

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2022

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

REGULAR FIRST APPEAL NO.1354/2016 (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, BESCOM, 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. D.L. ELECTRICALS
REPRESENTED BY ITS PROPRIETOR
LATE SRI D.L. SRINATH
SINCE DEAD BY HIS LRS

1. K.N.MAHADEVI
AGED ABOUT 43 YEARS
W/O LATE D.L. SRINATH
2. NEHA S. REDDY
AGED ABOUT 22 YEARS
D/O LATE D.L. SRINATH
SINCE MENTALLY RETORTED
SHE IS REPRESENTED
BY HER MOTHER K.N. MAHADEVI.
3. USHA S. REDDY
AGED ABOUT 29 YEARS
D/O LATE D.L. SRINATH
ALL ARE RESIDING AT VINAYA NILAYA
OPP. SHANKARA VIDYALAYA
MURALI LAYOUT, KOLAR-563 101. ...RESPONDENTS

(BY SRI B.V. ANANDA, ADVOCATE FOR R-1 & R-2;
R-3 SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE, AGAINST THE JUDGMENT AND DECREE DATED 04.06.2016 PASSED IN OS.NO.275/2015 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, AT KOLAR, PARTLY DECREERING THE SUIT FOR RECOVERY OF MONEY.

THIS REGULAR FIRST APPEAL COMING ON FOR ORDERS THIS DAY, HEMANT CHANDANGOUDAR, J., DELIVERED THE FOLLOWING:

JUDGMENT

The present Regular First Appeal is filed by the defendants against the impugned judgment and decree dated 4.6.2016 made in O.S.No.275/2015 on the file of the Principal

Senior Civil Judge, Kolar decreeing the suit of the plaintiff for recovery of money of Rs.10,70,190/- with current and future interest at the rate of 12% p.a. from the date of suit till realization.

2. For the sake of convenience, the parties are referred to as per their ranking in the original suit before the Trial Court.

3. Plaintiff filed the suit against the defendants before the trial court for recovery of money contending that it is a registered Electrical Proprietary concern run by its Proprietor by name M/s.D L Electricals and also is a Class-I Licenced firm/ Contractor to carry out electrical works with BESCOM and other departments. It is the case of the plaintiff that, the defendants have issued a work awards dated 23.2.2007 to carry out works viz., supplying and providing danger board and anti claiming devises in Kolar Urban Sub-division, Kolar. As per the estimate total amount awarded for completion of work was Rs.10,70,190/-and he has carried out

the entrusted work as per the specification given by the defendants company.

4. The said work was carried out under the supervision of concerned A.E/A.E.E. of O & M of Kolar. After completion of the said work undertaken by him he has submitted its report and the defendants were satisfied with work done by him and they have approved all his bills and there is reference given by him that even the concerned officials and Executive Engineer have visited the work personally during the progress of work and approved the bills by using schedule rates. In spite of several reminders and requests made by the plaintiff, the defendants have not released the amount. Therefore, the plaintiff filed the suit as prayed for.

5. Defendants in response to the suit summons filed written statement denying the plaint averments contending that, the BESCO is a company Registered under the Companies Act owned by the State of Karnataka and aimed to provide electrical service to the General Public and the

defendants have entrusted electrical work to some of the contractors for the period 2006-2007 and 2007-2008 and the plaintiff is also one of the Contractors and he was given work award and he was entrusted with the work order to carry out danger board and anti claiming devises in Kolar Urban Sub-division, Kolar and was estimated of Rs.10,70,190/-. It also not in dispute that the work award dated 23.2.2007 was issued to the plaintiff and he claimed the amount of Rs.10,70,190/-. Therefore, the plaintiff is not entitled for the amount. Hence, sought to dismiss the suit.

6. In order to prove his case, plaintiff got examined himself as PW.1 and got marked the documents as Exs.P.1 to P26, to disprove the case of the plaintiff, on behalf of defendants, one Sri N Nagaraj, who is the Executive Engineer of BESCOM was examined as DW1 and got marked document Ex.D1.

