HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.C.C.A.No.229 of 1999

ORDER:

The defendants 1 and 2 i.e., Food Corporation of India, represented by its Chairman, New Delhi and its Senior Regional Manager, Hyderabad in O.S.No.1250 of 1986 on the file of II Senior Civil Judge, City Civil Court, Hyderabad, are the appellants in impugning the legality and correctness of the trial Court's decree and judgment in favour of the plaintiff M/s. Bhaskar Fertilizers, registered partnership firm with Head Office at Tadepalligudem of West Godavari District, represented by its Managing Partner, M.Raja Bhaskara Rao (since died) and now represented by one of his sons, M.Rama Venkata Krishna Narasimha Rao.

2. The suit was filed for recovery of Rs.5,39,797.93 ps. on 24.10.1986 with interest from the date of suit till realization @ 12% p.a. thereon and for costs. The trial Court decreed the suit for said sum as prayed for, together with interest @12% p.a. on only Rs.3,96,236.06 ps. original amount and not on the suit claim till realization with costs of Rs.18,158/-; vide decree and judgment dated 17.06.1999.

3. Pending appeal, as per orders in CMP.No.25920 of 1999 dated 21.12.1999, the defendants/appellants were directed to deposit 50% of the trial Court's decree amount with costs in eights weeks and the plaintiff/respondent was permitted to withdraw 50% of the amount so deposited without furnishing security and for remaining 50% so deposited to withdraw on furnishing security. As per modified orders in CMP No.4501 of 2000 dated 27.03.2000, for not fully complied to deposit, but for suit amount, there was a direction to deposit further Rs.3,12,725/- within eight weeks before the trial Court. There is nothing more on record about compliance. Definitely trial Court record will prove what is deposited and what is withdrawn to recover for remaining if any, subject to result of the appeal.

4. The Division Bench of this Court earlier heard the present appeal by sitting against the trial Court's decree and judgment supra and ultimately it was disposed of, by confirming the suit claim and upholding the findings of the trial Court; however, by reducing the rate of interest from 12% to 9% p.a. with observation, to subserve the ends of justice by scaling down the rate of interest.

5. Against the appeal decree and judgment of the Division Bench of this Court dated 10.07.2012, the defendants preferred appeal before the Apex Court, vide Civil Appeal No.5092 of 2014. The Civil Appeal was heard and disposed of by a Division Bench of the Apex Court, vide judgment dated 05.05.2014 setting aside that the

1st appellate Court's decree and judgment supra on the ground of delay, in dismissal after hearing arguments, with observation of human memory would not be set good to remember as to what had transpired in the Court nearly three years prior to the pronouncement of judgment and thereby with a direction while remanding the matter back to this Court for fresh disposal of the appeal on merits as expeditiously as possible.

6. The matter later posted for hearing and in the meantime from the death of Managing Partner of the plaintiff-Firm by name, M.Raja Bhaskara Rao on 31.01.2015, the firm again arrayed as 2nd respondent/plaintiff to the appeal through the present Managing Partner, M.Rama Venkata Krishna Narasimha Rao and the memo was recorded and it is thereafter recently the matter came up for final hearing. After hearing both parties, the matter is reserved for judgment

on 29.04.2016.

7. In course of hearing the appeal, one of the major contentions of the learned counsel for the appellants/defendants in support of the grounds of appeal is that signature of the plaintiff in Ex.B7-receipt for Rs.1,24,371.46 ps. obtained by FCI officials not in dispute, and after alleged letter if not true, there is no immediate police complaint or action and that amount should have been considered by the trial Court for giving deduction. The another contention is the amount claimed towards transport charges or whatever the amounts claimed beyond the period of three years is barred by time under limitation law for not enforceable and that was not considered by the trial Court. The other contention is that once defendants not availed the amounts for the fertilizers supplied, entitled to interest for the delayed payments as per the stipulations, the trial Court should have considered the interest claim to deduct and should have been dismissed the suit and thereby sought for allowing the appeal.

8. Whereas, it is the contention of the learned counsel for the respondent/plaintiff that the trial Court's decree and judgment passed after full dressed trial are supported by reasons in arriving right conclusions by discussing the oral and documentary evidence on

record on every aspect in answering the *lis* and in arriving the finding and thus for this Court while sitting in appeal there is nothing to interfere. It is also the submission that the suit claim is no way barred by time and the delay on the part of defendants in encashing, for their any laches does not entitled them to make plaintiff liable for any interest and thereby sought for dismissal of the appeal.

