HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.36 OF 2008

JUDGMENT:

The present regular appeal under Section 96 of the Code of Civil Procedure, 1908, is preferred questioning the judgment and decree, dated 31.10.2007, in O.S.No.41 of 1999 on the file of the VII Additional District Judge (Fast Track Court), Visakhapatnam.

Heard Sri V. Surender Reddy, learned counsel for the appellants, and Sri K. Someswara Kumar, learned counsel for the respondents.

In a suit to enforce the agreement of sale, dated 31.12.1992, where the consideration was Rs.7,00,000/-, with alternative relief, the Court below, while rejecting the request on the ground that there were laches on the part of plaintiffs to perform their part of obligations under the agreement of sale marked as Ex.A1, however, acceded to the alternative relief of refund of Rs.2,43,500/- paid towards part performance on different dates with interest at 12% per annum from the date of payment till realisation.

Learned counsel for the appellants – plaintiffs, of course, does not insist anything here, though, the grounds are directed against refusal to grant the relief of specific performance of agreement of sale, but, however, would confine the scope of the appeal to enhance the interest from 12% per annum to 24% per annum on the amount directed to be refunded or returned to the plaintiffs by the defendants.

In support of his submission, learned counsel for the appellants placed reliance in **State of Haryana and Ors** v. **M/s. S. L. Arora and**

Company[1]**,** wherein, the Honourable Apex Court, while dealing with a case arising out of arbitration proceedings, held that if the award is silent about the interest, the rate of interest in such case would be at 18% per annum. But, such is not the scenario in the present case.

Learned counsel for the respondents would strongly resist the request.

A perusal of the grounds in the present appeal would show that there is no challenge with regard to rate of interest awarded by the Court below. Though, the learned counsel would submit that when the suit was filed, interest at 24% per annum was sought to be awarded, however, when the Court below decreed the suit so far as the alternative relief is concerned with specific rate of interest, which was not in tune with the rate of interest sought for by the plaintiffs, unless in the grounds of appeal, the rate of interest is challenged, certainly, the request of learned counsel for the appellants at this stage cannot be acceded to. Therefore, there is no merit in the present appeal.

Hence, the present Appeal Suit is dismissed. The parties are directed to bear their own costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand closed.

A. SHANKAR NARAYANA, J

February 06, 2018
v v

[1] AIR 2010 SC 1511