

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.472 of 2013

JUDGMENT:

This appeal is filed by the defendants challenging the decree and judgment dated 15.06.2012 in A.S.No.130 of 2010 on the file of the Court of X Additional Chief Judge, Fast Track Court, City Civil Court, at Hyderabad, wherein whereby the decree and judgment dated 30.12.2009 in O.S.No.253 of 2008 on the file of the Court of V Senior Civil Judge, City Civil Court, Hyderabad, partly decreeing the suit for Rs.65,516/- in favour of the plaintiff and against the defendants with interest at 12% per annum, was confirmed.

2. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the suit.

3. The facts leading to filing of the second appeal are briefly as follows: The plaintiff has been carrying on business of printing study material of Secondary Grade Telugu books. The first defendant is the regional office of the second defendant. On 22.12.1999, first defendant has issued a purchase order to the plaintiff for printing 18 Secondary Grade Telugu books and directed the plaintiff to lift the required paper material for the purpose of printing. All the books have a size of 18 x 23 with four pages format. The second defendant has supplied paper for 13 books only along with negatives. Accordingly, the plaintiff had completed printing work for total 13 books and delivered the same with bills within the stipulated time. First defendant did not supply the required paper for the balance five books till one month

after delivery of 13 books. Thereafter, first defendant requested the plaintiff to purchase the required paper for five books from open market. First defendant had given an amount of Rs.10,000/- in cash in advance to the plaintiff for purchase of the paper. The plaintiff had submitted 18 bills separately amounting to Rs.1,33,924/- for which the second defendant had paid only Rs.54,928/- in separate demand drafts, i.e., for Rs.34,186/-, Rs.11,289/- and Rs.9,453/-. The remaining amount of Rs.79,717/- was pending with the defendants. In spite of several letters, the defendants did not choose to repay the balance amount. The plaintiff filed W.P.No.26479 of 2001 on 14.06.2007 on the file of the Hon'ble High Court and the same was disposed of with a direction to the plaintiff to file a civil suit. Hence, the plaintiff having no other alternative filed the suit.

4. Second defendant filed written statement admitting the purchase order between it and the plaintiff, *inter alia* contending that though the plaintiff lifted the paper, he could not print all the books and the printed books also are not in accordance with the order. Initially, the plaintiff printed 13 books and later printed the balance five books and supplied to the defendants with bills No.013 to 018 in March 2000. The plaintiff is not entitled for the suit claim as well as the interest. The suit is barred by limitation and liable to be dismissed.

5. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the suit claim is barred by limitation?
2. Whether the plaintiff is entitled for recovery of suit amount with interest as claimed?
3. To what relief?

6. Before the trial Court, on behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A47 were marked. On behalf of the defendants, D.W.1 was examined and no documents were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial court arrived at a conclusion that the plaintiff filed the suit within the period of limitation and consequently decreed the suit directing the defendants to pay a sum of Rs.65,516/- to the plaintiff with interest thereon at the rate of 12% per annum from 2000 onwards, till realisation. Feeling aggrieved by the decree and judgment of the trial Court, the defendants preferred A.S.No.130 of 2010 on the file of the Court of X Additional Chief Judge, Fast Track Court, City Civil Court, at Hyderabad. The first appellate Court after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the plaintiff filed the suit within the period of limitation. The appellate Court also arrived at a conclusion that the plaintiff is entitled for recovery of suit amount from the defendants. Hence the defendants preferred the present second appeal.

8. Heard the learned counsel for the appellants-defendants and the learned counsel for the respondent-plaintiff and perused the material available on record.

9. Basing on the submissions made by both the counsel and the grounds of appeal, the question of law that arises for consideration in this appeal is:

- (1) Whether the Courts below are justified in granting interest from March 2000 even in the absence of interest clause in the purchase order?

10. There is no much dispute between the parties with regard to the purchase order. It is also not in dispute that the plaintiff supplied 13 books within the stipulated time. The plaintiff also supplied five books even though the defendants have not supplied the required paper. The material placed before the Court clinchingly establishes that the plaintiff purchased the paper in the open market for printing of five books. Whatever pleaded by the plaintiff is admitted by the defendants. It is a settled principle of law that the admitted facts need not be proved. The findings recorded by the Courts below that the plaintiff is entitled for recovery of an amount of Rs.65,516/- is supported by oral and documentary evidence. This Court shall not lightly interfere with the concurrent finding of fact unless the findings recorded by the Courts below are perverse. In the instant case, as observed earlier, the findings recorded by the Courts below are supported by oral and documentary evidence. Viewed from any angle, this Court is of the view that the findings recorded by the Courts below are not perverse.

11. Learned counsel for the appellants strenuously submitted that in the absence of interest clause in the purchase order, the plaintiff is not entitled for interest till filing of the suit. Even as per the averments made in the plaint, there is no interest clause in the purchase order. In the absence of interest clause, the plaintiff is not entitled for interest unless the custom prevails in that area permits the same. In the instant case, the plaintiff got issued a notice on 16.10.2007(Ex.A2) directing the defendants to pay the remaining balance with interest @ 24% per annum. For one reason or other, the defendants did not choose to issue a reply.