9. Heard both sides at length as referred above and perused the material on record.

10. The points that arise for consideration in deciding the appeal are formulated as follows:

i) Whether the suit claim for road transportation reimbursement charges, cash rebate payments, refund of amount for stock not delivered with amount incurred for consequential sales tax and other rebates after adjustment of the amounts said to have been paid by the defendant-F.C.I. to the plaintiff firm, by appropriation towards interest in making the suit claim for Rs.5,39,797.93ps. that was decreed by the trial Court is unsustainable and otherwise barred by limitation and it requires interference by this Court while sitting against, including in not believing of Ex.B7-payment receipt of Rs.1,24,371.46 ps. by the trial Court?

ii) Whether the interest awarded by the trial

Court at 12% p.a. on the original amount of Rs.3,96,236.06 ps. is unsustainable and if so to award at what rate and on what amount?

iii) To what extent, for this Court while sitting in appeal against the trial Court's decree and judgment, with the findings impugned covered by the points 1 and 2 supra, requires interference and with what observations?

iv) To what result?

11. **<u>POINTS 1 TO 3</u>**:

Before coming to the facts in detail, to decide the appeal *lis*, it is the settled law in dealing for appreciation of the evidence by the appellate Courts that, the 1st appellate Court must re-appreciate (appreciate afresh) the entire evidence in giving findings supported by reasons so as to decide the lis and there from to find how far the decision of the trial court on any of its findings and conclusions are correct or incorrect, including for confirmation or reversal of said findings of the trial Court vide decision of the Apex Court in **Santhosh Hazaria v. Purushottam Tiwari(Dead) by L.Rs**[1]. In coming to the appreciation of the evidence concerned, as laid down by the Apex Court in **Madan Lal Vs., Yoga Bai**[2], in Civil appeals, particularly in first appeal,the appreciation of evidence is at large like appreciation of evidence in a suit, more particularly from Order XLI, Rule 33 and 24 C.P.C. Coming to the powers of the 1st appellate Court in this regard concerned, more particularly from Order XLI, Rule 33 and 24 C.P.C. and from several expressions of the Apex Court including **Koksingh Vs. Deokabai[3], Giani Ram Vs. Ramjilal[4]; Jagdev singh sidhanji Vs. Pratap singh Daulta[5] in Banarasi Vs.Ramphal[6] and Madan Lal (supra),** the 1st appellate court is competent to grant relief if finds appropriate on any facts though not granted by the trial Court in rendering complete justice and prevent to the extent possible scope for further litigation in order to give finality to the *lis*, subject to the same is within the scope of the *lis* for not beyond.

12. No doubt, the burden of showing that the judgment or even a finding therein of the trial Court under challenge in appeal is wrong or incorrect either wholly or in part lies on the appellant and same is also the proposition in the course of the cross-objections, as the cross-objectors are at par with appellants, so far as their contentions in the cross-objections concerned, in the course of the cross-objections in shifting the burden

on them, from hearing the main appeal. In appreciation of evidence the Court will not only examine the oral testimony, but also the surrounding circumstances and probabilities of the case. It is because evidence is to be judged by test of human probabilities vide decisions reported in **Debi Prasad Vs. Tribeni devi**[7]**; Commissioner of Income Tax, West Bengal, Calcutta Vs. Durgaprasad more**[8] **and Maria M.S.Fernandes Vs. Erasno J.De Sequerie**[9]**.** It was also laid down in this regard that, it is the duty of the Judge to consider the evidence objectively and dispassionately to examine it in the light of probabilities and decide in which was the truth lies. The appreciation of evidence is no doubt from experience and knowledge of human affairs depending upon facts and circumstances of each case and regard had to the credibility of the witness, probative value of the documents, lapse of time if any in proof of the events and occurrences for drawing inferences, from consistency to the material on record to draw wherever required the necessary inferences and conclusions from the broad probabilities and from preponderance from the overall view of entire case to judge as to any fact is proved or not proved or disproved vide decision in

Chaturbhuj Pande Vs. Collector[10] and **Ishwari Prasad Misra Vs.Md.Isa**[11]

13. In **Balasankar Vs. Charity Commissioner, Gujarat**[12] at para-19 and in **Prem Lata v. Arhant Kumar**[13] at para-2, it was held by the Apex Court that, burden of proof pales into insignificance when both parties adduced evidence and it is the duty of the court to appreciate the entire evidence adduced by both sides in deciding the lis. Further a party proved in possession of best evidence is bound to produce the same to throw light on the lis and to unfold any truth and thereby cannot take shelter on the abstract doctrine of burden of proof saying burden not on him to prove by filing the same, as laid down in **Gopal Krishnaji Ketkar vs Mohamed Haji Latif** [14], **NIC vs. Jugal Kishore**[15], and **Lakhan Sao Vs.Dharam Chowdhary**[16].

