

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.NO. 742 OF 1997

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JUDGMENT:

The plaintiff, in whose favour decree of specific performance was granted, filed this appeal challenging the interest granted from 01.12.1990 to 18.02.1992 at the rate of 18% per annum and claiming suit costs, passed in O.S.No.36 of 1992 by the court of Subordinate Judge, Kakinada on 25.03.1996.

For convenience of reference, the ranks given to the parties before the trial court will be adopted throughout the judgment.

The plaintiff filed the suit for specific performance of agreement of sale dated 20.10.1990 marked as Ex.A.1 and at the time of entering into agreement, the plaintiff paid a sum of Rs.1,85,000/- and obtained agreement of sale contract and one of the terms of agreement is that the plaintiff has to deposit the balance of Rs.91,000/- on or before 01.12.1990, but the plaintiff deposited the amount only on 18.02.1992. However, the trial court decreed the suit granting interest at the rate of 18% per annum on Rs.91,000/- for the period from 01.12.1990 to 18.02.1992, while declining to grant suit costs of Rs.13,512.25 paise as per the cost memo filed by the plaintiff.

The defendant denied execution of agreement of sale explaining reasons for preventing into the existence of the above transaction. But the plaintiff created imaginary disputes that there are none for the plaintiff and defendant never promised to settle any such disputes. The plaintiff is never ready and willing to perform his part of his obligation by paying balance part of the sale consideration.

The defendant further contended that there are no merits in the contentions raised by the plaintiff and he is not entitled to claim any relief. When the plaintiff got issued the notice, the defendant got issued a reply dated 29.01.1992 with correct facts and willingness to execute the sale deed. Hence, the plaintiff prayed this court for dismissal of the

appeal.

Basing on the averments made by the plaintiff and the defendant, the trial court framed the following issues:

1. Whether plaintiff is entitled to get specific performance decree?
2. Whether the plaintiff is ready and willing to perform his part of contract?
3. To what relief.

During the course of trial, on behalf of the plaintiff, P.Ws 1 and 2 were examined and Exs. A.1 to A.9 were marked. On behalf of the defendant, D.Ws. 1 and 2 were examined and Ex.B.1 was marked.

Upon hearing argument of both counsel and considering the oral and documentary evidence on record, the trial court held that the plaintiff shall deposit the amount due i.e., Rs.91,000/- together with interest at the rate of 18% per annum, from 01.12.1990 to 18.02.1992 into the court within one month from the date of decree.

The said findings are challenged before this court on the ground that there is no clause for payment of interest and thereby grant of interest at the rate of 18% is excessive and arbitrary and prayed this court to set aside the grant of interest and it is also contended that failure to grant suit costs is erroneous since decree follows costs and no specific reason was assigned for not awarding suit costs and therefore prayed to set aside the decree and judgment to the extent of award of interest at the rate of 18% per annum from 01.12.1990 to 18.02.1992 and to grant suit costs.

During the course of arguments, learned counsel for the appellant while reiterating the contentions raised before the court requested to set aside the decree to the extent of grant of interest at the rate of 18% per annum from 01.12.1990 to 18.02.1992, as there was no term incorporated in Ex.A.2 for payment of interest and to award suit costs of Rs.13,512.25 paise.

No representation for the respondent.

Considering the contentions of learned counsel for the plaintiff

and after perusing the judgment and decree of the trial court, the points that arose for consideration are as follows:

1. Whether the plaintiff is liable to pay interest at the rate of 18% per annum on the balance of Rs.91,000/- from 01.12.1990 to 18.02.1992?
2. Whether the plaintiff is entitled to suit costs of Rs.13,512.25 paise?

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Point No.1:

Undisputedly, the suit was decreed awarding interest in favour of the defendant at the rate of 18% per annum from 01.12.1990 to 18.02.1992 on the balance of Rs.91,000/-. As per the terms of agreement, the plaintiff is under obligation to pay or deposit the balance of sale consideration on or before 01.12.1990 and admittedly, the plaintiff not paid or deposited the balance amount within the stipulated time i.e., on or before 01.12.1990, but deposited on 18.02.1992, i.e., during pendency of this suit. On account of delay in payment or deposit, the defendant is bound to lose the income by way of interest on the amount. Therefore, the defendant has to be compensate by granting interest. However, learned counsel for the plaintiff would contend that there was no stipulation for payment of interest at the rate of 18% per annum or at any rate and in the absence of such clause, the plaintiff cannot be said that he is liable to pay interest. No doubt there was no stipulation in the agreement of sale marked as Ex.A.1 for payment of interest, but when delay was caused on account of the lapse on the part of the plaintiff, the plaintiff has to pay interest.

According to Section 3 of the Interest Act, 1978 (for short, 'the Act'), in any proceedings for recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that

is to say, if the proceedings relate to a debt payable by virtue of written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings or if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

The present facts of the case would directly attract Section 3(1) (a) of the Act. Though there is no term for payment of interest, the court can award interest at the current rate, but the parties did not produce any evidence what was the current rate of interest on the date of filing of the suit. However, it is evident from the record that the plaintiff failed to deposit the amount within the stipulated time i.e., on or before 01.12.1990 in terms of Ex.A.1.; and for the fault of the plaintiff, the defendant cannot lose income by way of the interest. Therefore, I find no illegality in the decree passed by the trial court awarding interest at the rate of 18% per annum on the balance of Rs.91,000/- from 01.12.1990 to 18.02.1992 as the delay was caused by the plaintiff without any reasonable cause. Accordingly, findings of the trial court regarding award of interest is confirmed in favour of the respondent and against the appellant.

Point No.2:

The plaintiff claimed suit costs of Rs.13,512.25 paise, as per the memo of cost filed before the trial court. But the trial court did not award suit costs without any reason. Section 35 of CPC deals with suit costs and according to it subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the

exercise of such powers. Where the court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

In the instant case, the trial court did not record any reason as required under Section 35(2) of C.P.C., but the trial court attributed latches to the plaintiff in deposit of Rs.91,000/- as stipulated in Ex.A.1 i.e., on or before 01.12.1990. Therefore, the trial court declined to award suit costs but no reason was assigned. However, it is purely discretion of court either to grant or to deny suit costs and the trial court impliedly exercised its discretion not to award costs in view of the latches on the part of the plaintiff. Therefore, the plaintiff is not entitled to suit costs. Accordingly, the point is held in favour of the respondent and against the appellant.

In view of the foregoing discussion, I find no grounds to interfere with the findings of the trial court. Accordingly, the appeal is dismissed but no costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.

M.SATYANARAYANA MURTHY, J

30.06.2015

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