

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE K.SOMASHEKAR

AND

THE HON'BLE MR JUSTICE S RACHAIAH

COMMERCIAL APPEAL NO. 163 OF 2023

BETWEEN:

1. THE MANAGING DIRECTOR
BESCOM, K R CIRCLE
BANGALORE – 01.
2. THE CHIEF ENGINEER (ELE)
C, O & M BESCOM, BRAZ
ABB COMPLEX, RAJAJINAGAR
BANGALORE – 10.
3. THE SUPERINTENDING ENGINEER (ELE)
C, O & M BESCOM, CIRCLE, KOLAR.
4. THE EXECUTIVE ENGINEER (ELE)
C, O & M BESCOM, DIVISION, KOLAR
5. THE EXECUTIVE ENGINEER (ELE)
C, O & M BESCOM, DIVISION , KGF
6. THE EXECUTIVE ENGINEER (ELE)
C, O & M BESCOM, DIVISION, CHIKKABALLAPURA

...APPELLANTS

(BY SRI. SRIRANGA, SR. ADVOCATE FOR
SMT. ANJANA C H, ADVOCATE)

AND:

RAMAKRISHNAPPA
S/O RAMANNA

AGED ABOUT 52 YEARS
FIRST CLASS ELECTRICAL CONTRACTOR
M/S SRI SHIVA ELECTRICALS
SRINIVASAPUR KOLAR DIST

...RESPONDENT

(BY SRI. N S BHAT, ADVOCATE)

THIS COMAP IS FILED 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 AND SECTION 96 READ WITH ORDER 41 RULE 1 OF THE CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 17.02.2023 PASSED IN COMM. O. S. No. 25/2020 VIDE ANNEXURE-A AND CONSEQUENTLY, DISMISSING THE SUIT IN COMM. O. S. NO. 25/2020.

THIS COMAP HAVING BEEN RESERVED FOR FURTHER ARGUMENTS, COMING ON FOR PRONOUNCEMENT THIS DAY, **S RACHAIAH .J**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE K.SOMASHEKAR
and
HON'BLE MR JUSTICE S RACHAIAH

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE S RACHAIAH)

This appeal is filed by the appellants being aggrieved by the judgment and decree dated 17.02.2023 passed in Com.O.S.No.25/2020 by the learned Prl. District and Sessions Judge at Kolar.

2. The rank of the parties in the Trial Court, henceforth will be considered accordingly for the convenience.

3. The plaintiff is a diploma holder in Electrical Engineering and he is having a Class-I Electrical Contractor License and also running a electrical works in the name and style as "M/s. Shiva Electricals". He was entrusted the works of maintaining the transformers, minor repair works within the jurisdiction of Kolar, KGF divisions and Chikkaballapura divisions. After completion of works allotted to him, the bills were raised and submitted to the concerned Authority for payment. Though, the bills were submitted at the earliest, as per the averments of the respondent, the same bills were paid belatedly. Therefore, he filed a suit for recovery of compensatory amount by way of interest at the rate of 16% on belated payments

4. The defendants entered their appearance by filing the written statements contending *inter-alia* that there is a delay in approaching the Court. Therefore, the claim made by the plaintiff has to be rejected as barred by limitation.

5. It is further submitted that the plaintiff has submitted the bills after lapse of several years. The delay has been caused by the plaintiff and not by the defendants.

Therefore, the plaintiff is not entitled for any relief as prayed for and therefore, the defendants pray to dismiss the suit.

6. In order to defend the case of the plaintiff, he got examined himself as P.W.1 and got marked 14 documents as Exs.P.1 to P.14. Though the defendants have not examined any witnesses, they conducted the cross-examination of plaintiff and got marked five documents as Exs.D1 to D5.

7. The Trial Court after appreciating both oral and documentary evidence on record, decreed the suit partly and directed the defendants to comply the decree. Being aggrieved by the same, the defendants are before this Court.

8. Heard Sri. Sriranga, learned Senior Counsel for Smt. Anjana C.H., learned counsel for the appellants and Sri. N.S.Bhat, learned counsel for the respondent.

9. It is the submission of the learned counsel for the appellants that the judgment and decree passed by the Trial Court is erroneous and contrary to the facts and circumstances of the case. Hence, the same is liable to be set aside.

10. It is further submitted that the Trial Court has committed error in appreciating the documentary evidence

produced by both the parties. Even though, the suit is barred by limitation, the said limitation aspect was not properly considered by the Trial Court. Consequently, the impugned decree has been passed.

11. It is further submitted that, the plaintiff though has completed the work in the year 2007-2010, however, the suit came to be filed in the year 2019 claiming the interest at the rate of 16% per annum from the date of completion of the work i.e., after lapse of ten to twelve years of completion of work. The delay should have been considered as a preliminary issue and the suit ought not to have been decreed.

