THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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APPEAL SUIT Nos.542 of 2005 and 279 of 2006

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COMMON JUDGEMNT:

(Per the Hon'ble Sri Justice K.C.Bhanu)

Aggrieved by the judgment and decree dated 02.05.2005 passed by the II Additional District Judge, Madanapalle in Original Suit No.8 of 2001, Appeal Suit No.542 of 2005 is filed. Whereas, Appeal Suit No.279 of 2006 is directed against the judgment and decree dated 02.05.2005 passed by the II Additional District Judge, Madanapalle in Original Suit No.4 of 2005.

2. Since the questions of fact and law involved, and the parties, in both the appeals are one and the same, they are being disposed of by this Common Judgment.

3. M/s. Rudrakali Cotton Industries (for short, 'RCI firm') filed Original Suit No.8 of 2001 against M/s. Madanapalle Spinning Mills Limited (for short, 'MSML company'), whereas MSML company filed Original Suit No.4 of 2005 against RCI firm. For better appreciation of facts, the parties are hereinafter referred to, as 'RCI firm' and 'MSML company'.

4. RCI firm filed Original Suit No.8 of 2001 stating as follows.

RCI firm is a registered partnership firm. MSML company entered into an agreement on 20.11.1997 for job work contract for conversion of raw cotton supplied by RCI firm to it from time to time, into carded hosiery yarn on cones, subject to terms and conditions stipulated therein. One of the terms and conditions of the agreement is that the RCI firm should pay to the MSML company conversion charges at Rs.0.85 ps per count for which the latter should bear the expenses of conversion; that the MSML should realise the yarn atleast 85% to 86% from the raw material, 12% to 13% towards wastage and 2% towards invisible loss. It is also agreed by the MSML company to maintain proper accounts of all the wastage during the conversion of raw material into finished goods and to credit the account of RCI firm with regard to selling of waste cotton. RCI firm supplied altogether 8,28,091 kgs of raw cotton to MSML company from November, 1997 to August, 1998 on various dates for conversion of the same into yarn. Accordingly, MSML company, after verification of the quality of cotton, accepted the same, converted it into yarn, supplied processed yarn of 6,52,440 kgs to RCI firm on various dates as against 7,03,877 kgs. In terms of percentage, MSML company supplied only 78.78% of processed yarn as against the agreed ratio of 85% to 86%, and therefore, it is liable to supply the difference of processed yarn of 51,437 kgs or its value of Rs.19,41,842/- after deducting conversion and other incidental charges @ Rs.92/- per kg. Inspite of addressing letters and sending notice, MSML company did not respond. Hence, the suit for recovery of the same.

5. MSML company filed written statement contending *inter alia* as follows.

RCI firm failed to perform its part of contract as it failed to supply good quality cotton to convert the same into yarn. There was no response from RCI firm though it was informed to it that it could not run the specified spindles of 8000 as per the terms of the contract due to non-supply of stock by RCI firm for 15 days. RCI firm cannot expect good quality of yarn having supplied inferior quality of cotton. It has to pay an amount of Rs.3,62,524/- towards various transactions, and after giving credit of Rs.4,585/- to be received from Hariganga Cotton Waste Company, Coimbatore and Rs.1,00,064/- to be received from Atreya Process Private Limited, it has to pay Rs.2,57,335/- in addition to Rs.1,20,000/- towards damages. As a counter blast to Original Suit No.96 of 1999 on the file of the Senior Civil Judge, Madanapalle filed for recovery of the above amount, the present suit was filed with false allegations. The suit is not maintainable in view of declaration of the company as sick industrial company by the Board for Industrial and Financial Reconstruction (BIFR). Hence, it is prayed to dismiss the suit.

6. Basing on the above pleadings, the trial Court framed the following issues in Original Suit No.8 of 2001.

i) Whether the plaintiff is entitled for suit amount ?

ii) To what relief ?

7. MSML Company filed Original Suit No.96 of 1999 before the Senior Civil Judge, Madanapalle claiming Rs.4,44,879/- along with interest. The suit was later transferred to the file of the II Additional District Judge, Madanapalle and renumbered as Original Suit No.4 of 2005. The allegations in the plaint are almost similar to that of the allegations in the written statement in Original Suit No.8 of 2001. Similarly, the allegations in the written statement filed by RCI firm in this suit are also nothing but reiteration of its stand taken in the plaint in Original Suit No.8 of 2001.

8. Basing on the above pleadings, the trial Court framed the following issues in Original Suit No.4 of 2005.

i) Whether the plaintiff is not entitled for suit amount ?

ii) To what relief ?

9. Both the suits were clubbed together and common evidence was recorded by the trial Court.

10. During trial, on behalf of RCI firm, P.Ws.1 and 2 were examined and Exs.A1 to A10 were got marked, and on behalf of MSML company, D.W.1 was examined and Exs.B1 to B26 were got marked.

