

Mysore Lamp Works Ltd. Vs. Mysore Urban Development Authority.

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Court : Karnataka

Decided On : Jan-31-2011

Judge : Mr. Justice K.L.Manjunath ; Mr. Justice H.G.Ramesh, J.J.

Acts : Karnataka Urban Development Authority Act,1937

Appeal No. : REGULAR FIRST APPEAL No.2393/2007(MON).

Appellant : Mysore Lamp Works Ltd.

Respondent : Mysore Urban Development Authority.

Advocate for Def. : Sri.P.S.Manjunath, Adv.

Advocate for Pet/Ap. : Sri.. T . S . Amar Kumar, Adv.

Judgement :

1. The appellant has preferred this appeal challenging the legality and correctness of the judgment and decree passed by the Small Causes & Civil Judge (Sr.Dn.), Mysore dated 2.8.2007 in O.S.No.751/200 4 the appellant-company is a public sector undertaking of State of Karnataka. Respondent-Mysore Urban Development Authority is also a creation of the State of Karnataka under the Karnataka Urban Development Authority Act,1937.

2. Facts leading to this case are as hereunder: Mysore Urban Development Authority filed the suit to recover a sum of Rs.1,03,00,000/- which is said to have been paid as advance for the supply of electrical materials and erection of street

lights etc. to the defendant and a sum of Rs.36,87,682/- towards interest to be calculated from 24.11.2001 to 17.11.2004 on Rs.1,03,00,000/-with interest at 12% p.a. along with notice charges of Rs.1,000/-, in all Rs.1,39,88,682/-According to the plaint averments, in respect of two residential lay-outs formed by the plaintiff-Mysore Urban Development Authority viz., Rajiv Nagar III Stage (Devanur III Stage), Sathagalli II Stage in Mysore .and Kanduvinahalli Layout in Nanjangud entrusted the work of electrification to the defendant-company and on the request of the defendant, advance payment of Rs.1,03,00,000/- was paid on 24.11.2001 subject to the condition that the defendant shall complete the work of electrification and street lighting within the stipulated time on the ground that defendant did not execute the work by issuing a legal notice, tiled a suit to recover the aforesaid amount. Defendant admitted the entrustment of work by the plaintiff and it also accepted the receipt of advance paid by the plaintiff. According to the defendant, in terms of the order placed by the plaintiff, it supplied the material worth of Rs. 1, 06, 00, 000/- and the work could not be executed on account of the delay and latches in not getting the approval from the KPTCL and also on the ground that plaintiff did not co-operate with the defendant to execute the work. Therefore, defendant contended that the value of the material supplied by the defendant and certain work executed by the defendant is also required to be taker, into account and that the defendant is entitled to claim adjustment in this regard. Accordingly, defendant requested the court to dismiss the suit. Based on the above pleadings, following issues were framed by the court below:

1.Whether the defendant proves that in view of the mutual agreement dated 7,1.2003 between the plaintiff and the defendant and the resolution dated 4.2.2004, the plaintiff is stopped from making any claim against the defendant, the suit is highly misconceived?

2. Whether the defendant proves that the non-furnishing of the invoice is only by in advertence and there was no demand made by the plaintiff after receipt of the materials, asking the defendant to furnish the invoice immediately and mere non delivery of invoice will no way empower the plaintiff to set=k such a huge claim against the defendant?

3. Whether the plaintiff proves that the defendant is liable to pay Rs.1,39,88,682/- as claimed in the plaint?

4. To what order the parties are entitled to?

In order to prove their respective contentions, on behalf of the plaintiff one K.M.Munigopala Raju was examined as PW-1 and he relied upon Ex.P-1 to 15 and on behalf of the defendant one Manohar was examined as DW-1 . He relied upon Ex.D-1 to 14. Trial court, after considering the entire evidence held issues 1 & 2 in the negative and issue No. 3 in the affirmative. Accordingly, suit came to be decreed for a sum of Rs.1,39,88,682/- along with future interest at 12% p. a. on Rs.1,03,00,000/-from the date of the suit till the date of realization. Challenging the legality and correctness of the judgment and decree dated 2.8.2007, present appeal is filed.

3. The main contention of Mr.Amar Kumar, counsel for the appellant is that plaintiff/respondent having accepted the delivery of the material supplied by the appellant, trial court has committed a serious error in not adjusting the value of the material supplied by the defendant. According to him, trial court did not consider that the appellant had made a claim before the respondent that it had supplied the material worth of Rs.i,06,00.000/- and after adjusting the advance paid by the plaintiff towards the value of the material supplied, still the defendant was emitted to receive the amount from the plaintiff. Therefore, he requests the court to re-consider the entire evidence and allow the appeal.