14. Before coming to decide how far the trial Court was correct or not in arriving at the findings impugned in the appeal concerned, the basic principle of law that also to be kept in mind by the appellate Court is that, where trial Court rely on facts and probabilities basing on credibility also with opportunity to observe the demeanor of the witnesses, the findings of the trial Court when based on reasons and by consideration of the contents of the documents and oral evidence and on all facts and relevant circumstances, merely because some other view is also possible, the appellate Court shall not ordinarily or casually interfere with and reverse the findings of the trial Court- vide decisions, **Mohammad Salamatullah Vs.Government of A.P.**[17], **Narbada Prasad Vs.Chhaganlal**[18] at paras 10 & 11 and **Sann Madho Das Vs.Mukand Ram**[19] and **Sarju Pershad Ramdeo Sahu Vs.Jwaleshwari Pratap Narajusingh**[20]**.**

15. In case the appellate Court desires to reverse the judgment and decree of the lower Court, it should discuss the findings and set aside the same, which are contrary to law or weight of evidence or probabilities of the case or perverse, arbitrary or superficial or capricious or unsustainable either on fact or on law, vide decisions- **Veerayee Ammal Vs.Seeni Ammal**[21] **at para-14; Sarju pershad Ramdeo Sahu**(supra) para-(b)**, State of Rajasthan Vs.Harphool Singh**[22] para(b) **and Ishwar Dass**

Jain(dead) through L.Rs. Vs.Sohan lal(dead) through L.Rs.[23] at 437-k**.**

16. From above propositions, coming to the facts of the lis, the facts not in dispute are that, plaintiff is a dealer in fertilizers having been registered under the Fertilizers Control Order under the Government of Andhra Pradesh. The 1st defendant-Food Corporation of India, constituted under the Food Corporation of India Act, 1964 (for short 'F.C.I'), to ensure proper distribution and availability of fertilizers as per the Government of India guidelines, allocates to each State adequate quantities of fertilizers stock out of availability and pursuant to which the State Government in turn re-allots to the fertilizers dealers and the plaintiff is thereby pursuant to the process is called a re-allottee dealer.

17. It is also not in dispute that the Ex.A-1-circular dated 14.06.1976 was issued by the Department of Agriculture, Ministry of Agriculture and Irrigation, Government of India, prescribing the procedure for supply of pool fertilizers, making the position clear that the re-allottees will make payment to FCI by opening an irrevocable Letters of Credit in favour of the FCI in the form prescribed by them, unless the re-allottee desires to make payment by demand draft or in cash. These

circular instructions have been issued by the Ministry upon reviewing the existing procedures for supply of pool fertilizers specified by it earlier on 30.04.1976. Ex.A-1 is thus undisputedly a policy guideline framed by the Ministry and communicated to all the State Governments as well as to the Managing Director and Zonal Managers of the FCI. There is also no dispute or debate on the binding nature of the Ex.A1-Circular instructions dated 14.06.1976 on the parties, the relevant portion of which reads:

> *" I am directed to refer to this Ministry's letter of even number dated 30th April, 1976 wherein the State Governments have been permitted, at their discretion, to reallot pool fertilizers to private dealers registered under the Fertilizer Control Order.*
> *2. One of the condition mentioned at (iv) of the said letter is that "the reallottee will have to make payment to FCI in cash or by Demand Draft before release orders are issued by FCI". The position has been reviewed and it is requested that the said clause may be amended to read as "the re-allottees will make payment to FCI by opening an irrevocable Letters of Credit in favour of the Food Corporation of India in the form prescribed by them unless the re-allottee desires to make payment by Demand Draft or in cash".*

18. As per Ex.A1 supra, the reallottee dealers could draw fertilizers stock from FCI upon payment in cash or through demand draft or upon furnishing irrecoverable letter of credit in favour of Senior Regional Manager of FCI (2nd defendant herein). The letter of credit is

required to be drawn on any of the nationalized Banks or Schedulized Banks, that can be negotiated through one of the branches of the banker situated at Hyderabad, with a validity period of six months from the date of its opening/issue and it is on such furnishing of letter of credit duly, the stock release orders would be issued to the fertilizers dealers known as re-allottee to lift the stock and upon expiry of 60 days delivery or dispatch of stock, the Senior Regional Manager, FCI call upon for payment as per the letter of credit furnished by the re-allottee. There is a provision in case of payment made by cash or demand draft by reallottee dealer or any purchaser of fertilizers that the FCI extends cash rebate of 2.5% that was in fact enhanced after 29.09.1982 upto 31.03.1983 to 4.31%. FCI has to supply the stock. However, the FCI allowing the re-allottee/dealers to lift the stock by road from its godown by undertaking to pay road transportation charges (for scarcity of railway wagons) at Rs.0.36 ps per ton per kilometer during the period 1977 to 31.03.1981, that was enhanced later to Rs.0.45 ps per ton per kilometer from 01.04.1981 onwards.

19. The main suit claim of the plaintiff is towards reimbursement of the road transportation charges for a period of four years claiming at Rs.5,10,335.72 ps

besides from payments made towards cash/demand draft to refund the rebate entitlement at 2.5% and at 4.31% respectively supra for a sum of Rs.18,066.05 ps and for refund of Rs.47,876.12 ps, as 30 metric tons of Calcium Ammonia Nitrate (CAN) fertilizer not lifted and also for refund of sales tax incurred in this regard of Rs.8,871.10 ps for the short supplied quantities of fertilizers of 54.500 metric tons. The plaintiff also claimed a refund of amount of Rs.41,505/- towards rebate, allowed for lifting stocks of fertilizers which are more than 2 years old. The plaintiff has also claimed an amount of Rs.49,744/- towards equated freight charges, for the transportation of the fertilizers undertaken by him, from the rail head at Tadepalligudem up to its go-downs and also for lifting the fertilizer stocks available with the go-downs of the FCI within a 50 kilometer distance. The plaintiff therefore claimed a total amount of Rs.6,76,400.99 ps on the various counts mentioned supra and after adjustment of the payment made by the defendants for a sum of Rs.2,63,494/- on 21.10.1983 to pay the balance amount together with interest.

