IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2021

PRONOUNCED ON : 22.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P. No. 17543 of 2013
and
M.P. Nos. 1 & 2 of 2013

M/s.Bhanu Moulds and Dies [P] Ltd.,
50, Kayarambedu Village,
Guduvancheri,
Chengalpattu Taluk,
Kanchipuram District.
Represented by Power Agent.
V.Kovil Pillai ... Petitioner

vs.

1. The Principal Secretary/Chairman and Managing Director,
   State Industries Promotion Corporation of Tamil Nadu Limited,
   19A Rukmani Lakshmipathy Road,
   Post Box No.7223, Egmore,
   Chennai - 8.

2. K.James Antonyraj,
   S/o.V.Kovil Pillai
   (R2 impleaded vide order of this Court in W.M.P.No.5666 of 2021 in W.P.No.17543 of 2013 dated 12.03.2021) ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st respondent in their Ref.No.F&R/223/13, dated 20.03.2013, and to quash the same and consequently direct the 1st respondent to treat the loan account No.PF/F&R/223/2013 of the petitioner as closed and return the original title deeds of the mortgaged property deposited in respect of the said loan.

For Petitioner : Mr.S.Vijayakumar

For R1 : Mr.Sudarsana Sundar

For R2 : Mr.K.N.Pandian

ORDER

The petitioner has borrowed a sum of Rs.53.57 lakhs out of total sanctioned amount of Rs.56 lakhs from the 1st respondent(SIPCOT). The petitioner however fell in arrears and had paid only a part of the amount to the 1st respondent (SIPCOT). Under these circumstances, proceedings under State Financial Corporation Act, 1951 were initiated against the petitioner by the 1st respondent(SIPCOT) before the District Court, Chengalpet in SFCOP.No.11 of 1991.

2. The SFCOP No.11 of 1991 was decreed by the District Court, Chengalpet in favour of the 1st respondent(SIPCOT). Thus, an amount of Rs.78,22,146/- together with interest at 14% per annum from 29.01.1991 on the Principal amount of Rs.31,87,206/- lent to the petitioner was to be paid. The 1st respondent(SIPCOT) thereafter filed E.P.No.2 of 1994 in SFCOP.No.11 of 1991 on 22.04.1994 to recover the dues from the petitioner and attempted to auction the property. However, the auction could not be conducted by the 1st respondent (SIPCOT) for various reasons. During the interregnum, the 1st respondent(SIPCOT) offered OTS (One Time Settlement) by its communication dated 21.11.2003.

3. As per the aforesaid OTS proposal, the petitioner was required to remit the principal outstanding amount of Rs.31,87,206/- and other dues of Rs.5,41,958/- excluding interest of Rs.2,63,000/- involved in waiver of interest dues of Rs.1,05,662/- lakhs as on 31.12.2003.

4. The petitioner however failed to make any payment and thus the OTS was cancelled on 15.02.2005. The petitioner was therefore directed to pay the entire dues as decreed. Meanwhile, the petitioner sent representation on 19.05.2005. The petitioner thereafter filed W.P.No.34378 of 2005 for Mandamus to direct the 1st respondent(SIPCOT) to consider the petitioner's representation and pass appropriate orders on the representation dated 19.05.2005. In the said writ petition, an interim order was passed on 25.10.2005.

5. During the pendency of the above writ petition, the 1st respondent(SIPCOT) vide communication dated 13.11.2009 informed the petitioner that the earlier OTS could not be considered as it was cancelled on 15.02.2005 due to non-compliance. However, in view of the revised OTS Policy announced during 2005, the 1st respondent(SIPCOT) extended concessions such viz., waiver of interest on interest, penal interest, reduction of interest rates based on the merits of the case. Accordingly, the 1st respondent(SIPCOT) directed the petitioner company to furnish the following:-

"1) Copy of the Audited Annual Reports for the last three years (i.e. 31.3.2007, 31.3.2008 & 31.3.2009).

2) An Affidavit as per format (enclosed) in non-judicial stamp paper valued at Rs.100/- duly notarized.

3) Remit Rs.3.19 lakhs being 10% of principal outstanding amount of Rs.31.87 lakhs towards down payment."

