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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1035 OF 2015
WITH
CIVIL APPLICATION NO.3163 OF 2015**

Maharashtra Krishna Valley
Development Corporation and Ors. ... Appellants

Versus

B. Kumaraswamy Reddy ... Respondent

Mr. Vijay Dinkarrao Patil for the Appellants and Applicants.
Mr. N.V. Walawalkar, Senior Advocate i/by Mr. Chetan Gajanan Patil for
the Respondent.

**CORAM : A.S. OKA &
C.V. BHADANG, JJ.**

DATE : 1st FEBRUARY, 2016

ORAL JUDGMENT (Per A.S. Oka, J.)

1. Notice for final disposal was already issued. The Appellants who are the defendants have taken exception to the Judgment and Decree dated 2nd July, 2015 passed by the learned Civil Judge, Senior Division, Islampur. The said Decree has been made on an application at Exhibit-24 made by the Respondent – Plaintiff under Rule 6 Order XII of the Code of Civil Procedure, 1908 (for short “the said Code”).

2. The Respondent filed a Suit against the Appellants for various reliefs such as declaration. The prayers in the Suit read thus :-

- “(a) Declare that the questioned undertaking obtained by the defendant No.2 are non-est, null and void and not binding on the Plaintiff and pass a decree accordingly.
- (b) Declare that the decisions vide letters dated 21-9-2012, 29-11-2012 and 12-3-2013 respectively made by Defendant Nos.2 to 4 are null and void, non-est and not binding on the plaintiff and the plaintiff cannot be deprived of his right to recover the amounts claimed in the present suit and pass a decree accordingly.
- (c) Order and decree that Defendant No.1 do pay to the Plaintiff the sum of Rs.63,44,73,192/- as per Particulars of Claim set out in para 7 hereinabove with further interest on the principal amount of Rs.20,90,30,209/- at the rate of 12% per annum from the date of filing of the suit till payment and/or realization of the entire amount and pass a decree accordingly.
- (d) Award costs of this suit and pass a decree accordingly.
- (e) Grant such further and other relief/ reliefs that this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice to the plaintiff abovenamed.”

3. A detailed written statement was filed by the Appellants. The Appellants prayed for dismissal of the Suit and grant of compensatory costs. The material part of the written statement for the purposes of this Appeal is paragraph 16 which contains a chart which

shows total unpaid amount of Rs.20.90 Crores. The material part of paragraph 16 reads thus :-

“The plaintiffs claim of amount is frivolous, vexatious and baseless and hence liable to be rejected. The calculations shown in the amount charge are true and correct, the Defendant Corporation is at due of on Rs.20.90 Crores. It is pertinent to note that, as the plaintiff has agreed to receive the said amount of Rs.20.90 Crore from Defendant Corporation as per the availability of funds to the Defendant Corporation, the plaintiff's suit is liable to be dismissed with costs.”

(underline supplied)

4. The operative part of the impugned decree reads thus :-

- “1. Application Exh.24 is allowed with costs to plaintiff.
 2. Accordingly, at this stage defendants no.1 to 4 are jointly and severally directed to pay a sum of Rs.20,90,30,209=00 (Twenty Crores Ninety Lacs Two Hundred and Nine Rupees) as admitted by them to the plaintiff along with interest @ Rs.12% p.a. from the date 30.04.2011 till its realization.
 3. Plaintiff is at liberty to proceed with his remaining claim.
 4. Decree be drawn up accordingly.
- Pronounced in open Court.”

5. This Appeal is confined only to the interest part of the decree and there is no challenge to the decree passed to the extent of the payment of sum of Rs.20,90,30,209/-.

6 The first submission of the learned counsel appearing for the Appellants is that even assuming that there was an admission of the suit claim of Rs.20,90,30,209/-, the Appellants never admitted the claim for interest made by the Respondents. Secondly, he submitted that even in prayer clause (c) of the plaint, the interest on the aforesaid amount at the rate of 12% amount is claimed from the date of filing of the suit which is 24th April, 2014, but trial Court has granted interest from 30th April, 2011. The learned Senior Counsel appearing for the Respondent supported the Judgment and Decree. He invited our attention to the averments made in the plaint and the statement of claims in paragraph 7 of the plaint. His submission is that the the total claim specifically made in prayer clause (c) is of Rs.63,44,73,192/- includes the interest from 27th April, 2011.

7. We have carefully considered the submissions. The impugned decree is a decree on admission passed in exercise of the powers under Rule 6 of Order XII of the said Code. We have perused the impugned judgment. Perusal of the Judgment shows that there is no finding recorded by the learned trial Judge that there was any admission on the part of the Appellants to pay interest on the sum of Rs.20,90,30,209/- and that also from 30th April, 2011 till realization. The learned trial Judge has relied upon the admissions in paragraph 16

of the written statement which we have quoted above. In the said paragraph, there is no admission on the part of the Appellants of the alleged liability to pay interest. In fact, in paragraph 5 of the written statement, while dealing with paragraph 6 of the plaint, the Appellants relied upon Condition No.19 which provided that no interest will be payable on money due on the basis of the contract. Therefore, the claim of interest has been specifically disputed by the Appellants. Hence, there was no admission on the part of the Appellants which warranted passing of a decree as far as the interest is concerned. The issue of entitlement of the Respondent to interest as prayed will have to be gone into when the Suit is decided finally on the basis of the evidence adduced.

8. Therefore, the Appeal must succeed in part and we pass the following order :-

ORDER

- (i) The following part of clause 2 of the impugned Judgment and Decree dated 2nd July, 2015 is quashed and set aside :-

“along with interest @ Rs.12% p.a. from the date 30.04.2011 till its realization”;

- (ii) In view of clause 3 of the operative part of the decree, it is very clear that the first Respondent will be entitled to proceed with his remaining claim including the claim for interest as set out in paragraph 7 of the plaint;
- (iii) All contentions of the parties in respect of the remaining claims in the plaint are expressly kept open;
- (iv) The Appeal is accordingly partly allowed on above terms;
- (v) There will be no order as to costs;
- (vi) Civil Application does not survive and the same is accordingly disposed of.

(C.V. BHADANG, J)

(A.S. OKA, J)