20. In the plaint it is also averred that the plaintiff Managing Partner was coerced to pass a paper receipt as acknowledgment for a sum received of

Rs.1,24,317.46 ps in saying there was no such payment made to plaintiff but for receipt under threat obtained by 2nd defendant.

21. The defendants disputed the several amounts claimed in the suit; though Ex.A1-agreement and the terms of the plaintiff providing of letters of credit four in number each for six months period through Andhra Bank not in dispute. So far as payment by cash or demand draft entitlement of rebate at 2.5% enhanced to 4.31%, it is the contest by defendants that the benefit available is subject to compliance of stipulated conditions and applicable only to certain variety of fertilizers and not for all varieties and the lifting of the stock permitted by the defendants and the plaintiff through their transportation made for quicker supply and from non-availability of railway wagons, however, the plaintiff has not adhered to the conditions is not entitled to reimbursement. So far as non-lifting of 30 metric tons of Calcium Ammonia Nitrate refund claim of Rs.47,876.12 ps, it is the contest of the defendants that it is the default of the plaintiff to lift the stock and thereby the amount need not be refunded, however, the FCI settled the plaintiff claim already so also the sales tax refund for short lifting of Rs.8,871.10 ps. The FCI further

contest so far as graded quantity rebate of Rs.41,505/- claimed by plaintiff as due concerned, the amount stated worked out and paid to the plaintiff. Regarding freight charges of Rs.49,744/-, it is stated same was reimbursed to the extent entitled and the claim is settled.

22. It is also the contest of the defendants-FCI that, the so called coercion and obtaining of receipt is not true and it is against the payment, plaintiff voluntarily passed the receipt for Rs.1,24,317.46 that is to be given due credit. Regarding the charging of interest for alleged delayed payments by the plaintiff to FCI for the stock, it is the contest by FCI that the letters of credit furnished by plaintiff are only collateral security obtained by FCI as a precautionary measure and there is no lapse on their part in not redeeming and thereby liable for no interest to adjust.

23. From the respective pleadings in the trial Court, as many as 11 issues were settled after hearing on 14.10.1988 viz., regarding entitlement of the plaintiff for reimbursement of road transportation charges, cash rebate on payments by demand drafts, for no stock delivered against release orders to refund, sales tax for undelivered quantities to refund, for the rebate in lifting the old fertilizers, for the equate freight transportation charges claimed and charging of interest for the alleged

delayed payments to FCI by the plaintiff of Rs.1,77,760/- to adjust and regarding receipt passed for the amount of Rs.1,24,317.46 ps whether truly passed or obtained by coercion and as to entitlement of the suit claim including any interest on the principal amount, respectively.

24. It is pursuant to the issues settled supra, in the course of the trial-

a) On behalf of the plaintiff firm, its Managing Partner was examined as PW.1 and one Shaik Abdul Kareem as PW.2 and placed reliance upon Exs.A1 to A50 i.e., FCI letter dated 14.06.1976 for payment of opening irrevocable letters of credit, instructions in relation to credit facility, circular dated 18.11.1976 towards road movement of fertilizers and reimbursement of freight, plaintiff letter dated 01.12.1977 for road transportation reimbursement, telegram of plaintiff dated 11/15.07.1974, circular dated 28.11.1981 regarding reimbursement of transport charges, letter towards reimbursement of transportation charges dated 23.08.1978, letters dated 16.05.1979, 16.09.1982, 25.03.1982, 22.04.1983, 09.04.1983, 09.04.1983, 28.04.1983, registration certificate, Form No.A given by the Registrar of Firms, release orders dated 12.02.1981, 27.03.1981, 18.09.1981, 06.10.1981, 17.10.1981, letter for reimbursement, letter issued by Government of India to FCI, letter dated 21.03.1983, legal notice dated 13.04.1983, letters dated 02.05.1983, 03.05.1983, telegram dated 03.05.1983, letters dated 26.8.1983, 21.9.1983, 21.10.1983, 21.10.1983, 1.11.1983, 26.5.1984, legal notice dt.17.09.1984, reply to legal notice dt.05.12.1985, legal notice dt.27.02.1986, reply to legal notice dt.02.04.1986, notice dt.10.03.1992, irrevocable letter of credit for Rs.8,04,000/- dt.23.9.1981, demand notice dt.06.10.1982, partnership deed dt.06.06.1968, receipt acknowledging the receipt of Rs.9,25,229.28 towards full and final settlement, letter dt.08.11.1996, reply dt.02.12.1996, covering letters dt.10.12.1979, 17.2.1982, 25.4.1982, 28.4.1988.

