

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

RFA.No. 379 of 2009 ()

(AGAINST THE ORDER/JUDGMENT IN OS 558/2003 of I ADDL.SUB COURT,
THRISSUR DATED 05-12-2008)

APPELLANT(S)/DEFENDANTS 1 TO 3::

1. STATE OF KERALA REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

2. THE SUPERINTENDING ENGINEER,
OFFICE OF THE SUPERINTENDING ENGINEER, PWD
NATIONAL HIGHWAY CENTRAL CIRCLE, VYTILLA.

3. THE EXECUTIVE ENGINEER, PWD,
N.H.DIVISION, KODUNGALLUR.

BY ADV. GOVERNMENT PLEADER SRI.P.P.PADMALAYAM

RESPONDENT(S)/PLAINTIFF:

M/S.HIGHWAY CONTRACTORS(P)LTD.
REGISTERED OFFICE AT THYKKADAVIL, 13TH LANE
TOCH H ROAD, VYTILLA, KOCHI-19
REP.BY ITS, EXECUTIVE DIRECTOR, JOSHUA
CONTRACTOR, THYKADAVIL HOUSE, 13TH LANE
TOC H ROAD, VYTILLA, KOCHI-19.

R, BY ADV. SRI.C.T.JOSEPH
R, BY ADV. SRI.JOE POLLAYIL
R, BY ADV. SRI.ROSHIN IPE JOSEPH

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 8/7/-
2015, THE COURT ON 22/12/2015 DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

RFA. No. 379 OF 2009

Dated this the 22nd day of December, 2015

JUDGMENT

Sunil Thomas, J

This appeal at the instance of the State and the authorities of the PWD is directed against the judgment and decree of the Additional Sub Court, Thrissur in O.S. No.558/2003, a suit for recovery of money. The defendants are the appellants herein.

2. The plaintiff is a company constituted under the Companies Act, engaged in the business of undertaking contract works. Pursuant to an agreement dated 27/10/1997 with the defendants, the plaintiff company had undertaken certain contract works. It was completed as per the schedule on 19/7/1999. After accounting the entire payments received during the course of work, a sum of Rs.1,59,14,818/- was due.

In spite of the delay, amount was not paid and hence, lawyer notice was issued claiming the amount with 18%. Since there was no response, the plaintiff filed O.P.No.26786/99 before the High Court, which was allowed by the judgment dated 1/12/1999 directing the defendants to pay the admitted bill amount within three months, failing which interest shall be paid at the rate of 12% p.a.

3. W.A.No.1216/2001 was filed by the defendants challenging the above judgment. It was heard along with the connected matters and allowed by a common judgment, inter alia, directing that the Government shall pay interest at the rate of 12% p.a., if payments were not made before 30/6/2002 and that in all cases the parties are entitled to approach the civil court for recovery of interest, whether or not the amount was paid before 30/6/2002. The amount of Rs.1,59,14,818/- was paid in instalments by the Government on various dates. Claiming that the interest payable on the amount was not paid and further contending that since the huge amount had to be paid as interest by the plaintiff company, they had sustained loss, the plaintiff filed the present suit claiming a sum of Rs.33,66,140/- quantified

at 12% interest as on the last date of payment i.e.24/01/2003.

4. The defendants appeared and contended that the claim that final payment became due and payable after 19/7/1999 was misleading. It was contended that the payment became due only on 31/3/2000, that the Government had complied with the directions contained in the judgment in W.A.No.1216/2001 and that that there was no provision for payment of interest in the agreement. It was further contended that Madras Detailed Standard Specification (MDSS) provided that the contractor shall not be entitled for any interest upon any guarantee found or any balance found due at the time of filing the statement of account. It was further contended that the balance amount due was ascertained and was paid. Hence, the plaintiff was not entitled to any amount.

5. On the basis of the above pleadings, parties went for trial and on the side of the plaintiff, PW 1 was examined and Exts.A1 to A35 were marked. On the side of the defendants, DW1 was examined and Ext.B1 was marked. The court below, by the impugned judgment and decree, accepted the contentions of the plaintiff and decreed the suit for a sum of Rs.35,58,007/- with

future interest at the rate of 6% p.a. from the date of the suit till the date of realization with costs from the defendants and their assets. Aggrieved by the above decree, the defendants have preferred this appeal. Heard and examined the records.

6. The essential facts are not in dispute. It is also an admitted fact that the actual amount due as per the bill was ascertained as Rs.1,59,14,818/-. Several payments made are also admitted. Essentially, the question narrows down to the liability and to the entitlement of the plaintiff to claim the amount with interest.

