

Executive Engineer, vs M.Nirmala Devi

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Court : Kerala

Decided On : Jul-06-2023

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : AS/54/2003

Appellant : Executive Engineer,

Respondent : M.Nirmala Devi

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
THURSDAY, THE 6TH DAY OF JULY 2023 / 15TH ASHADHA, 1945 AS
NO. 54 OF 2003 AGAINST THE JUDGMENT AND DECREE IN OS
384/1999 OF SUB COURT, KOZHIKODE APPELLANTS/DEFENDANTS
1,3 & 4: 1 EXECUTIVE ENGINEER,HARBOUR ENGINEERING
DEPARTMENT, HARBOUR ENGINEERING DIVISION, BEACH,
KALATHINKUNNU AMSOM DESOM OF KOZHIKODE-32. 2 THE
SUPERINTENDING ENGINEER,HARBOUR ENGINEERING (NORTH
CIRCLE), BILATHIKULAM, KOZHIKODE. 3 THE DISTRICT
COLLECTOR,CIVIL STATION, NEDUNGOTTOOR AMSOM DESOM,
KOZHIKODE. BY GOVERNMENT PLEADER SRI.K.DENNI DEVASSY

RESPONDENTS/PLAINTIFFS 2 TO 7 & 2ND DEFENDANT & 5TH DEFENDANT:

1 M.NIRMALA DEVI, W/O. LATE V. JAYARAJAN, AGED 59 YEARS, YEARS, RESIDING AT 14/516 A, VATTAMPOYIL ROAD, NAGARAM AMSOM DESOM OF KOZHIKODE TALUK. 5 SRI.V.SAJEEV, AGED 26 YEARS, S/O. LATE V. JAYARAJAN, 6 SRI.V.BHAKTHARAJAN, AGED 50 YEARS, S/O. LATE KRISHNAN, (BROTHER OF DECEASED PLAINTIFF V. JAYARAJAN AND PARTNER OF M/S. RAJAN AND RAJA ELECTRICAL CONTRACTORS AND ENGINEERS) RESIDING AT 14/516 A, VATTAMPOYIL ROAD, NAGARAM AMSOM DESOM OF KOZHIKODE TALUK. AS NO. 54 OF 2003 -2- 7 SRI. RANJITH, FATHERS NAME NOT KNOWN, ASSISTANT ENGINEER (ELECTRICAL) HARBOUR ENGINEERING DEPARTMENT, PUTHIYAPPA, ELATHUR AMSOM DESOM, KOZHIKODE. 8 SRI. RAMACHANDRAN, AGED 55 YEARS FATHERS NAME NOT KNOWN, PROP. M/S. R.C. ELECTRICALS, SOUTH BAZAR, KANNUR-2. BY ADVS. O.V. RADHAKRISHNAN (SR.) K. RADHAKRISHNAN NAIR SUNIL V. MOHAMMED A.K. SUKUMARAN P.K. NOUSHAD THIS APPEAL SUITS HAVING COME UP FOR HEARING ON 06.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Sathish Ninan, J.

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===== Dated this the 6th day of July, 2023

JUDGMENT

The suit challenging the termination of a contract and for recovery of damages, was decreed in part by the trial court. Defendants 1, 3 and 4 are in appeal.

2. The plaintiff was awarded the contract for erecting and commissioning a DG Control panel attached

to a drudging pontoon in the fishing harbor at Puthiyappa. There was delay in the performance of the contract. Thereupon the appellants - defendants 1, 3 and 4 terminated the contract and awarded fresh contract to the 5th defendant. This has led to the suit.

3. The trial court found that the work done by the plaintiff was not in accordance with the specifications in the contract and that there was delay in the execution of work. It was held that the termination of

the contract was proper. However, the court proceeded to grant a decree for D 1,74,785/- towards the loss suffered by the plaintiff for collecting and purchasing :- 2 :- materials.

4. The additional 5th defendant who is the 8th

respondent in the appeal is no more. Since his rights are not involved in the appeal and the disposal of the appeal does not affect his rights, the appeal is being heard and finally disposed of.

5. Heard the learned Government Pleader for the appellants and the learned senior counsel Sri.O.V.Radhakrishnan for the contesting respondents- plaintiffs.

6. The point that arises for determination is, Whether the trial court was right in having decreed the suit for damages after having found that the plaintiff has committed breach of the contract.

7. It is not in dispute that the ACB panel provided by the plaintiff is of a different specification than

that was stipulated for in the contract. The one provided by the plaintiff would cause space constraints. It is also admitted that there was delay in completion of the work. It is in the said circumstances that the :- 3 :- plaintiff's contract was terminated. The trial court

held that the defendants were justified in terminating

the contract with the plaintiff. There is no challenge against the same by the plaintiff.

8. The trial court has however granted a decree for the value of the materials purchased and collected by the plaintiff. The work done and the materials collected

by the plaintiff being not in accordance with the specifications in the contract, the plaintiff was not entitled to claim its value. It is not in dispute that the panel provided by the plaintiff was returned to him. At any rate, pending the suit, an amount of D 70,583/- was paid to the plaintiff acknowledging the work done by

him. There is no reason or occasion for a further quantification of damages. The plaintiff having committed the breach was not entitled for any damages and especially in the background as above. The trial court was not right in having granted a decree for damages. The decree is liable to be interfered with. - : 4 :- Resultantly the appeal is allowed. The decree and

judgment of the trial court, to the extent it decreed

the plaintiffs claim, is set aside and the suit will stand dismissed. No costs. Sd/- Sathish Ninan, Judge vdv

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