(b) On behalf of defendants, the then Senior Regional Manager by name, M.Venkata

Ramana was examined as DW.1 and placed reliance upon Exs.B1 to B10. viz., letter dt.10.11.1982 of FCI demanding the plaintiff to pay Rs.1,77,760/- towards interest, reply dt.19.11.1982 and return reply to it dt.24/26.12.1983, statement showing the interest amount outstanding from the plaintiff, letters by FCI to the plaintiff dt.17.3.1983, 02.04.1983, receipt for Rs.1,24,371.46 obtained by FCI officers, reply to legal notice dt.29.5.1983, committee report dt.07.10.1983 in respect of claims of plaintiff and receipt for Rs.1,39,122.72 dated 21.10.1983.

25. It is after hearing both sides in answering the issues supra from the evidence referred supra placed on record, the trial Court decreed the suit claim as referred supra which is impugned in the appeal.

26. As per the evidence on record of PW1, PW2 and DW1, the FCI used to send the bills within 60 days of the letters of the credit respectively to the negotiated branch for payment as stipulated. As per PW1 and PW2, in case of delay in payments of the credit bills only, the FCI can charge interest at 22.5% p.a. and bank is liable to pay at the above rate penal interest. As per PW1,

plaintiff made cash payments or by demand drafts for which entitled to rebate at 2.5% and 4.31% respectively during 1982-1983. The entitlement of said rebate is covered by Ex.A2-circular which shows enhancement of rebate from 2.5% to 4.31%. Apart from the same, the circular shows the credit facility limit period is enhanced from 60 to 90 days. Said Ex.A2- circular also provides for rebate to the two years old stock. There is nothing in the cross examination of PW1 by defendants in this regard. Even it is the written statement contest of said entitlement is subject to compliance of stipulated conditions and are applicable to only some variety of fertilizers, those were not stated in the written statement, though the material facts were supposed to disclose. Even from DW1's evidence with reference to Exs.B1 to B10, there is nothing to disprove said entitlement by the plaintiff. Further, from non-availability of railway wagons, the stock was delivering by rail in Tadepalligudem railway station and they used to receive stocks either by wagon or by road and whenever stocks get by road, the plaintiff used to get reimbursement of freight charges on production of certificate of they transported the stock by the road. In support of the pleading and evidence of PW1, plaintiff placed reliance to the claim on Ex.A3- circular which shows the entitlement originally at Rs.0.36

ps per ton per kilometer, that is later enhanced to Rs.0.45 ps per ton per kilometer, which are also supported by Exs.A4 and A6, in support of the plaintiff's suit claim. Further, under Ex.A10, the Director of Agriculture addressed to the FCI to reimburse the plaintiff, the transportation charges incurred for getting the stocks by road and the transport charges paid by demand drafts by FCI as claimed of Rs.5,10,335.72 ps during 1979 December to April, 1983 under various bills. Even plaintiff issued notices to the defendants in this regard. PW1 deposed in support of the suit claim that there is no payment made. Undisputedly, notice to produce these bills from 1977 to 1983 was sought by the plaintiff and for which the defendants replied of said bills not traced. The Ex.A47 shows with the covering letter dt.10.12.1979, four bills were submitted by the plaintiff to the defendants from 1977, further under Ex.A48 covering letter of March, 1981, again under Ex.A49 covering letter dt.25.04.1982 six bills and again under Ex.A50 covering letter dated 28.04.1983 sixteen bills for which the amount claimed is Rs.5,10,335.72.

27. It is the observation by trial Court for objection raised for its marking in overruling the objection while marking the documents that, no doubt there are no

acknowledgments regarding letters for the claim from the defendants in the objection for its marking or relying upon raised in the evidence of PW.1 by defendants; however there is correspondence *interse* and it is not even the case of the defendants that plaintiff not filed any bills and even plaintiff called the defendants to produce the bills, the defendants stated as not traced under Ex.A46 reply and thereby those were marked to rely upon.

28. From very say of defendants it is clear that under Ex.A46, bills were submitted by the plaintiff and those the defendants stated were misplaced, thus it is not a case of non-submission; that too when it is not the case of the defendants that the plaintiff is not entitled to reimbursement of the charges for transport of fertilizers by road but for any contention for the first time in the appeal arguments now that the claim for the period beyond 3 years to date of suit barred by time under Limitation Law. When it is a running or current accident and there are reciprocal transactions from the above and accounts were not settled undisputedly, the limitation of three years from respective each transaction cannot be counted. In fact the Division Bench of this Court also in its judgment at paras 21 and 22, by called for original suit record of the trial Court noticed the suit

was filed in S.R.No12816 on 21.10.1986 and not as contended on 24.10.1986, but for same is the mistaken mention in drafting the decree by the trial Court and when the date 20.10.1986 was declared as public holiday, the suit claim is within three years from last payment on 06.04.1984 as DW1 admitted.