6. The said communication stated that, "After receipt of the above particulars we will examine your request and place it before the Sub Committee/Board and inform you the decision of the Sub Committee/Board within a month".

7. Pursuant to the above, a sum of Rs.3,20,000/- was remitted by the petitioner on 23.07.2010, which was duly acknowledged by the 1st respondent(SIPCOT) by enclosing a stamp receipt in their covering letter dated 28.08.2010. Thereafter, the petitioner paid a further amount of Rs.28,67,206/-(Rs.6,67,206/- + Rs.22,00,000/-) which was duly acknowledged by the 1st respondent(SIPCOT) by their receipt. Thus, in all the petitioner ended up paying a sum of Rs.31,87,206/- (Rs.3,20,000/- +Rs.6,67,206/- +Rs.22,00,000/-) during the pendency of the writ petition.

8. By another communication dated 13.01.2011, the 1st respondent(SIPCOT) further informed that the petitioner that it should remit a sum of Rs.53,57,652/- in all within a period of 30 days from the date of the aforesaid order. The break up of the aforesaid amount of Rs.53,57,652/- was as under:-

	/In Rupees/
Interest for the belated payment of OTS	30,95,295/-+
Sundries recoverable - Principal	13,43,946/-
Interest	9,17,633/-
Travelling Expenses - Principal	283/-
Interest	495/-
Total	53,57,652/-

9. The said letter indicated that on payment of the aforesaid amount of Rs.53,57,652/-, the request for revocation of cancellation OTS and revalidation of the OTS will be considered. It is at this stage, the 2nd respondent evinced

interest in the property mortgaged with the 1st respondent (SIPCOT). Therefore, the 2nd respondent agreed to pay a sum of Rs.54,00,000/- to the 1st respondent(SIPCOT). Under these circumstances, the petitioner (a defunct company) ended up paying further amount of Rs.54,00,000/- to the 1st respondent (SIPCOT) vide bankers cheque No.000208 drawn at Axis Bank, Perungudi in favour of the 1st respondent(SIPCOT). This payment was paid by the 2nd respondent through the petitioner.

10. The above amount was received by the 1st respondent (SIPCOT) towards OTS as is evident from the receipt given by the 1st respondent(SIPCOT) on 28.09.2011. The receipt also states that the amount was received towards sundry deposits. The petitioner thereafter paid another amount of Rs.4,00,000/- on 17.10.2012 through the 2nd respondent to the 1st respondent (SIPCOT). Thereafter, on 18.02.2013, W.P.No.34378 of 2005 came to be disposed by directing the 1st respondent(SIPCOT) to consider the petitioner's representation dated 19.05.2005. The details of which has been already extracted in the foregoing paragraphs.

11. W.P.No.34378 of 2005 was disposed on 18.02.2013. The operative portion of the said order reads as under:-

> "The petitioner has come to this court in the year 2005 seeking a limited prayer for issuance of a direction to the respondent to consider and dispose of the petitioner's representation dated 19.5.2005.
>
> 2. The learned counsel appearing for the petitioner submitted that though the petitioner has borrowed a loan for a sum of Rs.56,00,000/- (Rupees Fifty Six Lakhs only) on 27.1.1983, after some default, he deposited a sum of Rs.31,87,206/- without paying the penal interest, however, a sum of Rs.54,00,000/- towards the interest and the balance principle amount was also paid in the month December, 2012. When there was a difference of interest worked out by the respondent Corporation, once again the petitioner has paid a sum of Rs.4,00,000/- towards the difference of interest. In spite of all these three payments, the request of the petitioner made in the representation dated 19.5.2005 has not been considered. Therefore, the prayer for disposal of the pending representation dated 19.5.2005 cannot be refused.

3. Though the learned counsel appearing for the petitioner sought for some time to take instructions, this Court gives direction to the respondent to dispose of the petitioner's representation dated 19.5.2005 on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

4. Accordingly, W.P.No.34378/2005 stands disposed of. No costs. Connected WPMP No.37265/2005 is closed.”

12. In this writ petition, the petitioner has now questioned the rejection of the OTS by the 1st respondent (SIPCOT) by asking the petitioner to pay the entire balance amount as the petitioner had failed to remit the OTS amount in time.