7. Based on the aforesaid pleadings, the Trial Court framed the following issues:

- “1. Whether the plaintiff proves that he is having registered firm in the name and style of M/s.D L Electricals and that it is the Class-I electrical contractors?
2. Whether the plaintiff further proves that it was entrusted with work of supplying and providing of intermediate poles and realignment of poles at Kolar Urban sub-division, Kolar vide work order dt.23.2.2007?
3. Whether the defendants prove that all the works in their division undertaken from September 2006 to October 2007 found to be of substandard quality and suffered a total pecuniary loss of Rs.802.69 lakhs?
4. Whether the plaintiff is entitled the plaint relief?
5. What order or decree ?”

8. The Trial Court considering the oral and documentary evidence on record has recorded a finding that the plaintiff has proved that it is a registered licensed electrical firm and defendants have failed to prove that plaintiff has violated the terms and conditions imposed and also failed to confirm its quality standards. Accordingly, the trial court by the impugned judgment and decree, decreed the suit of the plaintiff for a sum of Rs.10,70,190/- with interest at

the rate of 12% p.a. from the date of the suit till its realization. Hence, the defendants have filed the present regular first appeal.

9. We have heard the learned counsel for the parties to the lis.

10. Sri Devaraju, learned counsel for the defendants contended with vehemence that the impugned judgment and decree passed by the Trial Court is erroneous and contrary to the material on record and liable to be set aside. He further contended that due to the scam on account of various irregularities in the quality of works done by the plaintiff and other contractors and as per the Report of the Technical Audit and Quality Control, BESCOM, the BESCOM thereby issued directions to the concerned officers not to process the Bills of the Contractors who are involved in the scam. He would further contend that the suit filed by the plaintiff is barred by limitation. He further contended that the interest at 12% p.a. awarded by the Trial Court on the principal amount is exorbitant without there being any agreement or any clause

in the contract entered into between the parties. Therefore, he contended that all these materials have not been considered by the Trial Court while passing the impugned judgment and decree. Therefore, he sought to allow the appeal.

11. Per contra, Sri B V Ananda, learned counsel for the plaintiff while justifying the impugned judgment and decree contended that the defendants have not disputed that the plaintiff is a registered company carrying on its function and has also not disputed that they have entrusted the electrical work to the plaintiff as per the work award dated 23.2.2007 and further contended that the suit is filed within the stipulated time and therefore, the question of limitation would not arise as contended by the learned counsel for the defendants. He further contended that the interest awarded by the Trial Court is just and proper. Therefore, he sought to dismiss the appeal.

12. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that arise for our consideration in the present appeal are:

- 1) Whether the defendants have made out a case to interfere with the impugned judgment and decree passed by the Trial Court decreeing the suit of the plaintiff as prayed for?
- 2) Whether the defendants have made out a case to modify the interest on the principal amount awarded by the Trial Court in the facts of the present case?

13. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material including the original records carefully.

14. This Court being the Appellate Court, in order to re-appreciate the entire material on record, it is relevant to consider the evidence of P.W.1, D.W.1 and also the material documents adduced by the respective parties, which are as under:

- (a) P.W-1 Mahadevi has deposed that the work was entrusted to the plaintiff by the defendants vide work

award dated 23.2.2007 and after completion of the electrical work submitted the bills for Rs.10,70,190/-. The said bills are approved by the concerned authority and the work carried out by the plaintiff was found satisfactory and there is no dispute with regard to the entrustment of the work to him but only disputing the payment of approved bills as his company has been falsely indicted in the alleged scam. In the cross examination of P.W.1, the defendants did not elicit anything, as what is the loss caused by P.W.1 and as to how P.W.1 is involved in the alleged scam. He has produced the documents Ex.P.1 to Ex.P.26 various correspondence, bills issued by the plaintiff and therefore, he sought to decree the suit.

(b) In order to disprove the case of the plaintiff, D.W-1 was examined who reiterated the averments made in the written statement, but has not disputed the entrustment of work to the plaintiff nor submission of bills from him and approval of the bills, the dispute is that financial loss was caused to the defendants because of irregularities. Therefore, sought to dismiss the suit.