29. The very Ex.A4 letter dt.01.12.1977, addressed by plaintiff to Director of Agriculture, seeking to allow to move the stock by road for quick supply to the farmers for short fall of railway wagons, that was considered and Ex.A7 letter dt.28.05.1979 issued by FCI to the Regional Manager speaks for reimbursement of the costs of road transportation of imported fertilizers from inadequate supply of wagons for the movement of fertilizers by road become difficult. Exs.A9 and A8 are the similar letters for reimbursement of transportation of imported fertilizers issued from Department of Agriculture with conditions and restrictions. Thereby from the above plaintiff is entitled to reimbursement of said charges. What DW.1, Assistant Manager of FCI deposed is as per column No.2 of Ex.A6, a private dealer has to submit certificates from the competent authority i.e., State Government and also from Railways regarding non-availability of wagons and without which, plaintiff-dealer cannot transport by

road and claim reimbursement. It was not the version of the defendants for earlier demands by plaintiff. Further, the Exs.A7 to A9 speaks from letters of the competent authority i.e., the Director of Agriculture and the F.C.I. to its Regional Manager to reimburse the road transportation charges, which the plaintiff is entitled as per the fixed rates covered by Ex.A3. Further, the contra version (to say by approbate and reprobate) of defendants from the written statement and Exs.B1 to B10 and from the DW1's evidence is that to consider said claim of the plaintiff, there was a committee consisting of Senior Regional Manager, Joint Manager Finance and Accounts and Deputy Manger Fertilizers and as per the balance sheet of the committee, claim of the plaintiff for road transport reimbursement charges were considered and allowed.

30. When such is the case and once the bills submitted are within the purview of the conditions laid in the circular of the Government of India, Ministry of Agriculture and the Director of Agriculture of the State also issued requisite certificate and the goods are as per which actually transported by road from Visakhapatnam to Tadepalligudem, there is no tenability of the contention of the bills supplied by the defendants to the plaintiff under Exs.A47 to 50 there are no

acknowledgments, for no other material to dispute and for not a case of not submitted but for saying those submitted were misplaced and not even a case of they passed acknowledgments and further not even shown with any proof of how paid if any and thus there is entitlement of the same by plaintiff. So far as Ex.B7-receipt dt.21.10.1983 for a sum of Rs.1,24,371.46 in favour of Senior Regional Manager, FCI, Hyderabad, issued by the plaintiff, as per the defendants in saying after adjustment of interest due to FCI Rs.1,77,760/- as final settlement of the transport charges claimed for the claim of defendants of no more due. When the plaintiff contends that it was obtained by the officers of the defendants by coercion with no amount paid and as argued whenever a receipt issued by the plaintiff for payment of money, it is always on the letter head of the plaintiff they were obtaining and not on white paper, whereas Ex.B7 is on white paper and according to PW.1 on 21.10.1983 the defendants to issue cheque to the plaintiff for Rs.2,63,494.18 ps. obtained on Ex.B1 signature as a condition to deliver the cheque which made the plaintiff to sign and there was no transaction with the defendants to the plaintiff on that day of Ex.B7 and in the compelling circumstances when the plaintiff explains to sign for clearing the other arrears stating no amount received and to substantiate the contention, plaintiff also relied on Ex.A32-receipt issued on the date of Ex.B7 i.e., 21.10.1983 on a letter head of the plaintiff namely, M/s.Bhaskar Fertilizers printed letter head for the cheque amount received supra there is nothing to believe the Ex.B7 document. Same was also the conclusion arrived by the trial Court from the material on record supported by reasons.

31. Further on perusal of ExB32 and EXB7 to say Ex.B7 issued by the plaintiff on white paper, when both are on the same day, when the Ex.A32 is on the printed letter head of the plaintiff obtained and if really Ex.B7 was to obtain on similar printed letter head, if it was also issued at the same time, defendants would have been insisted for similar receipt like Ex.A32 on the printed letter head of the plaintiff and there is no endorsement of plaintiff obtained on ExB7 to obtain on white paper under what circumstances. Thereby the alleged Ex.B7 receipt for full and final settlement of transport charges claimed by plaintiff as set up by defendants probablising plaintiff’s version and improbablising the defendants version, same cannot be relied in the absence of any other cogent material for what is discussed supra. It is also for the reason that, Ex.B10 is another receipt

dt.21.10.1983 and it is with handwriting of PW.1. It is thereby from the reappreciation of the material on record by this Court while sitting in appeal as discussed supra, it can be safely concluded that, there was no payment of Rs.1,24,371.46 under Ex.B7 under the alleged receipt on 21.10.1983 as rightly held by the trial Court. The non-giving of police report by plaintiff no way improve Ex.B7. Further the Division Bench of this Court in this regard held at paras 16 to 20 of its judgment in detail that besides mere look at EXB7 lacks tenability, from EXB6 dated 02.04.1983 with above six months gap, the other inconsistency was that Rs.1,24,371.46ps. alleged payment under ExB7 if taken and added to Rs.1,77,760/- comes to Rs.3,02,131.46 ps. Whereas as per ExB3, it arrives to Rs.3,00,082/- and that apart from EXB6 shown as adjusted Rs.47,876.12 ps. It only comes to Rs.2,52,205.88 ps. By dated 02.04.1983, from which amount shown in EXB7 is in stark variance that supports plaintiff's contest. Hence the conclusion thereby also no way requires interference in this regard.