12. It is further submitted that the plaintiff has submitted the bills relating to the Chikkaballapura Division on 29.03.2014 for the work completed during 2007-10. The appellants herein have paid the amount on 16.04.2014. In respect of bills relating to Kolar and KGF divisions were delayed as there was an enquiry being initiated in respect of the work carried out by the plaintiff. After submitting the report by the competent authority, payments were made to the plaintiff.

13. It is further submitted that the Trial Court ought to have considered the delay in filing the suit effectively and the suit should have been disposed of by holding that the suit was barred by limitation.

14. The learned Senior Counsel further submitted that the cause of action in filing the suit would arise from the date of demand made by the plaintiff not from the date of disposal of the writ petition. The Trial Court has committed an error on this point and passed the impugned judgment which is liable to be set aside.

15. Per contra, the learned counsel for the respondent/plaintiff contended that the interest on the delayed payment is mandatory and the appellants herein have caused the delay in making the payment for the work for which the plaintiff has completed the work in the year 2010 itself. However, the payments were made in the year 2014. Therefore, the plaintiff is entitled for the interest payable in accordance with law.

16. It is further submitted that the Trial Court has rightly computed the period of limitation to file the suit as per section-14 of the Limitation Act and arrived at conclusion that

the suit of the plaintiff is not barred by limitation. Moreover, the defendants/appellants have not objected the admitted facts. Therefore, the appeal filed by the appellants is liable to be dismissed.

17. After having heard learned counsel for the respective parties and also perused the findings of the Trial Court in passing the decree in favour of the plaintiff, the points which arise for our consideration are:

- 1) *"Whether the impugned judgment and decree passed by the Trial Court is justified?"*
- 2) *"Whether the appellants are made out a case to interfere with the said judgment and decree?"*

18. The Trial Court after appreciating the oral and documentary evidence on record and also relying on the evidence of P.W.1, held that the defendants are jointly and severally liable to pay the decretal amount as ordered by it.

19. The Trial Court while answering the Additional Issue relating to the delay in filing the suit, held that, the suit was filed within time. However, the learned Senior Counsel for the appellants herein submitted that the suit should have been

dismissed as barred by limitation and on the ground of delay in filing the suit.

20. The learned Senior Counsel has mainly relied on the judgment of the Hon'ble Supreme Court in the case of ***M.P. Steel Corporation Vs. Commissioner of Central Excise***¹ reported in **(2015) 7 SCC 58**, paragraph Nos. 7, 8 and 52 which reads as under:

"7. Section 14 of the Limitation Act reads as follows:

"14.Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect

¹ (2015) 7 SCC 58

of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order 23 of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

8. *Shri A.K. Sanghi, learned Senior Counsel appearing on behalf of the Department has stated that at no point of time has the appellant taken up a plea based on Section 14. Neither has the appellant met with any of the five conditions set out in para 21 of Consolidated Engg. Enterprises v. Irrigation Deptt., which reads as follows : (SCC p. 181)*

21. "Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it

becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;*
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and*
- (5) Both the proceedings are in a court."*

52. *As has been already noticed, Sarathy case has also held that the court referred to in Section 14 would include a quasi-judicial tribunal. There appears to be no reason for limiting the reach of the expression "prosecuting with due diligence" to institution of a proceeding alone and not to the date on which the cause of action for such proceeding might arise in the case of appellate or revisional proceedings from original proceedings which prove to be abortive. Explanation (a) to Section 14 was only meant to clarify that the day on which a proceeding is instituted and the day on which it ends are also to be counted for the purposes of Section 14. This does not lead to the conclusion that the period from the cause of action to the institution of such proceeding should be left out. In fact, as has been noticed above, the Explanation expands the scope of Section 14 by liberalising it. Thus, under Explanation (b) a person resisting an appeal is also deemed to be prosecuting a proceeding. But for Explanation (b), on a literal reading of Section*

14, if a person has won in the first round of litigation and an appeal is filed by his opponent, the period of such appeal would not be liable to be excluded under the section, leading to an absurd result. That is why a plaintiff or an applicant resisting an appeal filed by a defendant shall also be deemed to prosecute a proceeding so that the time taken in the appeal can also be the subject-matter of exclusion under Section 14. Equally, Explanation (c) which deems misjoinder of parties or a cause of action to be a cause of a like nature with defect of jurisdiction, expands the scope of the section. We have already noticed that the India Electric Works Ltd. judgment has held that strictly speaking misjoinder of parties or of causes of action can hardly be regarded as a defect of jurisdiction or something similar to it. Therefore properly construed, Explanation (a) also confers a benefit and does not by a side wind seek to take away any other benefit that a purposive reading of Section 14 might give. We, therefore, agree with the decision of the Madhya Pradesh High Court that the period from the cause of action till the institution of appellate or revisional proceedings from original proceedings which prove to be abortive are also liable to exclusion under the section. The view of the Andhra Pradesh High Court is too broadly stated. The period prior to institution of the initiation of any abortive proceeding cannot be excluded for the simple reason that Section 14 does not enable a litigant to get a benefit beyond what is contemplated by the section—that is to put the litigant in the same position as if the abortive proceeding had never taken place.”