11. Considering the evidence on record, the trial Court, vide its common judgment, decreed Original Suit No.8 of 2001 with a direction to MSML company to deliver the difference of processed yarn of 51,437 kgs or in the alternative to reimburse the same in cash at Rs.19,41,842/- together with interest at 24% per annum from the

date of filing of the suit till the date of decree and thereafter at 6% till realisation, and dismissed Original Suit No.4 of 2005 holding that it was not open for MSML company to claim certain amount as damages due to non-supply of raw material for a particular period. Challenging the same, the present appeals were filed.

12. Learned counsel for the appellant in Appeal Suit No.279 of 2006 (MSML company) vehemently contended that the parties are bound by the terms of the agreement dated 20.11.1997 but the conditions laid down in the agreement were not followed; that it is specifically pleaded that in terms of clause (11) of the agreement, RCI firm shall not, at a later date, charge the MSML company with any liability towards defective conversion, excess wastage and the like even in the event of the RCI firm not exercising its option to supervise at the company's plant, and therefore, he prays to set aside the judgment and decree in Original Suit No.8 of 2001 and dismiss the suit.

13. On the other hand, learned counsel for the respondent/RCI firm vehemently contended that in terms of clause (5) of the agreement, the defendant/MSML company shall endeavour to convert that out of all the raw materials supplied by the RCI firm atleast 85% to 86% obtained in the form of yarn; 12% to 13% towards waste and 2% towards invisible loss, subject to the quality of the cotton supplied by RCI firm; that admittedly MSML company supplied less than 78.78% only as against the agreed percentage of 85 to 86, and the trial Court, after considering the evidence on record, rightly decreed the Original Suit No.8 of 2001 and dismissed Original Suit No.4 of 2005 filed by MSML company, and prayed to dismiss both the appeals.

14. Now, the points for consideration in these appeals are:

> i) Whether MSML company is liable to pay for the difference of processed yarn of 51,437 kgs or in the alternative its value of Rs.19,41,842/-, to RCI firm, as claimed in Original Suit No.8 of 2001?
>
> ii) Whether MSML company is entitled for Rs.4,44,879/- together with interest from RCI firm, as claimed in Original Suit No.4 of 2005 ?

iii) To what relief ?

POINT No.1:

> Whether MSML company is liable to pay for the difference of processed yarn of 51,437 kgs or in the alternative its value of Rs.19,41,842/-, to RCI firm, as claimed in Original Suit No.8 of 2001?

15. There is no dispute that MSML company and RCI firm entered into an agreement for job work contract on 20.11.1997. Some of the terms and conditions of the agreement which are relevant for the purpose of disposal of the appeals are- i) MSML company shall convert cotton fibres supplied by RCI firm from time to time on job work basis into carded hosiery yard on cones; ii) RCI firm should provide minimum 15 days stocks of good quality cotton with the MSML company at any time to feed 8,000 spindles at 40s average count; iii) RCI firm shall pay to the MSML company, conversion charges at Rs.0.85 ps per count per kg (for example for 40s count, it shall be Rs.34/- per kg of yarn produced) in respect of all the expenses of conversion undertaken by the company for and on behalf of RCI and the same shall be paid to the company by RCI within one day from the date of intimation by the company that the cotton fibres supplied by RCI firm were converted into cotton carded hosiery yarn in accordance with their instructions.

16. It is settled principle that an agreement is a contract when it is made with free consent of the parties competent to contract for a lawful consideration. In other words, in order to constitute a contract, both parties must consent to the terms of the agreement. Interpretation of clauses (5) and (11) of the agreement dated 20.11.1997 is the point to be decided in these two appeals. The said clauses read as follows:

> "(5) Computation of conversion rate shall be on actual weight and count as supplied by the Company for the purposes of conversion charges. The Company shall endeavour to convert that out of all the raw materials supplied by RCI atleast 85 to 86% obtained in the form of Yarn, 12/13% towards waste and 2% towards invisible

> loss, subject to the quality of the Cotton supplied by RCI;
>
> (11) RCI shall be entitled to appoint its own personnel for the purposes of supervision of the operations of the Company during conversion of raw material supplied by RCI into finished products. All the expenses including salary of such personnel shall be to the account of RCI. The Management and staff of the Company shall extend all co-operation and assistance of such personnel appointed by RCI. RCI shall not at a later date charge the company with any liability towards defective conversion, excess wastage and the like even in the event of RCI not exercising its option to supervise at the company's plant."