The material placed before the Court clinchingly establishes that the plaintiff issued a notice directing the defendants to pay the suit amount with interest at 24% per annum with effect from 16.10.2007.

12. In order to appreciate the rival contentions, this Court is placing reliance on the following decisions:

(1) In **B.S.Rajput v M/s.The Cellar**¹, the point that fell for consideration is whether the trial court is justified in law in not awarding interest on the suit amount for the period from 2000 to 16.10.2007. While answering the point, the Karnataka High Court held at paragraph Nos.7 and 8 (of Manupatra) as follows:

7. In the instant case, as per Ex. P.4, the plaintiff has issued notice demanding interest. Ex. P.4 was served upon the 2nd respondent on 28-10-1984. The suit was filed on 8-10-1985. Therefore, the plaintiff was entitled to interest for the period from 28-10-1984 to 8-10-1985.

8. The next question for consideration is whether the plaintiff is entitled to interest at 18% per annum as claimed in Ext. P. 4. Under the Interest Act, the party is entitled to Interest at the "current rate of interest" which expression is defined in clause (b) of section 2 of the Interest Act, as meaning, the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of schedule banks in accordance with the direction given or issued to the banking companies generally by the Reserve Bank of India under the Banking Resolution Act, 1949. Therefore, taking into consideration the definition of the expression current rate of Interest" as contained in clause (b) of Section 2 of the Interest Act, we are of the view that the interest at the rate of 15% p.a. would be just and appropriate as that was the maximum rate of interest that was being paid on different classes of deposits during the period from 28-10-1984 to 8-10-1985. Accordingly we answer the point raised for determination as follows:

The trial Court is not justified in refusing to award interest on the suit claim for the period from 28-10-1984 to 8-10-1985. It ought to have awarded interest on the suit claim for the aforesaid period at 15% per annum.

¹ AIR 1993 Kant 9

(2) In **State of Rajasthan v Ferro Concrete Construction Pvt.**

Ltd.², the Hon'ble apex Court, while considering scope of Section 3 of the Interest Act, held at paragraph Nos.34 and 35 (of Manupatra) as follows:

34. The position regarding award of interest after the Interest Act, 1978 came into force, can be stated thus:

(a) where a provision has been made in any contract, for interest on any debt or damages, interest shall be paid in accordance with the such contract.

(b) where payment of interest on any debt or damages is expressly barred by the contract, no interest shall be awarded.

(c) where there is no express bar in the contract and where there is also no provision for payment of interest then the principles of Section 3 of Interest Act will apply in regard to the pre-suit or pre- reference period and consequently interest will be payable:

(i) where the proceedings relate to a debt (ascertained sum) payable by virtue of a written instrument at a certain time, then from the date when the debt is payable to the date of institution of the proceedings;

(ii) where the proceedings is for recovery of damages or for recovery of a debt which is not payable at a certain time, then from the date mentioned in a written notice given by the person making a claim to the person liable for the claim that interest will be claimed, to date of institution of proceedings.

(d) payment of interest pendente lite (date of institution of proceedings to date of decree) and future interest (from the date of decree to date of payment) shall not be governed by the provisions of Interest Act, 1978 but by the provisions of Section 34 of Code of Civil Procedure 1908 or the provisions of the law governing Arbitration as the case may be.

35. Therefore, even in regard to claims for damages, interest can be awarded for a prior to the date of ascertainment or quantification thereof if (a) the contract specifically provides for such payment from the date provided in the contract; or (b) a written demand had been made for payment of interest on the amount claimed as damages before initiation of action, from the date mentioned in the notice of demand (that is from the date of demand or any future date mentioned therein). In regard to claims for ascertained sums due, interest will be due from the date when they became due.

As per the principle enunciated in the cases cited supra, even in the absence of interest clause in the agreement, the plaintiff is

² (2009) 12 SCC 1

entitled to interest on the suit claim from the date of the demand. The facts of the case on hand are almost identical to the facts of the case 1st cited supra.

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the plaintiff is entitled to interest with effect from 16.10.2007 only and not from 2000 onwards. The Courts below lost sight of the scope of Sections 3 and 4 of the Interest Act and granted interest to the plaintiff even though there is no interest clause in the purchase order. The judgment and decree of the Courts below to the extent of granting of interest from 2000 to 16.10.2007 is not sustainable either on facts or in law. There is a question of law much less substantial question of law in this appeal.

14. Hence, the second appeal is allowed in part. The plaintiff is entitled to recover an amount of Rs.65,516/- with interest at 12% per annum with effect from 16.10.2007 only to till its full realisation. It is needless to say that any amount paid by the defendants during the pendency of the suit or appeal, shall be adjusted in accordance with law. No order as to costs. The miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

20th November, 2017.

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