7. The defendants grounded their defence on the strength of clause 69(a) of MDSS. The learned counsel for the plaintiff defended the above contention by taking up a contention that the above clause has no application to the facts of this case. This was directly in issue in the decision in **P.J.Mathai v. The state of Kerala [ILR 1980 (1) Kerala 582]**, in which it was held that it is not contemplated by the scheme underlying clauses Sections 68 and 69 of MDDS that after the completion of the work the issuance of the certificate should be indefinitely delayed and the contractor be made to wait for the payment due to him without

even any entitlement for interest for the period of such delay occasioned by no fault of his. It was also held that a combined reading of clauses 68 and 69 leads to a reasonable conclusion that the bar imposed by clause 69 against a claim for interest being put forward by the contractor will get attracted only in cases where a certificate has been issued by the Executive Engineer/Sub Divisional Officer in strict accord with the provisions contained in clause 68. It was also held that in that case, bar under Section 69 would not operate. In this case also, the situation is identical and the bar under Section 69 will not be applicable.

8. The question regarding the claim of a person, who is otherwise legally entitled for the amount, but payment being delayed for no fault of his, had come up for consideration of the Hon'ble Supreme Court in various decisions. In **Satinder Singh & others v. Umrao Singh and Another(AIR 1961 SC 908)**, the Apex Court had occasion to consider the question of payment of interest on award amount in land acquisition proceedings. It was held that when a claim for payment of interest is made by a person whose immovable property has

been acquired compulsorily, he is not making claim for damages properly or technically so called and he is basing his claim on the general rule that if he is deprived of his land, he should be put in possession of compensation immediately, if not, in lieu of possession taken by compulsory acquisition, interest should be paid to him on the said amount of compensation. Referring to Interest Act, it was held that the power to award interest on equitable grounds or under any other provisions of the law is expressly saved by the proviso to S.1. of the Act. This proposition of law was reiterated by the Supreme Court in **Union of India v. The Steel Stock Holders Syndicate, Poona (AIR 1976 SC 879)** to hold that, on the claim for damages under the Railways Act, the claimant is entitled for interest. This was followed by the Supreme Court in **Secretary, Irrigation Department, Government of Orissa and others v. G.C.Roy (AIR 1992 SC 732)**, wherein the question of claiming interest on the delayed payment under the Arbitration Act was considered. The Apex Court held that the claimant is entitled for interest in the case of delay. This was again considered by the Apex Court in the case of General Insurance in the decision in **United India**

Insurance Co. Ltd v. Corporation[(1996) 6 SCC 428] wherein it was reiterated that in the case of delayed payment of insurance policy, the claimant is entitled to interest. This was again reiterated by the Apex Court in **Sovintorg (India) Ltd. v. State Bank of India, New Delhi [(1999) 6 SCC 406]**, wherein the Court referred to the question of payment of interest under the Consumer Protection Act. The same question was again considered and reiterated in **Nifty Chemicals Private Limited v. Union of India [(2009) 15 Supreme Court Cases 314]**.

9. All the decisions referred to above uniformly lay down the principle that the bar under MDSS Act cannot apply in this case and reiterated the right of claimant to claim interest on the delayed payment. Hence, we are not inclined to accept the contention of the appellant herein.

10. Another contention set up by the defendants was that the suit was barred by limitation. It was contended that even though the work was completed on 19/7/1999, final bills were submitted at last on 18/12/1999, the suit was filed only in the year 2003. It was further contended that though payments were made initially, the suit was not filed within the time limit.

However, even according to defendant the amount became payable only in March 2000.

11. In this case, it is pertinent to note that by judgment in O.P.No.27686/99, the petitioner/plaintiff was granted time of three months from 28/10/1999 and if the amount is not paid, the amount can be claimed with 12% interest from the date of the bill. The writ appeal W.A.No.1216/2001 was disposed of by granting time till 30/6/2002 and with a direction that in the event of the amount being not paid, it would carry 12% interest from the date of filing of each of the writ petitions.

12. The court below correctly held that by the judgment in writ appeal, the Division Bench recognized the equitable right of the contractor for claiming interest. The defendant did not produce any document to show that payment became due on 1/3/2000. However, plaintiff had claimed to show that payment became due on 1/3/2000. However, plaintiff had claimed interest by notice dated 8/10/1999. Further no plea of limitation was set up in the written statement. In the light of the above conclusion the judgment of the court below is unassailable.

In the result, the appeal is dismissed with costs confirming

the judgment and decree of the court below.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge
Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge