

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 08TH DAY OF NOVEMBER 2011

PRESENT

THE HON'BLE MR.JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR.JUSTICE K.GOVINDARAJULU

RFA.NO.910/2006 C/W RFA.NO.911/2006

BETWEEN:

1. The Executive Engineer,
Public Works Department(PWD),
Belgaum Division,
Belgaum-590 001.

2.The State of Karnataka,
represented by Deputy
Commissioner,
Belgaum-590 001.

...APPELLANTS
COMMON

(BY SHRI C.S.PATIL, AGA)

AND:

Shri Basavaraj,
S/o Kashappa Matagar,
Age 40 years,
Occ: Class-I Contractor,
R/o Hidkal Dam,
Taluk :Hukkeri,

2

Belgaum District.

...RESPONDENTS
COMMON

(BY SHRI KALEEMULLAH SHERIFF, ADVOCATE)

THESE RFAS ARE FILED UNDER SECTION 96 OF CPC AGAINST THE JUDGEMENT AND DECREE DATED 30.09.2005 PASSED IN O.S.NO.286/2000 AND 287/2000 RESPECTIVELY ON THE FILE OF THE III ADDITIONAL CIVIL JUDGE (SENIOR DIVISION) BELGAUM DECREERING THE SUITS FOR DECLARATION.

THESE RFAs. COMING ON FOR FINAL HEARING THIS DAY, K.L.MANJUNATH J., DELIVERED THE FOLLOWING:

JUDGEMENT

The appellants are challenging the legality and correctness of the judgement and decree passed in O.S.No.286/2000 dated 30.09.2005 and also the judgement and decree passed in O.S.No.2876/2000 dated 30.09.2005 passed by the III Additional Civil Judge (Senior Division) Belgaum. Since the facts involved in these two appeals and the question of law raised by the appellants are one and the same, for the

87

sake of convenience these two appeals are taken up together and disposed of under a common judgement.

2. Three works were entrusted to the respondent - defendant by the appellants namely, improvements of the roads from Pashcapur to Gokak-Hidkal Dam approach road and Mavanur Parakahanatti road in Hukkeri taluk which was the subject matter for O.S.No.285/2000, improvement of road from Hirehatti to Makkalkeri from K.M. 0 to 5 K.Ms. Gokak Taluk which is the subject matter in O.S.No.286/2000 and improvement of road from Yaddalgudd - Neelaganti from 0 K.M. to 5 K.Ms. in Gokak Taluk on tender basis which is the subject matter in O.S.No.287/2000.

3. On the ground that the respondent - defendant did not complete the work in terms of the contract, the appellants - defendants rescinded the contract awarded to the first respondent -plaintiff and challenging the

8v

legality and correctness of the rescindment of the tender work awarded to the defendant/respondent herein and on the ground that he is entitled for refund of earnest money deposit, the respondent filed three suits in O.S.No.285 to 287/2000 to declare that the cancellation of tender work by the appellants as illegal and void and further requested the Court to decree the suits directing the appellants to refund the earnest money deposit amount. All the three suits were tried by the same Court under three different judgements. The suits filed by the plaintiff were decreed on 30.09.2005.

4. Challenging the judgement and decree in O.S.No.285/2000, the appellants had filed RFA.No.564/2006 which appeal came to be allowed by this Court on 19.4.2011, for which, one of us KLMJ is party to the judgement. This Court in the aforesaid appeal remanded the matter to the trial Court for fresh consideration, giving liberty to the respondent -

&

plaintiff to seek amendment to the plaint and to dispose of the suit as early as possible.

5. Having heard the Counsel for the parties, we are of the opinion that the present appeals are also required to be allowed, following the judgement passed by this Court in RFA.No.564/2006 dated 19.4.2011 because if the plaintiff was aggrieved by the rescindment of the contract, he was required to file a suit for damages considering the loss sustained by him, on account of the cancellation of the contract and without doing so even without seeking for a consequential relief, the mere suit for declaration was filed and even though he sought for refund of earnest money deposit, he has not paid the Court fee on the aforesaid claim and even he has not mentioned the amount of earnest money. Since the work entrusted to the respondent was rescinded and the work has been completed through another contractor and as work has been completed, no

87

purpose would be served in granting a decree in favour of the plaintiff, therefore, this Court allowed the appeal of the appellants in regard to the judgement and decree passed in O.S.No.285/2000 granting liberty to the respondent – plaintiff to make necessary amendment and seek appropriate relief. Since these two appeals are also arising out of the rescindment of the contract awarded to the respondent – plaintiff by the appellants, since the work has already been completed, we have to allow these two appeals and remand the matter granting liberty to the plaintiff to make necessary amendment to the plaint and if such amendment is filed, it is for the trial Court to grant time for the appellants to file additional written statement and dispose of the suit in accordance with law.

6. In the result, these two appeals are allowed. The judgement and decree passed in O.S.No.286/2000 and

21

287/2000 on 30.09.2005 by the III Additional Civil Judge (Senior Division) Belgaum are hereby set aside. Both the matters are remanded to the trial Court for fresh consideration, in the light of the observation made by us in the preceding paragraphs.

Sd/-
JUDGE

Sd/-
JUDGE

Sh