15. We have gone through the entire material on record, it is clear from the evidence on record that the plaintiff is a registered Company and there is no dispute with

entrustment of work to the plaintiff by the defendants supplying and providing danger board and anti claiming devises in Kolar Urban Sub-division, Kolar. It is also not disputed by the defendants in the written statement with regard to entrustment of work to the plaintiff and that the executive visiting the work place in order to verify the progress of the work done by the plaintiff by using schedule rates. D.W.1 himself admitted the electrical contract work was entrusted to P.W.1. D.W.1 further admitted in the cross examination, if according to D.W.1, P.W.1 has caused loss to their company on account of carrying out substandard electrical contract work, the said enquiry should start with issuance of notice either to the plaintiff or the other contractors, but they have not placed any such documents to establish before the court that even the P.W.1 is also the root cause for causing the substandard contract work which does not comply to the specification. The defendants completely failed to establish before the court what was the in action or misdeed committed by P.W.1 and till then there cannot be any reason to withhold the bill amount only on the basis of

anonymous letter written by a person to the then Energy Minister. It is also brought to the notice of this Court, in similar circumstances the bills of the contractors are already released.

16. Trial Court considering both oral and documentary evidence on record, recorded a finding that it is evident from the record that defendants are due to the plaintiff a sum of Rs.10,70,190/- and it is admitted that plaintiff was entrusted with the electrical contract work for the period from 2006-07 and 2007-08. So far as the say of P.W.1 that he has borrowed loan to complete the electrical contract work requires to be accepted because the defendants have not disputed these aspects and plaintiff is not directly involved in any of the enquires and investigation done by the defendants to detect irregularities. Therefore, the trial court is of the view that the plaintiff is entitled for the decree amount as prayed for.

17. Admittedly, the material on record clearly depicts that the work was entrusted to the plaintiff with work awards

dated 23.2.2007 and there is no material to prove in the contract entered between the parties, that there is a condition stipulated with regard to percentage of interest at the rate of 12% p.a. on the due amount. It is also not in dispute, the work done by the plaintiff is satisfied by the defendants and after completion of the said work undertaken, submission of bills for approval and approval of bills by the defendants is also not in dispute. Therefore, we are of the considered opinion that the trial court has proceeded to award 12% in the absence of any contract between the parties requires to be modified taking into consideration the admitted facts and circumstances stated supra, the plaintiff has already borrowed loan from others to complete the work and therefore he is entitled for reasonable interest at 10% p.a. instead of 12%, to that extent the impugned judgment and decree passed by the trial Court so far as interest is concerned has to be modified.

18. For the reasons stated above, the 1st point raised in the present appeal is answered in the **negative** holding that the defendants have not made out any ground to

interfere with the impugned judgment and decree passed by the Trial Court, decreeing the suit of the plaintiff for recovery of Rs.10,70,190/-.

19. The 2nd point raised in the present appeal is answered partly **affirmative** holding that the defendants have made out a case to reduce the interest awarded by the Trial Court, in the facts and circumstances of the present case. Accordingly, the interest awarded by the Trial Court is modified from 12% p.a. to 10% p.a. on the principal amount and the plaintiff is entitled for interest at the rate of 10% per annum from the date of the suit till the date of realization of the principal amount of Rs.10,70,190/-.

20. In view of the above, we pass the following:

ORDER

- (i) The Regular first appeal is allowed in part.
- ii) The judgment and decree dated 4.6.2016 passed in O.S.No.275/2015 on the file of the Principal Senior Civil Judge, Kolar decreeing the suit of plaintiff for recovery of money of Rs.10,70,190/- is hereby confirmed.

iii) The interest awarded by the Trial Court at the rate of 12% p.a. is modified and plaintiff is entitled for 10% interest p.a. and defendants are liable to pay interest at 10% p.a. on the principal amount of Rs.10,70,190/-from the date of filing of the suit till the date of realization within a period of three months from the date of receipt of certified copy of this order.

Ordered accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

bkm