13. The learned counsel for the petitioner has placed reliance on an unreported decision of the Hon'ble Supreme Court in State Bank of India Vs Vijay Kumar rendered on 26.03.2007 in C.A.No.1573 of 2007, wherein, the Hon'ble Supreme Court held that though the amounts were paid belatedly, the bank at no point of time before the final payments appears to have indicated that the settlement failed because of the failure to stick to the time schedule and therefore upheld the order of the Hon'ble High Court wherein, it has held that the compromise should be acted upon but directed the bank to charge interest for the defaulted period at 10.4% per annum.

14. Appearing on behalf of the 2nd respondent, Mr.K.N.Pandian, learned counsel would submit that the rejection of OTS by the 1st respondent(SIPCOT) was arbitrary and capricious and they are liable to be quashed and interfered by the Court inasmuch as the 1st respondent being an authority under the statute and a State within the meaning of Article 12 of the Constitution of India was expected to act in a fair manner. It is submitted that though there were some delay in making payments as per the OTS nevertheless the amounts were paid and appropriated by the 1st respondent (SIPCOT) towards the outstanding dues as determined in OTS proposal.

15. It is further submitted that the 1st respondent (SIPCOT) having acknowledged the amount of Rs.54 lakhs on 28.09.2011 towards OTS amount cannot approbate and reprobate and call upon the petitioner or the 2nd respondent to pay further after appropriating the amounts towards principal amount.

16. The learned counsel for the 2nd respondent also referred to the decision of the Hon'ble Supreme Court in M/s.Plasto Pack Vs Ratnakar Bank Ltd., 2001 (3) CTC 636, wherein, the Hon'ble Supreme Court stated that there was nothing wrong in the appellants expecting that the respondent-bank would, instead of indulging in litigation, settle the matter giving such just and equitable relief to the appellants as they deserved.

17. There was no counter proposal made nor the appellants' proposal was at any time turned down by any written communication made by the respondent-bank and held that grave injustice has been done by holding that the respondent-bank ought to taken a have reasonable stand and should have sympathetically considered the proposal of the appellants therein which was not lacking in bona fides and in the interest of avoiding litigation and early recovery of outstanding debts. He submits that the Hon'ble Supreme Court has castigated the attitude of the bank perpetuating the litigation because of the unreasonable and rigid attitude.

18. The learned counsel for the 2nd respondent also referred to another decision of this Court rendered in Narmathaa Textiles Ltd., Vs Union Bank of India, 2012 (1) CWC 740, rendered in the context of recovery of due to Securities and Exchange Board of India Act, 1992, (Merchant Bankers Regulations, 1992), and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002.

19. Dealing with the OTS Scheme of the banks, the Division Bench of this Court referred to the decision of the Hon'ble Supreme Court in Kranti Associates Pvt.Ltd., & Anr. Vs. Sh.Masood Ahmed Khan and ors., 2011 (11) MWN (Civil) 677 (SC) : 2010 (9) Scale 1999, wherein, the following guidelines were laid down to be followed by the banks:

> "51. ....
>
> (f) Reasons have virtually become as indispensable a component of a decision-making process as observing Principles of Natural Justice by judicial, quasi-judicial and even by administrative bodies.
>
> ....
>
> (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of

Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires", adequate and intelligent reasons must be given for judicial decisions".

20. The learned counsel for the 2nd respondent further submits that before rejecting the request of the petitioner, there should have been a proper reasoning and that in the present case, the conduct of the 1st respondent(SIPCOT) totally lacks bonafide. The learned counsel also drew attention to Para 58 from the said decision of this Court, which reads as under:-