4. According to Mr.Manjunath, counsel for the respondent, that even if the appellant's case is accepted that it had supplied the material, there was no counter claim made by the defendant, therefore, defendant cannot request to consider the counter claim in the absence of such a prayer and payment of court fee. Therefore, he requests the court to dismiss the appeal.

5. Having heard the counsel for the parties, the only point to be considered by us in this appeal is:"Whether the trial court is justified in decreeing the suit in toto without considering the value of the material supplied by the defendant?"

6. We have considered the evidence let in by the parties. Though defendant had agreed to supply the electrical materials and draw electrical line in respect of the layouts formed by the plaintiff, there is no actual contract entered into between the parties to know the terms and conditions of the contract . But it is not in dispute that the advance was paid by the plaintiff and the same was received by the defendant. Similarly, PW-1 has also accepted in his cross-examination that defendant has supplied the material to the plaintiff and it is also not in dispute that plaintiff did not show any inclination to return the material supplied by the defendant-company on the ground that defendant has failed to carry out the work entrusted to the defendant. In normal circumstances, this court could have accepted the contention of the plaintiff provided the material supplied by the defendant had been returned to the defendant. Even this court could have accepted the contention of the plaintiff, if the plaintiff had filed a case for recovery of the balance money after adjusting the value of the material supplied by the defendant. Admittedly, both the plaintiff and defendant are creation of State of Karnataka. In such circumstances it was incumbent upon the plaintiff to ascertain the value of the material supplied by the defendant and adjust the same towards the advance amount and if the value of the material supplied by the defendant was less than the advance amount received by the defendant, in all fairness plaintiff should have filed the suit to recover the balance amount. In this case, such an exercise has not been done by the plaintiff. In para-2 of the Cross-examination dated 11.1.2007 PW-1 has admitted as hereunder: "I do not know that the value of the material supplied by the defendant was Rs.1,05,90,560." He admits that the plaintiff has received the delivery. From the above admission, it is clear that plaintiff is not disputing the receipt of the value of the material supplied by the defendant, but the dispute is what would be the value of the material supplied by the defendant to the plaintiff. Unfortunately, in this regard, there is no proper evidence let in by both the parties.

7. This court, after hearing the parties for some time, considering the relationship between the plaintiff and the defendant, that both of them are creation of State of Karnataka, directed the parties to ascertain the actual value of the material supplied by the defendant which is in custody of the plaintiff. It is not in dispute that the material supplied by the defendant is still in possession with the plaintiff.

Therefore, actual dispute in this case is what would be the costs of the material supplied by the defendant. But unfortunately, there is no evidence. According to the plaintiff, value of the material as per the schedule rate would be round about Rs.40 lacs. But as per the arguments of Mr.Amar Kumar, cost of material supplied was Rs.1,05,00,000/-. There is no basis for this court to ascertain the actual value of the material supplied by the defendant. In such circumstances, this court has to guess what would be the value of the material supplied by the defendant. It has also come in the evidence that in addition to the supply of materials, defendant-appellant has also erected certain electrical poles for the purpose of drawing electrical line in the layout of the plaintiff. Therefore, this court has to consider the costs incurred by the defendant to erect the electrical poles in the layout formed by the plaintiff. In other words, this court has to consider the market value of the material supplied by the defendant and the costs of erection and probable profit which would have been earned by the defendant and also supervisory expenditure. Therefore, in the absence of proper evidence, this court has to guess the value of the material supplied by the defendant and the costs incurred by the defendant towards erection of pole and drawing up of electrical lines. It is unfortunate that defendant-company was under liquidation and no documents are produced by the defendant. In the interest of both the parties, this court is of the opinion that costs of value of the material supplied and the costs of the work executed by the defendant put together may be about Rs.75 lacs. Accordingly, we estimate the same at Rs.75 lacs. Since trial court has not considered the value of the material supplied by the defendant and the costs incurred to execute the work as we have estimated the same at Rs.75 lacs, the appellant is entitled to claim adjustment, of Rs.75 lacs out of the suit claim. If the plaintiff has paid an advance of Rs. 1,03, 00, 000/- and out of which if Rs.75 lacs has to be deducted towards the value of the material supplied by the defendant and the costs of erection of electrical poles, actual amount payable by the defendant to the plaintiff would be Rs.28 lacs. Therefore, plaintiff is entitled to claim interest of Rs.28 lacs only. Accordingly, we answer the question that arises for our consideration.

8. In the result, appeal is allowed in part. Judgment and decree passed by the Civil Judge (Sr.Dn.), Mysore in O.S.No.751/2004 dated 2.8.2007 is hereby set aside and modified and the suit filed by the plaintiff is decreed only for a sum of Rs.28

lacs along with interest at 9% p.a. to be calculated from 24.11.2001 till the date of payment. Parties to bear their costs.

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