17. With regard to interpretation of terms of a contract, it is pertinent to refer to a decision of the Hon'ble Supreme Court of India, in *Rajasthan State Industrial Development and Investment Corporation & another v. Diamond & Gem Development Corporation Limited & another*, wherein it is held thus: (para 23)

> "A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however is reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without giving any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. (Vide: United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, AIR 2004 SC 4794; Polymat India P. Ltd. & Anr. v. National Insurance Co. Ltd. & Ors., AIR 2005 SC 286)."

Therefore, the points are required to be decided in the light of the aforesaid settled legal proposition laid down by the Hon'ble Supreme Court of India.

18. It is the specific pleading taken by the MSML company that the

RCI firm had not supplied good quality of cotton to convert the same into yarn and the said fact was brought to the notice of the personnel of the firm, who were supervising the conversion process. Whereas the specific stand taken by the RCI firm is that MSML company accepted for the cotton supplied after verification of the quality of the cotton and then only the company converted it into yarn, but it was unable to convert the raw yarn into processed yarn and committed breach of the contract.

19. P.W.1 is one of the partners of RCI firm. In his evidence, he reiterated the aspects which are mentioned in the plaint. His evidence is that MSML company, after verification of the quality of the cotton, had taken up conversion. He admitted in his cross-examination that as per clause (11) of Ex.A2-agreement, he appointed one Surendra to supervise the process of conversion of cotton into yarn and he had to look after loading and unloading of raw material and finished goods. He also admitted that the quality of the cotton supplied by the firm in each month is shown in Ex.A3 and as and when the load was ready, the company used to despatch the yarn to the firm, and along with yarn, copies of Central Excise duty challan, way bill and debit note of conversion charges were being sent by the company to RCI firm by duly giving a copy of the same to the supervisor appointed by the firm. He admitted that Exs.B1 to B14 are debit slips and yarn particulars reports. He stated that Exs.B4, B8, B12 and B13 are not acknowledged by their supervisor, whereas the others were acknowledged by him.

20. P.W.2 is the despatch clerk of the RCI firm. His evidence is that he was never allowed to supervise the processing work in respect of conversion of raw cotton into processed yarn in the spinning mills, and that he does not know about the manufacturing process in the MSML company. He did not state that good quality of cotton was sent from time to time to the company. Admittedly, he used to send production details to his firm. Therefore, his evidence does not disclose that there was a defective conversion of cotton into yarn or that there was excess wastage due to that defective conversion. The

RCI firm has not raised any dispute when the cotton was converted into yarn for realisation. It is not in dispute that details of yarn realisation in the month of December, 1997 and April, 1998 to July, 1998 were received by the supervisor of the RCI firm.

21. D.W.1, who is the Chief Accountant of the MSML company, stated that as per clause (11) of Ex.A2-agreement, the RCI firm shall not, at a later stage, charge the company with any liability for any defective conversion or excess wastage, and that the condition also requires that quality cotton should be supplied; that the conversion process had taken place in the presence of the supervising staff of the firm and the staff has not raised any objection.

22. There cannot be any dispute that all the clauses in an agreement have to be read together, but not in isolation, because it is the joint intention of both the parties, and the joint intention of the parties has to be discovered from the entirety of the contract and the circumstances surrounding its formation. If the Court reads clause (5) of the agreement in isolation, it provides that MSML company shall endeavour to convert that out of the raw materials supplied by RCI firm atleast 85% to 86% obtained in the form of yarn. Of course, that is subject to the quality of the cotton supplied by the RCI form, It is not in dispute about the quantity of the cotton that has been supplied by the RCI firm to the MSML company and the yield of yarn after conversion of the raw material. The dispute is whether the RCI firm is entitled to charge MSML company with any liability towards defective conversion and excess wastage even in the event of RCI firm not exercising the firm’s option to supervise at the company’s plant.

23. As per Clause (11) of the agreement, staff and management of MSML company shall extend all co-operation and assistance to the personnel appointed by RCI firm for the purpose of supervising the operations of the company during conversion of raw material supplied by the firm into finished product of yarn. So, option has been given to the staff of the RCI firm to supervise the process of conversion of the raw material into yarn. It is also clear from the said

clause that at a later date, the RCI firm shall not charge the company with any liability towards defective conversion, excess wastage and the like. What clause (5) says is that MSML company shall endeavour to convert the raw material to an extent of 85% to 86% of yarn. Therefore, though the MSML company had taken all steps or made endeavour to convert the raw material into yarn, if the yield of yarn is less than 85%, whether the company is liable to pay difference of yarn, which is less than 85% ? The said clause is silent with regard to the situation when the MSML company failed to convert raw material into yarn atleast to an extent of 85%. Clauses (5) and (11) of the agreement have to be read together whenever any dispute arises between the parties with regard to conversion of yarn less than 85%. In such circumstances and when RCI firm has agreed not to charge the MSML company with any liability towards defective conversion and excess wastage, can the Court give a direction to pay for the difference of the yarn obtained in the process of conversion which is less than 85%.

