

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.1436 of 1999

ORDER:

This appeal is filed by the Government/defendants against the order dated 03.10.1998 passed in O.S.No.6 of 1997 by the III Additional District Judge, Vijayawada.

The brief facts of the case are that pursuant to the purchase order dated 03.06.1987 raised by the defendants, the plaintiff supplied RCC pipes and collars on three occasions under three invoices bearing Nos.8/87-88, dated 22.07.1987, 17/87-88, dated 08.08.1987 and 13/87-88, dated 31.08.1987. The second defendant received material under the said invoices and made some part payments leaving a balance of Rs.1,21,200.10 paise. As the defendants did not pay the said amount, the plaintiff filed the suit for recovery of the said outstanding amount with costs.

The defendants contested the matter and raised a defence stating that the material was not delivered at the work spot or as per schedule and that therefore, the plaintiff was not entitled for recovery of the said amount. After the written statement was filed, two issues were framed viz., i) whether the plaintiff is entitled for the suit amount or any part thereof; and ii) whether the plaintiff is entitled for interest.

Exs.A.1 to A.43 were marked by the consent of both parties. There was no oral evidence adduced by either party.

It appears that after considering the material on record, the lower Court granted a decree deducting a sum of Rs.4,994.20 paise from the sum claimed towards the re-carting charges. The defendants also deposited the sum of Rs.71,730/- on 05.07.1989 and a further sum of Rs.44,490/- on 07.08.1996 towards the suit claim during the pendency of the suit. The lower Court after assessing the documents came to a conclusion that the plaintiff is entitled to interest on the said sums and passed a decree in the following terms:

“the suit is decreed against the defendants directing them to pay an amount of Rs.4,994.20 ps with subsequent interest on Rs.1,16,720/- at 18% p.a., from the date of suit till 4-7-89 and on Rs.44,990/- at the rate of 18% p.a. from 5-7-89 till 7-8-1996. The defendants are directed to pay proportionate costs to the plaintiff on Rs.1,21,714.20 ps., being the amount found to be due to the plaintiff from the defendants as on the date of the suit. The rest of the suit claim to an extent of Rs.4,994.20 ps is dismissed with proportionate costs.”

It is this order that is assailed in the present appeal. Essentially, the State is questioning the deduction of Rs.4,994.20 paise towards the principal and the interest that is awarded at 18% p.a. on the principal sum less the two amounts deducted.

Heard the learned Government Pleader for Appeals, for the appellant/defendants and Sri V.S.R. Anjaneyulu, learned counsel for the respondent/plaintiff.

The short and simple question involved in this case is whether the order of the lower Court is correct or not on the issues 1 & 2.

The lower Court found as a matter of fact that a sum of Rs.4,480/- was expended by the defendants to re-cart the material from Pakalapadu to the work spot. Regarding the quantum of amount claimed, there is no dispute, therefore, the lower Court proceeded to award a sum of Rs.4,480/- to the plaintiff. This finding is not challenged in the appeal. The question that survives for consideration is award of interest at 18% per annum.

The lower Court discarded the claim for interest at 18% p.a. on the basis of trade, custom and usage holding that the said trade, custom and usage is neither pleaded nor proved. This is a correct finding as trade, custom and usage is to be pleaded and proved.

As far as under the Interest Act, 1978 is concerned, Section 3 of the Interest Act allows the Courts to grant interest from the date on which the interest is claimed up to the date of institution of the suit.

In this case, the lower Court correctly noticed that Ex.A.42 notice issued under Section 80 C.P.C. contains a demand for interest. Even the invoices, which are marked as Exs.A.2 to A.4, contain a stipulation that interest at 24% per annum is payable.

In the light of this evidence and the fact that the law permits a party to make a claim for interest despite the contract not containing the condition, the finding of the lower Court can really be faulted with. The lower Court also noticed the fact as the admitted amounts are not paid to the plaintiff

or deposited, a party is entitled to both under the law or fact to claim interest. A person deprived of the use of his money is entitled to interest if the basis is established. Now, only the question is about the rate of interest. In this case, the invoices contain the stipulation for interest at 24% but the plaintiff limited his claim to 18%. As noticed earlier, the documents were marked by consent and no oral evidence was let in. The invoices contain a stipulation for interest @ 24%. The power of the court to award interest is thus not curtailed in any manner. There is no evidence to show that this rate is usurious or penal. Hence, taking an overall view of the matter, this Court is of the opinion that there are no merits in the appeal and the impugned order is liable to be confirmed.

In the result, the Civil Miscellaneous Appeal is dismissed and the order dated 03.10.1998 passed in O.S.No.6 of 1997 by the III Additional District Judge, Vijayawada is hereby confirmed. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 28.11.2017
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