

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

+ CCCA No.197 of 2004

% 08-03-2018

The Andhra Pradesh State Civil Supplies Corporation Ltd.,
rep.by its Vice Chairman and Managing Director,
Somajiguda, Hyderabad

... Appellant/
Defendant

v.

\$M/s. Kesarimol Promod Kumar,
rep.by its Proprietor,
Pramod Kumar Agarwal

... Respondent/
Plaintiff

! Counsel for the appellant: Sri S. Satyanarayana Prasad,
learned senior counsel appearing for
Ms. C. Sindhu Kumari, learned counsel

Counsel for the Respondent: Sri C.V. Mohan Reddy

< Gist:

> Head Note:

? Cases referred:

1. AIR 1997 SC 1324
2. AIR 1992 SC 732
3. 2002 (4) ALT 525
4. AIR 1985 AP 21

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

C.C.C.A.No.197 of 2004

JUDGMENT:

This appeal is filed by the defendant against the judgment and decree dated 03.11.2003 in O.S.No.1573 of 2001 passed by the VII Senior Civil Judge, City Civil Court, Hyderabad.

2. For the sake of convenience, the parties are referred to as the plaintiff and the defendant only.

3. The suit O.S.No.1573 of 2001 out of which the present appeal arises, which is a suit filed by the plaintiff against the defendant (present appellant) for recovery of money with interest and costs. The lower Court conducted the trial, in which PW.1 was examined for the plaintiff; Exs.A.1 to A.25 were marked. DWs.1 to 5 were examined for the defendants and Exs.B.1 to B.15 were marked. The lower Court ultimately passed a decree holding that the plaintiff is entitled to a part of the claim with interest from 15.06.2001 till the date of the decree. In the lower Court, the first issue was on the question of interest. The findings on this issue are the subject matter of this appeal. Other issues were not really raised or argued.

4. This Court has heard Sri S. Satyanarayana Prasad, learned senior counsel appearing for Ms. C. Sindhu Kumari, learned counsel for the appellant/defendant and Sri C.V. Mohan Reddy, learned counsel for the respondent/plaintiff on the question of award of interest.

5. The learned senior counsel appearing for the appellant/ defendant argued that the lower Court erred in granting interest from the date of the notice till the date of the decree. He also argued that there is no legal or factual basis for awarding interest as prayed for. In reply thereto, the learned counsel for the respondent/plaintiff argued that the award of interest is perfectly valid and as per the law of land including the Interest Act, 1978.

6. The facts which are necessary to decide this issue are in a narrow compass. The plaintiff supplied material to the defendant for which the payment was not made completely. Therefore, the suit is filed for recovery of the balance sum along with interest. Admittedly, there is no clause in the understanding between the parties for payment of interest.

7. The law is very well settled that in the absence of any contract for payment of interest, interest can be demanded as per Section 3 (b) of the Interest Act, 1978. This section of the law caters to a situation where the contract is silent about the interest. In such a case, the legal mandate as per settled law on this subject is that a party should demand the principal along with interest through a written notice and then the Court is empowered to grant interest from the date mentioned in the notice. In this case, admittedly, interest was demanded by a notice dated 15.06.2001. Therefore, in line with the judgment of the Hon'ble Supreme

Court of India reported in **B.V. Radha Krishna v. Sponge Iron India Ltd.**¹, this Court feels that the lower Court did not commit any error in awarding interest from 15.06.2001. In **B.V. Radha Krishna's** case also, the Hon'ble Supreme Court considered the provisions of the Interest Act, 1978. In a constitution bench decision reported in **Secretary, Irrigation Department, Government of Orissa v. G.C. Roy**², the Hon'ble Supreme Court of India held as follows:

“47. (i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, C.P.C., and there is no reason or principle to hold otherwise in the case of arbitrator.”

This principle of law although enunciated in a case under the Arbitration Act is valid for all claims for interest.

8. As far as the rate of interest is concerned, as per the provisions of the Interest Act, 1978, interest rates prevailing have to be proved. In this case, admittedly, there is no clear evidence to prove the prevalent rate of interest. However, a Full Bench of this Court in a case reported in **A.P.S.R.T.C. v. B. Vijaya**³ held that after a review of the law that the Court has the discretion to award interest at a rate it considers just and equitable more so under Section 34 CPC. In a case reported in **Sri Srinivasa Co. v. Firm, V.D.H.A. Setti**⁴,

¹ AIR 1997 SC 1324

² AIR 1992 SC 732

³ 2002 (4) ALT 525

⁴ AIR 1985 AP 21

a learned single Judge of this Court also held that awarding 12% interest is reasonable.

9. Considering the time that has already elapsed and to bring a quietus to this small issue, this Court follows these two decisions and holds that as the transaction is a commercial transaction of the year 2000 to 2001 interest @ 12% can be awarded. This is a decision for this case also. It is made clear that for all claims for interest under the Interest Act, a notice demanding interest is mandatory. Some evidence of the prevalent interest rates is necessary for the Court to award interest. Interest rates are fluctuating. Hence, evidence is necessary to prove the same. The judgment in **Sri Srinivasa Co.**'s case (4 supra) is also apt for this finding.

10. For all the above reasons, this Court holds that award of interest at 12% from the date of the notice till the decree and thereafter @ 6% is correct.

11. In the result, the appeal is dismissed and the judgment and decree dated 03.11.2003 in O.S.No.1573 of 2001 passed by the VII Senior Civil Judge, City Civil Court, Hyderabad are 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: 08.03.2018
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Note: L.R. copy marked.