

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.706 OF 2010

O R D E R

This revision is filed against the order dated 31.12.2008 passed by the court of Additional Senior Civil Judge, Kurnool in E.P.No.324/2006 in O.S.No.198/2001, wherein the court below while refusing to grant interest, as claimed by the petitioner; in exercise of discretion under Section 34 of CPC, granted interest at the rate of six per cent per annum from the date of the decree and judgment in A.No.50 of 2003 i.e., from 19.10.2004 to 5.3.2005 i.e., till the date of payment of principal amount of Rs.50,000/- to the decree holder under the demand draft. Aggrieved by the same, the petitioner/decreed holder filed the present revision.

The brief facts are that the petitioner herein obtained demand draft of Rs.50,000/- from the respondent – bank in the year 1991, in order to purchase wood from one M/s Anuradha Timber Estate, Hyderabad. Alleging that the said firm failed to supply the agreed quality of wood, he requested the bank not to honour the demand draft and filed the suit in O.S.No.216/1991 against the Bank and the firm, for cancellation of the demand draft. By judgment and decree dated 3.4.1995, the suit was dismissed. First appeal in A.S.No.58/1995 and the second appeal in S.A.No.1098/1999 were also dismissed. Petitioner carried matter to Apex Court in Special Leave Petition C.C.No.7021/2000 and the same also ended in dismissal. In the second appeal in S.A.No.1098/1999 dated 9.6.2000, this court observed that the petitioner has to file a suit for recover of amount due under the demand draft. Based on that observation, the petitioner again

filed the present suit in O.S.No.198/2001 against the firm along with its managing director and the executive partner. The Bank is not a party to the suit. By judgment and decree dated 3.3.2003, the suit was dismissed. The petitioner preferred first appeal in A.S.No.50/2003 on the file of V Additional District Judge, Kurnool (Fast Tract Court) Kurnool. While dismissing the appeal, the lower appellate court directed the bank, before which the amount pertaining to demand draft was lying, to pay the amount with accrued interest, if any, on the demand draft. The bank paid the amount to the petitioner on 5.3.2005. Aggrieved for not paying any interest on the draft amount of Rs.50,000/-, the petitioner filed the present E.P. under Order 21 Rule 43 of CPC for realization of the interest from 1991 till date of payment i.e., 5.3.2005 at the rate of 18 per cent per annum. The executing court while not finding any merit in the claim of the petitioner, however in exercise the discretion Section 34 of CPC, granted interest at the rate of 6 per cent per annum from the date of the decree and judgment in A.S.No.50/2003, till date of payment on 5.3.2005. Aggrieved by not granting the interest as claimed, the present revision is filed.

The learned counsel for the petitioner submits that the court below erred in not granting interest from 1991 till the date of payment made on 5.3.2005, though the amount is lying with the respondent – Bank. He submits that bank cannot keep the amount with them and refuse to pay interest and the court below has not considered the judgment and decree in A.S.No.50/2003 and refused to grant interest from 1991 till the date of payment on 5.3.2005, which the petitioner is legitimately entitled to, since the demand draft amount is admittedly lying with the respondent – Bank.

On the other hand, the learned Standing Counsel for the respondent – bank submits that earlier petitioner filed suit in O.S.No.216/1991 against the bank. In the said suit, the trial court had framed a specific issue whether the petitioner/ plaintiff is entitled to claim interest at the rate of 18 per cent per annum from the respondent – Bank. Considering the material on record, the court below answered the issue in the negative. Again the present suit in O.S.No.198/2001 is filed without impleading the bank. The learned counsel submits that during the pendency of the proceedings, the petitioner obtained injunction not to encash the demand draft and hence the petitioner himself is responsible for not paying the amount. She also submits that there was also direction to release the amounts on providing security. In view of the same, the petitioner is not entitled for interest. She further submits that even in the judgment and decree in A.S.No.50/2003, the observation was to return the demand draft with accrued interest, 'if any'. Based on the said observation, bank paid interest to the petitioner from 19.10.2004 i.e., the date of judgment in the first appeal, till the entire amount is paid, and he is not entitled for any further interest as the judgment and decree in A.S.No.50/2003, does not provide for the same. She submits that when the demand draft is in the hands of third parties, the amount cannot be paid to the petitioner, as the same will not amount to valid discharge of the demand draft.

From the material on record, it could be seen that the court below observed that the demand draft would not carry any interest. The court below also found that in the earlier suit, the claim for interest was negated

and the said judgment in O.S.No.216/1991 attained finality, as the same was confirmed in the first appeal in A.S.No.58/1995, second appeal in S.A.No.1098/1999 and by the Apex Court in Special Leave Petition C.C.No.7021/2000. There is no dispute in this regard. Further, even in the present judgment and decree in the first appeal in A.S.No.50/2003, there is no specific direction to pay interest from 1991 till date of payment, as such the executing court is bound by the judgment and decree and it cannot go beyond it.

The court below considering all the said aspects, refused the claim of the petitioner. Having regard to the facts and circumstances, I do not find any merit in the revision and the same is dismissed. No costs.

Miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

DATE:01—03—2017
AVS

