

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SMT JUSTICE T.RAJANI

APPEAL SUIT No.706 of 2014

Date:20.02.2017

Between:

Kota Venkateswara Patel,

S/o Rajaiah

..... Appellant

And:

M.Venkatesh,

S/o Ramakrishna

.....Respondent

Counsel for the appellant: Mr. S.Satyanarayana Prasad

Senior Counsel for

For Kum. C.Sindhu Kumari

Counsel for the respondent: Mr. Srinivas Polavarapu

The Court made the following:

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

At the interlocutory stage, the Appeal Suit is heard and disposed of with the consent of the learned counsel for both parties.

This Appeal Suit arises out of judgment and decree, dated 03.6.2014, in O.S.No.21 of 2009 on the file of the learned VI Additional District Judge, Siddipet, Medak District. The respondent filed the afore-mentioned suit for specific performance of agreement of sale, dated 30.11.2006, and for consequential relief of injunction. He has also sought for alternative relief of refund of the Earnest Money Deposit along with interest @ 24% per annum. The appellant has contested the said suit by, *inter alia*, pleading that though he was ready and willing to perform his part of the contract, the respondent failed to discharge his obligations under the contract, as a result of which, he has forfeited the deposit. Both parties adduced oral and documentary evidence. On appreciation of the evidence, the lower Court granted alternative relief of refund of Earnest Money Deposit received by the appellant. While doing so, the lower Court has committed a serious error in specifying the rate of interest.

We find from the judgment of the lower Court conflicting reliefs *qua* rate of interest. While in paras-12 and 14 of its

judgment, the lower Court has awarded interest @ 12% per annum from the date of filing of the suit till the date of decree and @ 6% per annum from the date of decree till the date of realisation, in para-13 thereof, it has awarded interest @ 6% per annum from the date of the suit till the date of realisation.

For better appreciation, paras-12 to 14 of the impugned judgment are reproduced hereunder:

“12. Here, the evidence of P.Ws.1 to 3 and D.W-1 shows that the suits are pending against the suit property and title is in dispute and those suits are not finally resolved so in such circumstances, the specific performance of relief if granted by the Court would be practically benefit to the concerned plaintiff so in this set up of circumstances the alternative relief which was sought by the plaintiff is substantiated and proved through the evidence of P.Ws.1 to 3 and Exs.A-1 to A-6. Therefore, the advance paid shall be returned. Here, Ex.A-1 does not disclose the term of interest over the advance amount paid to the defendant, however, the legal notices were exchanged in between the parties, the defendant is not denied the payment which was made under Ex.A-5 document that the amount shall be refunded with 2% interest per month from the date of suit till the date of realisation but this term creates hardship to the defendant because the amount is more. So, in such circumstances, the amount shall be charged 12% interest per annum from the date of decree and 6% per annum future interest from the date of decree till the date of realisation.

13. Here, the terms and conditions on Ex.A-1 document as not implemented. As such, it deems that the contract was terminated between the parties. Therefore, the advance amount which was paid by the plaintiff under Ex.A-1 and subsequently to a tune of Rs.12 lakhs shall be returned to him with interest @ 6% per annum from the date of suit till the date of realisation. Hence, I answer this issue in favour of the plaintiff.

14. In the result, the suit is partly allowed. This Court is hereby terminated the contract/agreement between the plaintiff and the defendant, dated 30.11.2006, and this Court is hereby directed the defendant to refund the amount of Rs.22,00,000/- (Rupees Twenty two lakhs only) to the plaintiff with interest @ 12% per annum from the date of suit till the date of decree and future interest @ 6% per annum from the date of decree till the date of realisation, within three months from the date of this judgment. No costs.”

Though Mr. Srinivas Polavarapu, learned counsel for the respondent, has submitted that the figure ‘6’ mentioned in para-13 of the impugned judgment is a typographical error, the respondent has not taken any steps to get the purported error corrected by the lower Court.

In our opinion, the component of interest being a severely contested issue, the judgment of the lower Court cannot be sustained with regard to this issue. On this limited issue and without going into the other issues involved in the said suit, the impugned judgment is set aside, while not disturbing its

remaining part for the time being. The case is remanded to the lower Court for fresh consideration with respect to the rate of interest which the respondent is entitled to receive. It is further made clear that this judgment shall not be understood as this Court upholding the remaining part of the impugned judgment which the appellant is entitled to challenge after disposal of the case, following the remand, by the lower Court.

The Appeal Suit is, accordingly, allowed in part to the extent indicated above.

As a sequel to disposal of the Appeal Suit, interim order, dated 24.10.2014, in ASMP.No.2053 of 2014 is vacated and ASMP.Nos.2053 of 2014 and 1409 of 2016 are disposed of as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.RAJANI

20th February, 2017

DR