21. The learned Senior Counsel for the appellants has relied on one more case reported in **(2020) 16 SCC 230** in the case of **Asgar and Ors. Vs. Mohan Varma and Ors²**. Paragraph-21 which reads as under:

"21. While dismissing the special leave petition against the judgment of the High Court, this Court in its order dated 25-7-2014 observed that : (Mohan Varma case, SCC OnLine SC para 4)

"4. Insofar as the question of compensation for improvements made by the appellants is concerned, the appellants were free to pursue an appropriate remedy for the redressal of their grievances in accordance with law."

These observations as contained in the order of this Court cannot be construed to mean that the respondents would be deprived of their right to set up a plea of constructive res judicata if the appellants were to raise such a claim. The appellants were, as this Court observed, free to pursue the "appropriate remedy for redressal of their grievances in accordance with law." This must necessarily be construed to mean that all defences of the respondents upon the invocation of a remedy by the appellants were kept open for decision. The liberty granted by this Court was not one-sided. It encompasses both the ability of the appellants to take recourse and of the respondents to raise necessary defences to the invocation of the

² (2020) 16 SCC 230

remedy. Therefore, we do not find any merit in the submission urged on behalf of the appellants that the earlier judgment of the Kerala High Court and the order of this Court preclude the respondents from raising the bar of constructive res judicata."

22. On careful reading of the dicta of the Hon'ble Supreme Court stated supra, we are of the considered opinion that the said judgments of the Hon'ble Supreme Court may not be helpful to the present case on hand for the reason that the plaintiff has filed the suit within the time as contemplated under Section 14 and Article 18 of the Limitation Act, 1963. In this context, it is relevant to refer those two provisions which read as under:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction.—*(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil

proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

18. Effect of acknowledgment in writing.—(1)

Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or

right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

23. On careful perusal of the aforesaid provisions, it makes it clear that if a party approached the wrong Forum and the case came to be returned for want of jurisdiction, the time

consumed for approaching the wrong Forum has to be excluded.

24. In the present case, the plaintiff has submitted the bills before the Authority for the work done. According to the plaintiff, all his claims were settled in the year 2014. The said fact has been uncontroverted. Further, the plaintiff had issued a notice as per Ex.P.9 on 22.01.2016 demanding the Authority to pay the interest at the rate of 16% for the delay in making the payments. When the said letter has not been answered by the Authority, a writ came to be filed before this Court in W.P. No.6314/2018. This Court dismissed the said writ petition granting a liberty to resort an appropriate proceedings in accordance with law on 15.03.2018. Thereafter, a suit came to be filed by the plaintiff seeking remedy before the Civil Court on 23.09.2019. Considering the dates and events of the case, the finding of the Trial Court in appreciating the fact relating to delay which appears to be just and proper. Therefore, we are in agreement with the findings of the Trial Court relating to the additional issues framed by it.

25. As regards the other issues are concerned, the Trial Court partly allowed Issues No.1 and 2 by assigning the reasons that the work done by the plaintiff in the years

2008-09, 2009-10, 2011-12 and 2012-13, an amount of Rs.28,39,870/- was paid through seven cheques on 07.01.2014. Similarly, all other departments have also paid the amount as admitted by the plaintiff. There is no dispute in respect of the payment of which the work has been done. However, the dispute is with respect to the interest on delayed payment. The Trial Court has awarded the rate of interest at 10% in stead of 16% as claimed by the plaintiff on the ground that there was no agreement relating to the interest payable to the plaintiff on the delayed payment. Moreover, the plaintiff has not filed any cross-appeal as against relating to the reduction of the rate of interest by the Trial Court. Therefore, we are of the considered opinion that the Trial Court has rightly justified in reducing the rate of interest.

26. In view of the aforesaid discussions, we answer the points which arose for our consideration are as follows:

Point No.1 : In the affirmative;

Point No.2 : In the negative;

27. As regards I.A.No.1/2024 filed by the respondent/plaintiff is concerned, since the appeal is dismissed and the judgment and decree passed by the Trial Court is

upheld, considering the I.A.No.1/2024 does not arise. Hence, the same is disposed of accordingly.

28. In the light of the observation made above, we pass the following:

ORDER

The Commercial Appeal is dismissed.

**Sd/-
(K.SOMASHEKAR)
JUDGE**

**Sd/-
(S RACHAIAH)
JUDGE**

JS/-