HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
CCCA No.61 of 2000

JUDGMENT:

This appeal is preferred by the plaintiff aggrieved by the decree and judgment dated 06.09.1999 in O.S.No.974 of 1990 on the file of V Senior Civil Judge, City Civil Court, Hyderabad whereby and whereunder learned Judge partly decreed the suit for principal amount of Rs.63,036/- and dismissed the claim for interest.

2) The factual matrix of the case is thus:

a) Plaintiff's case is that first defendant was a registered firm till 30.04.1987 comprising plaintiff, K.Venkateswarlu, Mohan Chandra and 2nd defendant as partners and on the death of Mohan Chandra on 30.04.1987 the remaining partners decided to dissolve the firm and the 2nd defendant took over the business with all its assets and liabilities as a proprietor concern. His Further case is that as per retirement deed dated 18.07.1987 defendants 1 and 2 were found liable to pay Rs.1,35,145/- to plaintiff; Rs.10,228/- to K.Venkateswarlu and Rs.10,025/- to the deceased—Mohan Chandra. The 2nd defendant paid amounts due to Venkatewarlu and LRs. of Mohan Chandra and also debts due to third parties. Sofaras dues of the plaintiff is concerned, defendants paid Rs.12,745.40 ps. on the date of execution of retirement deed and for the balance amount of Rs.1,22,400/- he issued four post-dated cheques dated 07.08.1987 for Rs.33,048/-; dated 07.09.1987 for Rs.32,436/-; dated 07.10.1987 Rs.31,824/-; dated 07.11.1987 for Rs.31,212/- which includes interest. While so, the first post-dated cheque dated 07.08.1987 was honoured and post-dated cheques 2 to 4 were dishonoured. Subsequently the plaintiff filed a criminal case on the file of XVI Metropolitan Magistrate, Hyderabad which was registered as Cr.No.229 of 1988 and investigation is pending after reference to the concerned police station by the Court. On much persuasion the plaintiff received payment under second post-dated cheque dated 07.09.1987 on 18.12.1987 along with interest. However, defendants did not arrange payment for the remaining post-dated cheques dated 07.10.1987 and 07.11.1987 even by January, 1988 as promised. Plaintiff's further case is that at the time of clearing of the second cheque the second defendant issued another cheque bearing No.268668 dated 18.12.1987 drawn by Vijaya Bank, Malakpet Branch, Hyderabad for Rs.4,932/- which amount represents the interest covered by cheque numbers 2 to 4 at 2% p.m. The defendants promised that they would pay the amount covered by remaining two cheques by first week of January, 1988 along with interest at the rate of 2% p.m. but they failed to do so. Hence, the plaintiff filed suit for recovery of Rs.63,036/- towards principal and Rs.42,417/- towards interest at the rate of 24% p.a.

b) Defendants opposed the suit contending that on the death of Mohan Chandra, the plaintiff and K.Venkateshwarlu expressed their desire to retire from partnership business and so the 2nd defendant took over the partnership firm as Sole Proprietor and he paid Rs.10,228 and Rs.1025.78ps. to Venkateshwarlu and heirs of Late Mohan Chandra. The plaintiff's interest was valued at Rs.1,35,145.42 and 2nd defendant paid Rs.12,745.42 and for the remaining amount of Rs.1,22,400/-, he issued four post-dated cheques drawn on Vijaya Bank, Malakpet, Hyderabad.

c) The further case of defendants is that the plaintiff received the amount covered by the 1st cheque on 25.08.1987. While-so, the APSEB under its letter dt: 24.07.1987 informed defendant that an amount of Rs.14,564/- was due from the plaintiff towards house building advance to the Board and if that amount was not paid, it would be recovered from the pending bills of the defendant. Though the defendant informed this fact to plaintiff, he failed to pay and therefore an amount of Rs.14,564/- was recovered by the Board from the security deposit belonging to the defendants.

d) The further case of defendants is that a refund order pertaining to the defendant was sent by the Income Tax Department to the plaintiff address which he withheld and the defendant came to know about it in the month of November, 1987 and after repeated demands the plaintiff returned the same in the first week of December, 1987. Thereby the defendant was deprived of the benefit of the said amount for about two months. Due to this and the plaintiff's failure to arrange payment to the Electricity Board, the 2nd defendant has not made the arrangement for honouring the cheques. The defendants contended that the complaint allegations made by the plaintiff are false. During the said proceedings, the plaintiff negotiated with the defendants and settled the matter for an amount of Rs.56,728/-. The defendant obtained a pay order on Vijaya Bank for the said amount on 10.02.1989 and wanted the plaintiff to execute two documents but the plaintiff has not turned up, the plaintiff has not cleared the amounts payable to the Electricity Board which amount has been deducted from the 2nd defendant's amount. The defendant told the plaintiff on settlement of the same, the balance amount will be paid. The defendant has not promised that the balance amount would be paid in the first week of January, 1988 along with interest @ 2% p.a. The defendant was ready to pay the balance amount. The plaintiff is not entitled to interest as there is no contract for the same.

e) Basing on the above pleadings, the trial Court framed following issues.

1) Whether the plaintiff is entitled for the suit amount with interest and costs as prayed for?

2) Whether the suit is barred by limitation?

