M/s United Engineers & Contractors

v.

Secretary to Govt, A.P. & Others

(Supreme Court Of India)

HON'BLE DR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE V. GOPALA GOWDA

Civil Appeal No. 1181 Of 2003 | 16-01-2013

Dr. B.S. Chauhan, J.

1. This appeal has been preferred against the judgment and order dated 19.4.2002, by way of which the High Court of Andhra Pradesh at Hyderabad while entertaining the first appeal under Section 96 of Code of Civil Procedure, 1908 (hereinafter referred to as `CPC'), reversed the judgment and decree dated 12.7.1991 in Original Suit No. 62 of 1983 passed by the court of Subordinate Judge, Nizamabad.

2. Facts and circumstances giving rise to this appeal are that:

A. One agreement between the appellant and State of Andhra Pradesh for widening of road was entered into in February 1980. As the work was not started and executed within stipulated time, the respondent no. 3 took action under Clause 60 (b) of the Andhra Pradesh Detailed Standard Specification on 24.9.1980 and the said contract was terminated by the State Authorities on 13.1.1981.

B. The appellant vide Suit No. 62 of 1983 sought damages to the tune of Rs.16,51,950/-. Respondents contested the suit, however, the learned trial court vide judgment and decree dated 12.7.1991 decreed the suit awarding the damages to the appellant to the tune of Rs. 9,51,650/-.

C. Aggrieved, the respondent preferred appeal before the High Court which has been allowed vide impugned judgment and order dated 19.4.2002.

Hence, this appeal.3. Shri L. Nageshwar Rao, learned senior counsel appearing on behalf of the appellant, has submitted that the High Court while deciding the first appeal has proceeded with the premise that the suit for damages could have been entertained as the termination of contract was not challenged, particularly, when the appellant himself has breached the conditions of the contract and was not able to execute the work. The High Court committed an error while deciding the first appeal in a cursory manner without meeting the requirement of Order XLI Rule 31 CPC. The appeal has been decided without following the procedure prescribed for deciding the first appeal, thus, the impugned judgment and order stood vitiated. Thus, the appeal be allowed and the judgment and

decree of the trial court be restored wherein findings of fact had been recorded in favour of the appellant after examining the evidence on record.

4. Per contra, Shri A.T.M. Rangaramanujam, learned senior counsel appearing on behalf of the State, has contested the appeal contending that the agreement contained the arbitration clause, therefore, the suit instituted by the appellant itself, is not maintainable; and the State of Andhra Pradesh was not impleaded as a party. Thus, in view of the provisions of Section 79 CPC, the suit could have been entertained. The High Court has rightly appreciated the facts and allowed the appeal filed by the respondents. Thus, the impugned judgment and decree do not warrant any interference and the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. The issue of non-impleadment of a necessary party in view of the provisions of Section 79 CPC, has not been raised by the respondents at any stage of the proceedings and suit had been filed against the officers of the State. The issue could have been raised and decided in view of the judgments of this Court in Ranjeet Mal v. General Manager, Northern Railway, New Delhi & Anr., AIR 1977 schedule 1701; and The District Collector, Srikakulam & Ors. v. Bagathi Krishna Rao & Anr., AIR 2010 SC 2617.

7. The question of maintainability of suit when the agreement contains an arbitration clause, the question does arise as to whether in such a fact-situation, suit can be entertained. While filing the written statement, the respondents had raised this objection and taking note of the pleadings of the parties, the learned trial court framed Issue No. 1 in this respect. However, the trial court had taken note of such objections and answered the issue observing as under:

"The counsel for the defendant have conceded before this Court at the time of argument that he is not pressing on this issue. It is held that the suit is maintainable in spite of arbitration clause. Issue answer accordingly."

8. The trial court has decided the other issues and awarded the damages to the appellant as referred to hereinabove. The impugned judgment and order makes it evident that the High Court, while deciding the first appeal just mentioned the facts, took note of the issues framed by the trial court and thus, abruptly reached the conclusion as under:

".....The plaintiff knew the specifications and it had been explained to him and he had accepted that, the date of acceptance of the agreement was of the date of handing over the site, that was 6.3.1980. The plaintiff also failed to prove that the agreement was not signed in his presence by the 2nd defendant on 6.3.1980. He had been given various notices by which he had been told that the contract would be terminated. At one stage he had been fined also with Rs. 4,000/- but still he did not start the work and in terms of clause 60 (a) the defendants were empowered to terminate the contract. The plaintiff all along knew the site, contract had been signed by him, in spite of reminders from the defendants and even after imposition of fine on him he did not start the work. Therefore, we fail to

understand how he could get a suit decreed for damages. Since the plaintiff failed to challenge the order of termination of contract and he also failed to establish that he had not violated the conditions of the agreement, therefore, the decree could have not been passed in his favour at all. For these reasons alone the judgment and decree of the trial court cannot sustain and is accordingly set aside....."

9. This Court has considered the scope of Order XLI Rule 31 CPC in H. Siddiqui (dead) by LRs. v. A. Ramalingam, AIR 2011 SC 1492 and held as under:

"18. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions. (Vide: Thakur Sukhpal Singh v. Thakur Kalyan Singh and Anr., AIR 1963 SC 146; Girijanandini Devi and Ors. v. Bijendra Narain Choudhary, AIR 1967 SC 1124; G. Amalorpavam and Ors. v. R.C. Diocese of Madurai and Ors., (2006) 3 SCC 224; Shiv Kumar Sharma v. Santosh Kumari, AIR 2008 SC 171; and Gannmani Anasuya and Ors. v. Parvatini Amarendra Chowdhary and Ors., AIR 2007 SC 2380).

19. In B.V. Nagesh and Anr. v. H.V. Sreenivasa Murthy, (2010) 10 SCC 55, while dealing with the issue, this Court held as under:

"The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth and pressed by the parties for decision of the appellate Court. Sitting as a court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. [Vide: Santosh Hazari v. Purushottam Tiwari, AIR 2001 SC 965 and Madhukar and others v. Sangram and others, AIR 2001 SC 2171]."

Thus, it is evident that the First Appellate Court must decide the appeal giving adherence to the statutory provisions of Order XLI Rule 31 CPC.

10. The High Court decided the appeal without following the procedure required under Order XLI Rule 31 CPC. Therefore, without entering into the merits, the impugned judgment and order is set aside and the matter is remanded to the High Court to decide the first appeal in accordance with law. As the matter is quite old, we request the High Court to dispose of the first appeal as early as possible.

11. It is further clarified that we do not express any opinion on the issue of necessary parties and as to whether the suit could be entertained when there was an arbitration clause in the agreement. It is open for the parties to raise factual and legal issues permissible in law and in case, any application for any purpose is filed, the High Court is at liberty to decide the same in accordance with law. With these observations, the appeal stands disposed of.