

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL MISCELLANEOUS APPEAL No.352 OF 2006

JUDGMENT:(per Hon'ble Sri Justice K.C. Bhanu)

This Civil Miscellaneous Appeal is filed challenging the order, dated 23.02.2006, in Original Petition No.2652 of 2004 passed by the XI Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad, whereunder and whereby, the award passed by respondent Nos.1 to 3 therein in favour of respondent No.4 therein directing the petitioner therein to pay a sum of Rs.54,33,171.50 ps., as principal and Rs.1,13,53,105/- towards interest for delayed payments, was set aside and the matter was remanded to the Arbitral Tribunal for fresh disposal.

2. Learned counsel for the appellant contended that Original Petition filed by the 1st respondent herein is not maintainable in view of the fact that the 1st respondent has not deposited 3/4th of the amount, which is mandatory under Section 7 of the Interest on Delayed payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short, 'the Act') and therefore, he prays to set aside the impugned order.

3. On the other hand, learned counsel for respondent No.1 contended that there is a dispute with regard to the quality of machinery supplied by the appellant herein to the 1st respondent and therefore, unless the sum is adjudged by the Arbitral Tribunal, the question of payment under Section 7 of the Act would not arise; that is the reason why the Tribunal remanded the matter to the Arbitral Tribunal and that issue shall be decided by the Arbitral

Tribunal and therefore, he prays to dismiss the appeal. He placed reliance on a decision reported in **Modern Industries Vs. Steel Authority of India Ltd. and Ors**^[1].

4. The facts are not in dispute. Certain goods have been supplied by the appellant to the 1st respondent herein. Though it is admitted by the 1st respondent that certain goods have been supplied by the appellant, but it has been seriously disputed that the goods supplied by the appellant are defective in nature. Therefore, Section 7 of the Act has no application. He placed reliance on **Modern Industries** (1 supra), wherein it is held thus (Para No.36):

“36. The High Court, in the impugned order, however, held that expression amount due from a buyer’ would be amount admitted to be due in its plain and natural meaning and when admitted due amount is not paid by the buyer, the provisions of Sections 3 to 6 along with other provisions of 1993 Act would be applicable. In the opinion of High Court since the buyer has alleged breach of contract by the supplier, there was no amount admitted to be due or settled amount and, therefore, there was no question of delayed payment and reference of the dispute to the IFC under Sub-section (2) of Section 6 was without jurisdiction. The High Court in the impugned order held thus:

16. Therefore, the said matter before the IFC would be limited to the amount due from the buyer together with amount of interest calculated only in accordance with the provisions of Sections 4 and 5 of the Act. Section 4 applies only when Section 3 is applied. Therefore, the ultimate focus in the Act is on Section 3 as already discussed above. Section 3 speaks about the settled amount and not the amount which may be calculated according to the calculations of the supplier disputed by the buyer or where there is dispute regarding delayed supply causing loss to the

buyer or defective supply of the materials. Therefore "the amount due from a buyer would be interpreted in its plain and natural manner i.e. amount admitted to be due" and when it is not paid by the buyer, the provisions of Section 3 to 6 along with other provisions of the Act would be applicable.

17. In the instant case, the buyer i.e. the petitioner has alleged that the supply was not made by the opposite party No.2 in time and there was delay in supply of materials which caused loss to the petitioner and by the time of supply of materials, technology has already been changed. Therefore, in nutshell, the petitioner has alleged breach of contract by opposite party No.2 and therefore, in case of allegation of breach of contract, it cannot be said that there is any amount admitted to be due or settled amount. Hence, there is no question of delayed payment and referring the dispute to the IFC under the provisions of Sub-section 2 of the Section 6, to our mind, would be without jurisdiction."

A perusal of the above decision shows that when no amount admitted to be due or settled amount, the question of invoking Section 7 of the Act does not arise.

But, Section 2(b) of the Act defines "appointed day", which reads as follows:

"(b) "appointed day" means the day following immediately after the expiry of the period of thirty days from the date of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;

Explanation.- For the purposes of this clause,-

(i) "the day of acceptance" means,-

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within thirty days

from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

- (ii) “the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;”

The above definition makes it clear that the actual charge from goods or rendering of services amounts to an acceptance.

Section 3 of the Act reads as follows:

“3. Liability of buyer to make payment.- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

[Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.]

A perusal of the above provision makes it clear that when the supplier makes supplies of any goods to any buyer, the buyer shall make payment therefor on or before the date agreed upon between them. But, the 1st respondent herein takes a plea that the appellant supplied defective material. The said plea has to be proved and established by him during the course of enquiry. Since he has not filed any material to show that the appellant herein had supplied the defective material, the plea of respondent No.1 has not been taken into consideration. Admittedly, goods have been received by the 1st respondent, but the amount has not been paid in pursuance of the invoice raised by the appellant. Therefore, the

1st respondent herein is bound to pay 3/4th of the amount as adjudged by the Arbitrator in terms of Section 7 of the Act, which reads as follows:

“7. Appeal.- No appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent. Of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such court or, as the case may be, such authority.”

5. Therefore, the first respondent is directed to deposit 3/4th of the amount as advised by the Arbitrator and however, if the 1st respondent deposits 3/4th of the amount into the trial Court, then the Original Petition shall be taken on file and the same shall be decided on merits. The 1st respondent shall deposit the amount within a period of three (03) months from the date of receipt of a copy of this order, failing which the original petition filed by the 1st respondent herein shall stand dismissed without further reference to the Court. Registry is directed not to entertain any application seeking ‘extension of time’ or ‘for being mentioned’ in this regard.

6. With the above direction, the Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE K.C. BHANU

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JUSTICE M.SEETHARAMA MURTI

Date:24.02.2015
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[\[1\]](#) AIR 2010 SC 1625