

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

WRIT APPEAL Nos.1162, 1163 & 1164 of 2016

COMMON JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard the learned Advocate General for the State of Andhra Pradesh appearing on behalf of the appellants, and Sri I.Koti Reddy, learned counsel appearing for the respondents-writ petitioners.

These Writ Appeals are preferred by the State of Andhra Pradesh against the orders passed by the learned Single Judge in W.P.Nos.36828, 40031 & 40593 of 2015 dated 05.01.2016, 05.01.2016 & 04.02.2016, respectively. The grievance of the appellants, in these appeals, is confined only to that part of the order of the learned Single Judge whereby the appellants were directed to pay interest at the rate of 6% per annum from the date of expiry of three months from the date of entering of the measurements in the measurement books; and, if the appellants failed to make payment within the stipulated time, they were directed to pay interest at the rate of 12% per annum, instead of at 6% per annum from the time as aforementioned.

While the principal amount has since been paid, the complaint of the respondents-writ petitioners is that the said amount was paid only after the orders under appeal were passed.

Learned Advocate General would draw our attention to clause 69 of the general terms and conditions of the contract which relates to interest on money due to the contractor. We are concerned in these appeals only with clause (a) thereof, which reads thus:

“No omission by the Executive Engineer or the Sub-Divisional Officer to pay the amount due upon certificates shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee fund or payments in arrear, nor upon any balance which may, on the final settlement of his accounts, be found to be due to him.”

The said clause is in two parts. The first limb stipulates that omission by the Executive Engineer or the Sub-Divisional Officer to pay the amount due upon certificates shall not vitiate or make void the contract. The second limb provides that the contractor shall not be entitled to interest upon, among others, payment in arrears or upon any balance which may, on the final settlement of his accounts, be found to be due to the contractor.

While Sri I.Koti Reddy, learned counsel for the respondents-writ petitioners, would contend that the second limb of clause 69 (a) is merely a consequence of the first limb, we are satisfied that the second limb is independent of the first, and provides for a contingency where either payment is made in arrears, or the balance amount, found due on final settlement of accounts, has not been paid. As clause 69 (a) prohibits grant of interest, and as this provision was not brought to the notice of the learned Single Judge when the orders under appeals were passed, the orders under appeals, to the limited extent the appellants were directed to pay interest for the belated payment, must be and is, accordingly, set aside.

The question whether the appellants would be entitled for payment of interest, by way of damages, for the inordinate delay in making payment, independent of the general terms and conditions of the contract, can only be examined in a Suit filed before the

competent Civil Court. Suffice it to make it clear that, in case the respondents-writ petitioners invoke the jurisdiction of the Civil Court claiming damages, the Suit shall be decided on its own merits, uninfluenced by any observations made either in the orders under appeals or in the order now passed by us.

These Writ Appeals are disposed of accordingly. No order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

(RAMESH RANGANATHAN, ACJ)

Date: 10.11.2016
v v

(A.SHANKAR NARAYANA, J)

