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. 351 of 2008 ( )

(AGAINST THE ORDER/JUDGMENT IN OS 55/2005 of SUB COURT, MUVATTUPUZHA DATED 19-12-2007

APPELLANT(S)/PETITIONER:

K.BABURAJ , GOVERNMENT CONTRACTOR,
NARAYANA MANDIRAM, OORAMANA PO, MUVATTUPUZHA TALUK
ERNAKULAM DISTRICT.

BY ADVS.SRI.T.K.MARTHANDAN UNNITHAN
SRI.V.JAYAKUMAR

RESPONDENT(S)/DEFENDANTS:
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1. THE STATE OF KERALA, REPRESENTED
BY THE DISTRICT COLLECTOR, ERNAKULAM,
CIVIL STATION KAKKANAD, ERNAKULAM.

2. THE SECRETARY , P.W.D.
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

R, BY ADV. GOVERNMENT PLEADER P.P.PADMALAYAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 8/7/2015 THE COURT ON 22/7/2008 DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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RFA.No. 351 of 2008

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Dated this the 22nd day of December, 2015

JUDGMENT

Sunil Thomas,J

This appeal is directed against the judgment and decree in O.S.No.55/2005 of the Sub Court, Muvattupuzha, in a suit for recovery of money.

2. The case of the plaintiff/appellant is that he is a licensed PWD contractor, who had been undertaking the Government contract works. Pursuant to the invitation of tenders by the Government for the reconstruction of roads, separate works were undertaken with respect to a stretch of road. The above contract works were completed and the bill amount due to the plaintiff, on the basis of the agreed rate, was Rs.23,60,799/-. All the bills were submitted after the completion of the respective works. Five bills were submitted, each on 17/6/1999, 17/6/1999, 15/6/1998, 1/12/1997 and 26/3/1998. Since the amount remained unpaid over a long period of time, writ petition was filed by the plaintiff before this Court as O.P.No.23878/99

claiming the return of money with 18% interest. That petition was disposed of on 28/10/1999 with a direction to pay the money within three months, failing which it would carry interest at the rate of 12%. Since the amount was not paid as directed by the learned Single Judge, Contempt of Court Case, C.C.No. 324/2000, was filed before this Court. In the meanwhile, two payments were made by cheques dated 14/6/2000 for Rs.6,68,015/- and Rs.5,31,575/-. The contempt petition was disposed of by the judgment dated 6/9/2000 directing the Government to pay the amount covered by the writ petition within four weeks from 6/9/2000.

3. In the meanwhile, the Government challenged the judgment in O.P.No. 23878/1999 along with several other judgments of similar nature, in writ appeals including W.A.No.2469/2000, from which the present subject matter arises. W.A.No.2469/2000 was heard along with the connected appeals and disposed of by a common judgment dated 5/4/2002. It was inter alia directed that the undisputed amounts should be paid on or before 30/6/2002, failing which the State Government would be liable and bound to pay 12% interest per annum on the

admitted amounts from the date of filing of the respective original petitions. In the cases where the direction to pay the admitted amounts on or before 30/6/2002 was not complied with and in cases where the principal amounts have already been paid before that date, the petitioners were at liberty to adopt appropriate legal proceedings before the civil court for recovery of the interest claimed by them on the amounts paid or to be paid on or before 30/6/2002.

4. The present suit (OS No.55/2005) was filed pursuant to the above direction. It has come out on record that pending the proceedings, two cheques dated 8/12/2000 and 4/10/2001 were issued to the plaintiff for a sum of Rs.2,51,951/- and Rs.9,09,256/- respectively. The defendants appeared and the written statement was filed by the second defendant-PWD. It was inter alia contended that the contractor had executed an agreement subject to the condition in preliminary specification of the Madras Detailed Standard Specifications(MDSS). Clause 69(a) of the MDSS provides that contractors were not liable for interest on the delayed payment. It was further contended that the suit was barred by limitation. According to the defendants,

the claim for interest, if any, ought to have been filed within the time limit prescribed in the Limitation Act, even if the plaintiff was entitled for any benefit.

5. The court below considered the issue on the basis of the above pleadings and ultimately held that the suit was barred by limitation and also that clause 69(a) of the MDSS Act acted as a bar in claiming interest over the pending amount.

6. This is under challenge in this appeal. Heard both sides and examined the records.

7. The essential facts, including details of entering into contract, completion of work, submission of bills and principal amount due, are not in dispute. The dispute between the parties narrows down to the question as to whether the suit was barred by limitation and whether the plaintiff was entitled to any claim for interest.

8. The defendants grounded their defence on the strength of clause 69(a) of MDSS which was marked as Ext.A8. The learned counsel for the plaintiff defended the above contention by arguing that the above clause has no application to the facts of this case. This issue was directly related to the 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 was not contemplated by the scheme underlying clauses 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,even without 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 clause 69 would not operate. In this case also, the situation is identical and the bar under clause 69 will not be applicable.