32. With regard to cash rebate for payments, by demand draft that is required to be refunded to the plaintiff and for the non-delivery of the stock amount to be refunded, so also sales tax paid for the undelivered

quantities so also rebate for lifting two years old fertilizers. For that Ex.A12 is the letter sent by the plaintiff, where item No.4 of annexure 1 shows the cash rebate entitlement for 2075 tons of two years more than old stock supplied and taken, for which the rebate amount is claimed under Ex.A13 letter and equally for the other amount under Ex.A14 letter. Thereby the plaintiff is entitled to said amounts. Regarding charging of interest by defendants for the cash credit encashment delays, Ex.A17 is the release order dt.12.2.1981 for Lr.No.1/81, dated 31.01.1981. It shows for the stock quantity of 200 M.T., worth Rs.6,87,870/-; similarly under Ex.A18 release order dt.27.03.1981, Ex.A19 release order dt.18.09.1981, relating to L.C.No.5/81 dt.27.8.1981, Ex.A20-letter of credit dt.06.10.1981 relating to L.C.No.8/81 dt.25.9.1981, Ex.A21-release order dt.17.10.1981 relating to L.C.No.11/81 dt.10.10.1981. The release orders were issued on the basis of the letters of credit of plaintiff given to the defendants. 1st defendant did not send the bills through 2nd defendant encashing branch early, but for after lapse of time. The defendants also communicated to the plaintiff that, by mistake they could not send the bills to the encashing branch and if the amounts are not being paid, the officials of the 1st defendant are likely to lose their jobs. The plaintiff was obliged to pay the amounts there from is the version of PW.1. Ex.A22 is the letter addressed to defendants requesting to pay difference in cash rebate of Rs.8,035.03 ps. and Ex.A23 is the reply of the defendants to it stating reimbursement of road transportation charges is pending with FCI, Hyderabad for necessary action. Like wise for Ex.A24 letter addressed to 2nd defendant for payment of cash rebate showing the details due, defendants failed to pay and the plaintiff cause issued another notice, Ex.A25 for refund of Rs.47,876,12 ps. that has been withheld by the defendants towards interest for the bills payments.Ex.A26 is the plaintiff's representation to the 1st defendant. Ex.A27 is the reply of 1st defendant stating Regional Manager of FCI, Hyderabad, to settle the claim with plaintiff and there was another reply of defendants through their advocate. Ex.28 is the telegram rejecting the claim of the plaintiff and plaintiff made the claim again by Ex.A29 with Ex.A31 covering letter and Ex.A30 office copy of the remainder and Ex.A31 is the covering letter under which cheque for Rs.2,63,494.18 received from 2nd defendant covered by Ex.A32 acknowledgment for receipt of the cheque. It is the case of the plaintiff-PW1 that at the time of issuing the cheque alleged interest amount of Rs.1,77,000/- was adjusted and it is only a part payment and consequently besides addressing Ex.A33, letter to the Chairman of FCI; plaintiff addressed the Exs.A34 and A35, to the 1st defendant for the outstanding. The Exs.A33, A35, A39 and A40 and the Exs.B1 to B10 are relating to the delayed payments correspondence.

33. In this regard, PW.2 who worked as Assistant Grade-II(General) in the FCI during 1977 to October, 1982 in the Regional Office at FCI Hyderabad, deposed that, the plaintiff taken fertilizers from the FCI being the dealer of Tadepalligudem of Andhra Pradesh and letters of credit opened in the bank in favour of FCI and those are rooted through the negotiating branch to the Regional Office at Hyderabad and after verification of those are in conformity, it would be sent to the release orders section for release of the fertilizers to the dealers. Thereafter only, letter of credit was given in favour of FCI through Andhra Bank with validity period of six months. PW2 deposed that for original of Ex.A44 receipt, he issued as cost of the final settlement towards pool fertilizers supplied to plaintiff and

in 1st defendant's letter dt.10.11.1982, the payment of

Rs.9,21,299.28 ps., covered by Ex.A44 also mentioned. The letters of credit as per PW.2 also not submitted for encashment within six months period thereby lapsed in the defendant claiming interest from plaintiff. Even from PW2's evidence, the delay caused was not for the fault of the plaintiff, but for laches of the defendants and thereby they are not entitled to charge the plaintiff with interest liability. The EXs.B1 and B2 claim for interest by defendants vide notices dated 10.11.1982 and 24/26.02.1983 are unsustainable and defendants are not entitled to any adjustment under said claim including under Ex.B6 out of any amount due to the plaintiff, for plaintiff was not at all at fault in this regard and for the own fault and laches of defendants to redeem the letters of credit cannot mulk the plaintiff with liability for interest. It is there from the trial Court held all the issues in favour of the plaintiff by disbelieving the Ex.B7 and by decreeing the plaintiff's suit claim by further holding that the defendants are not entitled to interest once the plaintiff issued letter of credit to encash within the validity period for their laches.