3) To what relief?

f) During trial, the plaintiff was examined as PW.1 and

Exs.A.1 to A.15 were marked on his behalf. The 2nd defendant was examined as DW.1 and documents filed by him were marked as Exs.B.1 to B.13.

g) A perusal of the judgment would show that the income tax refund order is concerned, the trial Court observed that since the second post dated cheque is not the subject matter of the suit, it is irrelevant whether the delay in arranging the payment under the second post dated cheque by the defendant was due to plaintiff's failure in returning the income tax refund order or not. Sofaras an amount of Rs.14,564/- due by the plaintiff to APSEB towards interest of house building advance was concerned, the trial Court basing on evidence has held that the plaintiff was due of the said sum to the APSEB towards house building loan while he was working as a employee of APSEB and the APSEB ultimately recovered the said amount from the amount due to the 2nd defendant company as the plaintiff was a partner of the said company inspite of the defendant's intimation that plaintiff was no more a partner of the said company and in view of the said reason, the defendant has withheld the amounts due to the plaintiff. Then ultimately the trial Court decreed the suit for Rs.63,036/- towards principal but did not award any interest thereon on the observation that there was no agreement between the parties regarding interest and further, the plaintiff has not issued any notice before institution of the suit demanding payment of amount with interest and hence, plaintiff was not entitled to any interest.

Hence, the appeal against dismissal of the plaintiff's claim for interest.

3) The parties in this appeal are referred as they stood before the trial Court.

4) Heard arguments of Sri J. Prabhakar, learned counsel for appellant. Though respondents are appeared by learned counsel Sri V. Srikrishnudu but there is no representation and no arguments were addressed on their behalf inspite of granting several adjournments.

5) While criticising the trial Court dismissing the claim of the plaintiff for interest, learned counsel for appellant/plaintiff strenuously argued that though for arguments sake it is admitted that defendant withheld the principal amount due to the plaintiff because the amount of Rs.14,564/- payable by the plaintiff to APSEB was recovered from the 2nd defendant and inspite of knowing this, the plaintiff has not made any arrangement for return of the said amount, still the trial Court ought not to have dismissed the claim of the plaintiff for interest as it could have seen that the defendant has not deposited the amount due to the plaintiff as admitted by the defendant into the Court pending suit to show his bonafides and therefore, the plaintiff is entitled to interest atleast subsequent to the filing of the suit till realisation. Thus he prayed to allow the appeal and award suitable interest if any @ 24% p.a.

6) In the light of above arguments, the point for determination in this appeal is:

"Whether the trial Court was right in denying the interest to appellant/ plaintiff?

7) **POINT**: On a perusal of the facts, evidence and judgment of the trial Court, I find no force in the contention of learned counsel for appellant/ plaintiff. The 2nd defendant's contention was that in fact there was an agreement between the parties for payment of Rs.56,728/- by the defendant to plaintiff but the plaintiff denied such agreement. Be that it may, the record under Exs.A.10 to A.14 shows that the plaintiff paid correct amount due by him to APSEB i.e, Rs.9,709/- under Ex.A.10— receipt and thereafter correspondence was made between him and APSEB that the plaintiff requested the APSEB to refund the amount deducted by APSEB from the amounts of M/s.MEC Engineering Co. of the defendant and also pay the other amounts due by APSEB to M/s.MEC Engineering Co. and the APSEB replied under Ex.A.14 that they informed M/s. MEC Engineering Co. to contact Executive Engineer/TLC/Warangal for claiming the amount and the Executive Engineer was requested to refund the amount to M/s. MEC Engineering Co. The record under Exs.B.1 to B.4 would show that the appellant/plaintiff was due a sum of Rs.14,564/- to APSEB which amount the APSEB recovered from the bills payable to the 2nd defendant company inspite of the 2nd defendant

informing that the plaintiff already retired from the M/s. MEC Engineering Co. of the 2nd defendant. So there was a justification for the 2nd defendant to seek for deduction of the said amount from the amount due to the plaintiff and in that context the delay in paying the balance amount also can be understood till filing of the suit under appeal. However, his grievance is that till date he could not receive the said amount of Rs.14, 000/- and odd from the Executive Engineer and this fact was not challenged by the plaintiff. So in the ultimate analysis, what surfaced is that the amount of Rs.14,564/- which was unduly deducted by APSEB from the amounts due by it to M/s. MEC Engineering Co. of 2nd defendant company was not refunded to the defendants inspite of the letters correspondence made by both plaintiff as well as defendants. In such scenario, it is not just to find fault with the defendants if they have not deposited the agreed amount into Court subsequent to the filing of the suit. So on that count, they cannot be blamed. The trial Court was right to the extent of awarding the principal amount of Rs.63,036/- but it was not right in failing to award interest subsequent to the decree. By this, there is a scope for defendants not paying the decreetal amount immediately after the decree as they know, even if the plaintiff puts the decree in execution and even if the defendants delayed the execution, they would have to pay the principal amount alone ultimately. Therefore, the decree and judgment of the trial Court needs a slight correction.

8) In the result, this appeal is partly allowed with costs and ordered as follows:

a) While upholding the judgment of the trial Court in awarding a sum of Rs.63,036/- towards principal and proportionate costs, the other part of the judgment in dismissing the claim for interest is set aside and it is directed that defendants shall pay simple interest @ 6% p.a from the date of decree till the date of realisation.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 22.09.2015
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