9. The question regarding the claim of a person, whose legally entitled payment is delayed for no fault of his, came up for consideration before 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 delayed payment of land acquisition award amount and whether in such cases, the claimant is eligible for interest. 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, 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. 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)** holding that, on the delayed payment of damages under the Railways Act, the claimant is entitled to 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 to interest in 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].** It was reiterated that in case of delayed payment of insurance policy, the claimant is entitled to interest. This was again reiterated in **Sovintorg (India) Ltd. v. State Bank of India, New Delhi [(1999) 6 SCC 406)],** wherein the Apex Court referred to the question of payment of interest under the Consumer Protection Act. Again, the same question was considered and reiterated in **Nifty Chemicals Private Limited v. Union of India [(2009) 15 Supreme Court Cases 314).**

10. All the decisions referred to above uniformly lay down the principle of claim to interest on the delayed payment due. Hence, we are inclined to accept the contention of the appellant herein.

11. Another contention set up by the defendants was that the suit was barred by limitation. It was contended that even

though the final bills were submitted at last on 26/3/1998, the suit was filed only in the year 2005. It was further contended that though part payments were made initially on 14/6/2000 and thereafter through cheques on 8/12/2000 and 4/10/2001, still, the suit was not filed within the time limit.

12. The court below dealt with the above issue with reference to Section 14 of the Limitation Act. After elaborate discussion the court below ultimately held that the claim of the plaintiff, that he was prosecuting the matter before the High Court, even if accepted, still even after excluding the period taken in prosecuting the matter before the High Court, even then the suit was filed beyond the period of limitation.

13. In this case, it is pertinent to note that by Ext.A1 judgment in O.P.No.23878/99, the petitioner/plaintiff was granted time of three months from 28/10/1999 and if the amount was not paid, the amount could be claimed with 12% interest from the date of the bill. The writ appeal was disposed of by Ext.A3 judgment 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. The court below relied on the decision reported in **Kerala State Civil Supplies Corporation v. MGM Transports [2005 (1) KLT 467)** to hold that it cannot be said the proceedings under Article 226 of the Constitution was not a civil proceedings. Even after giving benefit of that decision, the trial court concluded that the suit was filed beyond the period of prescribed.

14. The above finding is not sustainable for more reasons than one. Admittedly, the amounts were paid before Ext.A3 judgment, but after Ext.A1 judgment in the original petition. Admittedly, the principal amount has been paid, but the interest has not been paid. The contention of the plaintiff was that since the payment of the amount was delayed, he is entitled for interest over the amount. In fact, the plaintiff invoked the writ jurisdiction to claim relief of payment of money. It was allowed with a direction to pay the money due. The State, though party to the proceedings, conceded to the existence of liability. In none of the proceedings, the defendants had a case that the amount was not due. In fact, the liability was acknowledged. The suit was filed essentially in the light of the judgment of the

this court in the writ proceedings. Hence, the liability to pay the money stood fixed as on the date of the judgment in the writ appeal and the liability to pay the amount due stood acknowledged by the defendants in the appeal.

15. In the light of the above, the limitation period can start only from the date of the judgment in the writ appeal. Even otherwise, in the writ appeal no time limit was prescribed for the purpose of instituting the civil suits. Virtually,the suit was filed to give effect to the judgment in the writ appeal and to quantify the amount due as per the liability fixed in the writ appeal. Ext.A3 writ appeal was decided on 5/4/2002, granting time till 30/6/2002. The limitation period has to be reckoned from that date onwards. The suit was filed on 24/5/2005 as seen from the decree in O.S. No.55/2005.

16. To support the case of the plaintiff on the question of limitation,the plaintiff relied on the decision reported in **Raman Kunjukrishnan v. Raman Viswanathan & Others (2964 KLT 449).** In this case it was held that in a case where the District Court has no jurisdiction, elements of Section 14 of the Limitation Act are present, the period of limitation may be

excluded. When the facts are so patent and clear, the court cannot refuse to apply section 14. In the decision in **Rameshwarlal v. Municipal Council, Tonk & Others [91996) 6 SCC 100],** it was held that when the matter was proceeded before the High Court and the High Court expressly declined to grant relief relegating the parties to a civil suit, the time taken in prosecuting the proceedings before the High Court and the Supreme Court diligently and bona fide, needs to be excluded. In **Union of India and others v. West Coast Paper Mills Ltd. and another [(2004) 2 SCC 747],** the Hon'ble Supreme Court held that in a case where the Railway Claims Tribunal declared the enhanced rate of freight to be illegal which was challenged in writ petition seeking refund of the excess freight charge from them and the High Court relegating the company to the remedy of suit and the company on filing a suit accordingly, the company is entitled to claim benefit of Sections 14 and 15 of the Limitation Act. These decisions also apply to the facts of this Case.

17. In the light of the above findings, it is clear that the finding arrived at by the court below that the suit is barred by

limitation is without any basis. In the light of the above conclusion, the judgment of the court below is not legally sustainable and is liable to be set aside. The plaintiff is entitled for interest on the delayed payment till the entire amount is paid. In the writ proceeding it was held that the plaintiff is entitled for 12% interest from the date of submission of each bill till the actual payment. Hence, the plaintiff has claimed a sum of Rs.6,70,566/- with interest. The plaintiff will be entitled to recovery of that amount with 6% interest from the date of suit till recovery from the defendant. He will be entitled for costs also.

In the result, the appeal is allowed. The judgment and decree of the court below is set aside. The plaintiff is granted a decree permitting him to recover a sum of Rs.6,70,566/- with 6% interest from the date of suit till recovery. The plaintiff will be entitled for costs through out.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge
Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.