excavation work entrusted to some other contractor. The plaintiff has stated that his work - cement concrete lining for



chainage channel would commence only after earth excavation work is completed.

24. In other words, the delay in completion of work cannot be attributed directly to the plaintiff for the reasons that the other contractor has not completed his work in time.

25. Admittedly, the work has been entrusted to the plaintiff based on the completion of earth excavation work.

26. D.W.2 had clearly admitted in his evidence that there was a delay in completion of earth excavation work, expecting the plaintiff to complete his work in a time bound manner is thus incorrect. The same has been rightly appreciated by the learned Trial Judge in the impugned judgment.

27. So also, D.W.2 admits that before entrusting the work, there was a spot inspection and thereafter the estimation has been prepared. D.W.2 also admits that after such work was over, approval was to be required for the estimation and all these aspects of the matter consume sufficient time.

28. In Ex.P.14, there is a clear mention that the work was entrusted on 15.01.1998 and on 31.07.1998 the work was commenced. It is also found in Ex.P.14 that the work was



under progress and the engineers who are required to supervise, had inspected the commencement of work and were satisfied.

29. Therefore, at an undisputed point of time, the officers of the appellants have periodically made spot inspections and they did not find delay in commencement of work, but they found delay in completing the work, which is exclusively attributed to the plaintiff.

30. No doubt, in Ex.P.4 there is a mention that there were many oral directions. Ultimately, when the engineers themselves were satisfied with the progress in the work and they did not make any adverse remarks with regard to delay in completing the work, entrusting the work to the others is thus incorrect.

31. However, Trial Court has also noted that the work has been completed by the plaintiff and the payment that had already been received by the plaintiff, the plaintiff is entitled to sum of Rs.4,41,000 for the remaining work and not the claim made in a sum of Rs.15,93,726/-.

32. In the absence of any cross appeal or the cross objection by the plaintiff in this appeal, this Court is of the



considered opinion that point Nos.1 to 3 are to be answered in favour of the plaintiff and point No.4 against the appellants.

In view of the findings of this Court on point Nos.1 to 4 as above, following:

ORDER

Appeal is meritless and hereby dismissed .

No order as to costs.

**Sd/-
(V SRISHANANDA)
JUDGE**

MR, List No.: 1 SI No.: 73