24. It is not in dispute that MSML company used to maintain records regarding receipt of raw material and despatch of processed yarn from the mill. Ex.B26 is the Photostat copy of relevant entries in various sheets relating to the RCI firm with regard to conversion of cotton into yarn. Original of this document was produced and after comparison of the original with the Photostat copy, the said document was marked. Ex.B26 is not shown to be fabricated or pressed into service by the MSML company for the purpose of a false claim. From Ex.B26, it is clear about supply of raw material by the RCI firm and conversion of the same into yarn by the company. It is not the case of the MSML company that there was defective conversion of cotton into yarn. Except suggesting that Ex.B26 is created for this case, nothing has been elicited to doubt the contents in it. This document was prepared during the course of official and business transactions of the MSML company. Therefore, the entries therein are presumed to be correct unless contrary is shown. The entries relating to Ex.B26 were being sent to the Central Excise Department and as per Rules,

they can inspect the records at any time. After comparing the relevant entries in Ex.B26 and after satisfying with the correctness of the same, the Central Excise Department will accept it. Therefore, Ex.B26 is the statutory document prepared as per law. It is not the case of RCI firm that Central Excise Department officials have not verified the statement of account sent by the MSML company to them with the original of Ex.B26.

25. In view of clause (11) of Ex.A2-agreement, RCI firm is not entitled to charge MSML company with any liability with regard to defective conversion or excess wastage. In such a view of the matter, when the percentage of conversion of cotton into yarn is less than 85%, as agreed, RCI firm is not entitled to claim the difference of processed yarn of 51,437 kgs or in the alternative Rs.19,41,842/-. The trial Court has not considered these aspects and came to wrong conclusions. The conclusions arrived at, by the trial Court are solely based upon clause (5) of Ex.A2-agreement. As already pointed out, clause (5) of the agreement alone cannot be read in isolation and the agreement in its entirety has to be taken into account. Therefore, the suit claim in Original Suit No.8 of 2001 is liable to be rejected. Accordingly, this point is answered in favour of MSML company and against RCI firm.

<u>POINT No.2:</u>

> ii) Whether MSML company is entitled for Rs.4,44,879/- together with interest from RCI firm, as claimed in Original Suit No.4 of 2005 ?

26. MSML company claimed Rs.4,44,879/- as due by the RCI firm under various transactions, including damages to a tune of Rs.1,29,000/- on the ground that RCI firm failed to supply required stock with good quality for the period from 01.02.1998 to 22.02.1998, as a result of which loss had occurred to it. As per the conditions of Ex.A2-agreement, RCI firm should provide minimum 15 days stocks of good quality cotton with the MSML company at any time to feed 8,000 spindles at 40s average count. It is stated by D.W.1 that the plaintiff supplied cotton for certain period to feed 8000 spindles, but not able to supply cotton to feed 8000 spindles for some time and

therefore when there was failure on the part of the RCI firm in supplying cotton to feed 8000 spindles, the MSML company sustained loss which the RCI firm is liable to pay. Though certain documents were exhibited through him, he did not specifically state for which period RCI firm supplied cotton to feed less than 8,000 spindles. He has not specifically pointed out under which document RCI firm supplied cotton less than the quantity agreed i.e. the quantity must feed 8,000 spindles. Even assuming for a moment that RCI firm has not supplied sufficient raw material so as to feed 8,000 spindles, still there is no clause in Ex.A2-agreement that MSML company is entitled for the damages for supply of less quantity of cotton. Since there was no default clause in Ex.A2-agreement, the question of payment of damages for non-supply of required quantity of cotton by RCI firm to the MSML company does not arise. Both parties are bound by the terms and conditions as agreed between them as per Ex.A2-agreement. As there is no right conferred upon MSML company to claim damages for non-supply of requisite cotton, the trial Court rightly dismissed Original Suit No.4 of 2005, and there are no grounds to interfere with the same. Accordingly, the point is answered in favour of RCI firm.

POINT No.3: TO WHAT RELIEF ?

27. In the result, Appeal Suit No.542 of 2005 is allowed setting aside the judgment and decree dated 02.05.2005 in Original Suit No.8 of 2001 on the file of the II Additional District Judge, Madanapalle, and consequently, Original Suit No.8 of 2001 shall stand dismissed. Appeal Suit No.279 of 2006 is dismissed confirming the judgment and decree dated 02.05.2005 in Original Suit No.4 of 2005 on the file of the II Additional District Judge, Madanapalle. No order as to costs of the appeals. Miscellaneous petitions pending, if any, in the appeals shall stand dismissed.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

25.03.2015

DRK

THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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COMMON JUDGMENT

IN

A.S.Nos.542 of 2005 and 279 of 2006

(Per the Hon'ble Sri Justice K.C.Bhanu)

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