34. Having regard to the above and even from reappreciation of the evidence based on the material on record afresh by this Court as discussed supra, there is practically nothing to interfere with the trial Court's

decree and judgment on the liability of the principal amount of Rs.3,96,236.06 ps.

35. However, coming to the pre-lite substantial interest concerned, there is once no settlement of accounts and no contract or agreement to pay interest for the amount due if any to plaintiff by defendants, the substantial pre-lite interest cannot be claimed, but for under Interest Act, from date of service of notice of demand with specified sum claimed if any as due with demand to pay interest thereon. In the case on hand from the correspondence, there is no such specified sums of what is mentioned in the suit claim by plaintiff. There is no any such plea as basis to the pre-lite interest claimed in the plaint. A perusal of the notices issued by the plaintiff viz., namely Ex.A11 dated 22.04.1983 is for refund of cash rebates, non-lifting stocks and sales tax adjustment, with a claim for Rs.74,801.54 ps. only to adjust and not with demand to pay any amount, much less with interest, leave about Ex.A12 and Ex.A13 dated 09.04.1983, for same included in Ex.A11 claimed supra. Ex.A14 dated 28.04.1983 is for reimbursement of equated freight charges covered by bills of 1981-82 and 1982-83 of fertilizers road-transport. Ex.A22 dated nil-02.1983 was even earlier to Ex.A11 supra, so also

Ex.A24 dated 21.03.1983. Ex.A 2 5 reply dated 13.04.1983 of plaintiff to notice/letter of defendants 10.11.1982. There also, there was no claim by plaintiff for interest on the amount asked to refund, while claiming not liable for interest, for their fault in not availing the letters of credit facility. The plaintiff's Ex.A26 letter dated 02.05.1983 and Ex.A29 letter reply to telegram dated 26.08.1983 speak the amount entitled of Rs.6,73,000/- towards the bills payable. There is no mention of interest liability, much less demand or even request to pay the same with interest, so also from Ex.A30 dated 21.09.1983 for Rs.74,939.56 ps. It is in response to above under Ex.A31 letter enclosed cheque NO/C/46-262538, dated 21.10.1983 for Rs.2,63,494.18 ps. payment made by the FCI to the plaintiff towards transportation charges equated freight charges etc., It is what therefrom and also from what is admitted by DW1, there is if not as an acknowledgment of liability by part payment, atleast from the material account with reciprocal transactions unsettled, the limitation for suit claim of three years to be counted from that date to say the suit claim is within three years there from and that what the Division Bench of this court earlier held as discussed supra. It is there from, for pre-lite interest liability, to claim by plaintiff, there is no basis either under Interest Act or otherwise for no contract or agreement for interest. Thus, plaintiff is not entitled to pre-lite interest till date of suit on the principal sum claimed and proved due of Rs.3,96,236/- referred supra. Thus, the plaintiff is entitled only to the suit claim of Rs.3,96,236/- with subsequent pendentilite and post lite interest at 12% p.a. from the date of suit till date of decree dated 17.06.1999 and thereafter till realisation at the same rate of interest awarded by trial Court and with costs of suit in trial court of Rs.18,158/-. Accordingly, points 1 to 3 for consideration in the appeal are answered.

36. **POINT NO.4:**

In the result, the appeal is partly allowed and plaintiff is entitled, out of the suit claim of Rs.5,39,797-93 ps. only to the principal sum of Rs.3,96,236/- with no pre-lite interest, however, plaintiff is entitled to pendenti-lite and post-lite interest at 12% p.a. on Rs.3,96,236/- from the date of suit till date of decree and thereafter till realisation and also costs of suit as granted by the trial court of
Rs.18,158/-. There is no order as to costs of the appeal.

37. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 01-07-2016

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[1] AIR-2001-SC-965

[2] 2003(5) SCC 89

[3] AIR-1976-SC-634

[4] AIR-1969-SC-1144

[5] AIR 1965-SC-184

[6]

[7] AIR 1970 SC 1286

[8] AIR 1971 SC 2439

[9] AIR 1965 SC 354.

[10] AIR-1969-SC-255

[11] AIR-1963-SC-1728

[12] AIR 1995 SC 167

[13] AIR 1973 SC 626

[14] AIR 1968 SC 1413

[15] AIR 1988 SC 719(DB)

[16] 1991(3) SCC 331

[17] AIR 1977 SC 1481

[18] AIR 1969-SC-395

[19] AIR 1955-SC-481

[20] AIR 1951-SC-120

[21] 2002 (1)-SCC-134

[22] 2000(5)-SCC-652

[23] 2000(1)-SCC-434