

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF AUGUST 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO.1679 OF 2015 (MON)

BETWEEN:

1. BANGALORE ELECTRICITY SUPPLY COMPANY
LIMITED
K.R.CIRCLE BANGALORE-560 001.
REPRESENTED BY
MANAGING DIRECTOR/
GENERAL MANAGER (ADMIN & HRD)
2. THE EXECUTIVE ENGINEER (ELE)
BANGALORE ELECTRICITY SUPPLY COMPANY
LIMITED, O & M DIVISION,
KOLAR-563 101
3. THE GENERAL MANAGER (ELECTRICAL),
C.O & M. DIVISION,
BANGALORE ELECTRICITY SUPPLY COMPANY
LIMITED
KOLAR-563 101

... APPELLANTS

(BY SRI.H.V.DEVARAJU, ADVOCATE)

AND

M/S THIRUMALASHREE ELECTRICALS
REPRESENTED BY ITS PROPRIETOR,
K.RAJESH,
S/O KRISHNAPPA,
R/AT NO.945,

GOKUL COLLEGE ROAD,
VEERANJANEYA NAGARA,
KOLAR TALUK AND DISTRICT-563 101.

...RESPONDENT

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 25.08.2015 PASSED IN RA NO.2/2015 ON THE FILE OF THE PRL. DISTRICT JUDGE, KOLAR. DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 6.12.2014 PASSED IN OS.NO.148/2013 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE, KOLAR.

THIS REGULAR SECOND APPEAL COMING ON FOR **ADMISSION** THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The captioned Second Appeal is filed by the unsuccessful defendants who are questioning the concurrent judgments and decrees of the Courts below wherein the recovery suit filed by the plaintiff contractor seeking recovery of Rs. 6,01,556/- with interest at the rate of 18% p.a. is allowed.

2. For the sake of convenience, the parties are referred to as per their rank before the Trial Court.

3. Plaintiff has instituted suit against the defendant Nos.1 to 3, seeking direction against the defendants to pay a sum of Rs.6,01,556/-. Plaintiff claims that he is a registered electrical proprietary concern. Plaintiff further claim that defendants entrusted work regarding providing spiral earth electrode for various high-tension lines and the estimate project amount was fixed at Rs.6,01,556/-. Plaintiff contended that he has completed the work and a report was submitted. Plaintiff's grievance is that though he has completed the work and concerned officials have approved his bills after visiting the spot, however, for the reasons best known, the defendants have not cleared the plaintiff's bill which are legally due to him and hence the present suit.

4. Defendants on receipt of summons tendered appearance and stoutly denied the entire averments made in the plaint. Defendants claim that the technical committee on inspection found that department has incurred financial loss of Rs.50,089/-. The technical audit

and quality control has also found that plaintiff is guilty of several irregularities while executing the work. Therefore, defendants contended that they are justified in keeping the bills pending. The defendants also claimed that the present suit is barred by limitation.

5. The Trial Court having examined oral and documentary evidence held that plaintiff is entitled to recover the suit claim. While examining the evidence on record, the Trial Court found that defendants though are alleging that there are some irregularities, no action is initiated against the contractor. The Trial Court was also of the view that report though indicate that there are some irregularities, the official of defendants who was examined as D.W.1, was not sure as to whether any action is initiated against the official or contractor.

6. It is in this background, the Trial Court found that defendants action of withholding the bills which are legally due to the plaintiff was unfair and unjustified. While

considering the additional issue No.1, the Trial Court answered the issue against the defendants and also held that the suit is not barred by limitation. Based on legal evidence let in by the plaintiff, suit was decreed directing the defendants by holding that defendants are jointly and severally liable to pay a sum of Rs.6,01,556/- with 12% interest.

7. The said judgment is confirmed by the Appellate Court in R.A.No.2/2015. The Appellate Court having independently assessed oral and documentary evidence has also concurred with the findings of the Trial Court. The Appellate Court was also of the view that having alleged that department has incurred financial loss of Rs.50,089/- have not let in any evidence to substantiate their claim. The Appellate Court has also concurred with the findings recorded by the Trial Court on limitation. If both the Courts have concurrently held that the plaintiff has completed the work entrusted to him and in absence of rebuttal evidence indicating that plaintiff has committed irregularities, have

rightly proceeded to decree the suit. The concurrent findings recorded by the Courts below is based on legal evidence let in by the plaintiff and in absence of rebuttal evidence let in by the defendants.

Therefore, no substantial question of law would arise for consideration. Accordingly, the regular second appeal is **dismissed.**

The pending interlocutory applications, if any, stand disposed of.

**Sd/-
JUDGE**

HDK