

Kerala High Court

Fact Udyogamandal vs T.M.Sasi on 9 December, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

AS.No. 963 of 1996()

1. FACT UDYOGAMANDAL

... Petitioner

Vs

1. T.M.SASI

... Respondent

For Petitioner :SRI.ANTONY DOMINIC,A.M.SHAFFIQUE

For Respondent :SRI.S.V.BALAKRISHNA IYER,P.B.KRISHNAN

The Hon'ble MR. Justice M.N.KRISHNAN

Dated :09/12/2010

O R D E R

M.N. KRISHNAN, J.

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A.S. NO. 963 OF 1996

& Cross Objection

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Dated this the 9th day of December, 2010.

J U D G M E N T

This appeal is preferred against the judgment and decree passed by the Subordinate Judge, North Paravur in O.S.338/92. The suit is one for realisation of the amount due for transporting garbage from the Fertilizers and Chemicals Travancore Ltd. The plaintiff has claimed an amount of Rs.66,726.25 and the trial court has granted a decree for Rs.44,362.26. It is against that decision the defendant has come up in appeal. The plaintiff has also filed a cross-objection with respect to the disallowance of the amount which he had claimed as the amount not due from him towards provident fund and other statutory liabilities. A.S. 963 OF 1996 & Cross Objection

2. Heard the learned counsel for both the sides. Though the issue is very simple and it could have been settled out without any confusion, but I find that the issues are unnecessarily complicated and

therefore it is desirable to understand the scope of the suit itself. Lastly it is desirable to refer to Ext.A4 document first to know the claim of the plaintiff.

3. The plaintiff would contend that out of the amount due from 1.5.89 to 31.10.89(6 months) he is entitled at the rate of Rs.12,650/- each per month but only 40% of the amount had been given and the rest had been withheld by the defendants amounting to Rs.45,540/-. It is also the case of the plaintiff that under the heads of statutory deductions Rs.30,000/- had been deducted which is also not correct and therefore the plaintiff is entitled to have an amount of A.S. 963 OF 1996 & Cross Objection Rs.75,540/-. At the time of filing of the suit the plaintiff would contend that since the amount of Rs.8813.75 had been reimbursed to him, he has filed the suit for balance amount of Rs.66,726.25.

4. On the other hand, the defendant as seen from the written statement would contend for the position that the work has not been satisfactorily done and as per the terms of the agreement only 40% need to be paid and all the amounts so due has been paid and statutory conditions has been met and only when it was found that an amount of Rs.8,800/- which was found in excess of the statutory due collected was reimbursed. Therefore the defendant would contend that there is no reason to grant any relief to the plaintiff. So the crux of the matter only depends upon the fact what is the amount due and whether it has been paid or not. A.S. 963 OF 1996 & Cross Objection

5. The learned trial judge had elaborately considered the matter and held that Rs.9295.99 as per Bill No. 28 in Ext.A2 is given to the plaintiff in 1989. The Court also found that an amount of Rs.13,068/- also is due from the defendant as Provident Fund amount. Therefore the Court deducted those two amounts and granted a decree for realisation of Rs.44,362.26.

6. Now the learned counsel for the appellant would submit before me for perusal, Ext.A2 invoice to convince the Court that the amount has been duly paid and he would refer to the voucher of 26.5.89 where it relates to these bills of 1985-90 for an amount of Rs.45,950/- and had made some allowance in favour of the plaintiff and an amount of Rs.35508.48 is passed. The next voucher is dated 9.11.89 and an amount of Rs.9295.990 is paid after deduction of the statutory dues as well as the advance. A.S. 963 OF 1996 & Cross Objection The voucher dated 18.11.89 represents Rs.3,921/- which is paid after deduction. The last voucher dated 15.1.90 represents Rs.6822.09 as the amount disbursed. Now as stated by me earlier if it is calculated at the rate of Rs.12,650/- for six months the amount would come to Rs.75,900/-. The deductions as per Ext.A1 agreement is permissible only when there is a deficiency of work committed by the contractor. The methodology adopted in Ext.A1 agreement is that a log book is maintained and reports are received regarding the satisfactory nature of the work done and thereafter the bills are passed. So unless and until the establishment is able to show that the work has not been done properly the contractor is entitled to get the entire amount. So it is the duty of the establishment to convince the Court that he has not done the work in accordance with the A.S. 963 OF 1996 & Cross Objection prescription. Though an amount is claimed by the contractor there was no necessity for the defendant to plead in the written statement with respect to their entitlement to reduce the amount to be paid. Therefore it appears from the materials available that the defendant wanted to raise a contention of reduction of the amount for non performance of the contract.

7. The trial court correctly found that the material point which would convincingly establish about the nature of the work is the log book which is kept in the possession of the establishment. It is not coming to the lime light and no satisfactory answer is tendered for the non-production of the log book. Therefore when one calculates the amount as per the contract and the amount due is found out and after deduction of the amount the balance is found out the entitlement is Rs.44,262.26. Since A.S. 963 OF 1996 & Cross Objection no materials are forthcoming to deduct for non performance nothing can be deducted.

8. The learned counsel for the appellant wanted to rely upon Ext.A2 which would show that amounts have been paid as per Ext.A2 voucher. As stated by me earlier it does not specify the date or event for which it is paid and therefore Ext.A2 as such does not prove the case of the defendant that the amount has been paid as claimed by the plaintiff. Unless the full picture is properly explained it cannot help the defendant to prove the payment. Therefore the appeal cannot be allowed.

9. Now coming to the cross-objection. The cross-objection is with respect to the diallowance of the amount which the plaintiff claimed as the amount not due towards Provident Fund etc. It can be seen from the materials available that the outstanding amount was only A.S. 963 OF 1996 & Cross Objection Rs.13,500/- whereas the department has collected Rs.21,000/-. They had promptly reimbursed the amount which was collected in excess that what has been due. So there is no question of unnecessary collection for the statutory liability and therefore the plaintiff is not entitled to get any amount for the collection with respect to the same. So the cross- objection also does not merit consideration. Therefore it is also dismissed.

From these discussions the Appeal as well as the Cross Objection fail and both are dismissed.

Sd/-

M.N. KRISHNAN, JUDGE.

ul/-

[true copy] P.A. To Judge.

A.S. 963 OF 1996 & Cross Objection M.N. KRISHNAN, J.

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