> "58. The Petitioner has raised several questions in the earlier Writ Petition. This Court while allowing the Writ Petition and remitting the matter to the Management Committee, very clearly indicated that the OTS was cancelled by the Chief Manager on his own and the same was not in consonance with the RBI guidelines. It was further indicated that the Petitioner had made efforts to settle the amount and therefore, wanted the Competent Authority to consider the claim on merits. In spite of making such observations and directing the Bank to consider the issue afresh, no serious efforts appears to have been taken by the Administrative Committee. In fact, the note prepared by the Regional Office wanted the Managing Committee to pass a resolution confirming the order passed by the Chief Manager which was already set aside by this Court. The Debts Recovery Tribunal would not be in a position to interpret the order passed by this Court and arrive at a decision as to whether the issue was considered by the Bank in accordance with the order in W.P.No.17626/2010. The materials available on record shows that the Bank has not considered the issue in the light of the mandatory guidelines and in accordance with the directions given by this Court earlier in W.P.No.17626/2010. Therefore, we are of the considered view that there is no point in directing the Debts Recovery Tribunal to consider the issue raised by the Petitioner at this point of time. In fact, it is in the interest of the Bank to give a quietus to the matter and to recover the amount in case the Petitioner is not entitled to an order to

condone the delay in fulfilling the terms of One Time Settlement."

21. He further submits that in the facts of the said case, the Court also held that even after withdrawal of One Time Settlement, if substantial payments are made, the banks are required to accept the same in order to resolve genuine disputes.

22. Mr.K.N.Pandian, learned counsel for the 2nd respondent submits that after an interim order was passed by this Court on 12.03.2021, he made an attempt to approach the 1st respondents(SIPCOT) to settle the case. However, the offer was turned down on the ground that the 2nd respondent has no locus and the officers of the 1st respondent(SIPCOT) refused to receive the application. He submits that the 2nd respondent has pumped in about 54 lakhs under a bonafide belief that the the OTS offered by the 1st respondent(SIPCOT) would be acted upon and now the 2nd respondent is stuck with the investments and has been running factory at the premises of the petitioner. The 2nd respondent has registered a sale deed dated 20.01.2012 and is doing manufacturing business from the said premises and therefore would like to bring the quietus by offering any additional amounts, which may be reasonable,

even though the amounts that were offered under OTS Scheme has been fully settled though with a slight delay.

23. He submits that even if there was a delay through 2nd respondent, the petitioner has paid another sum/further amount of Rs.4,00,000/- towards interest over and above 54 lakhs which was originally paid. He therefore submits that any reasonable amount that may be demanded will be paid. It is submitted that, the 1st respondent(SIPCOT) is unyielding and relying on the content OTS scheme offered on 13.01.2011 stipulating payment of Rs.53,57,652/- within a period of 30 days from the date of letter. He submits that having accepted the amount of Rs.54 lakhs as OTS amount vide Receipt No.558 dated 27.09.2011, the 1st respondent(SIPCOT) cannot act arbitrarily.

24. It is submitted that it is not open for the 1st respondent(SIPCOT) to resile from the same. He further submits that another sum of Rs.4,00,000/- has been paid on 17.10.2012 and therefore the interest of the 1st respondent (SIPCOT) has been adequately protected. He further submits that when the 1st respondent(SIPCOT) attempted to auction the property under the EP proceeding, there were no takers.

25. Thereafter in 2011, the 2nd respondent stepped in/offered to pay the amount. He therefore submits that the

2nd respondent cannot be punished and penalized merely because the 1st respondent(SIPCOT) acts in a whimsical and capricious manner. He therefore prays for allowing the writ petition and submits that any reasonable amount that may be fixed by the Court or the 1st respondent(SIPCOT) will be paid by the 2nd respondent to put a quietus to the dispute.

26. The learned counsel for the 1st respondent(SIPCOT) submits that OTS Scheme is sacrosanct and therefore if there was failure on the part of the 1st respondent to act in accordance with the OTS Scheme, the 1st respondent(SIPCOT) being a State Financial Corporation cannot taken exception and settle the case of the petitioner. He submits that the 1st respondent(SIPCOT) was in default after borrowing a sum of Rs.53.87 lakhs way back in 1983.

27. The petitioner only paid 31.87 lakhs and therefore the 1st respondent(SIPCOT) was constrained to recover the dues from the petitioner initiate proceedings under Section 31 of the State Financial Corporation Act, 1951. It is submitted that the 1st respondent(SIPCOT) being a public body was forced to initiate proceedings as there were no payments forthcoming from the petitioner and repeatedly different writ petitions came to be filed which came to be disposed.

28. He submits that the present writ petition totally lacks bonafide and in any event it was open for the petitioner to approach the 1st respondent(SIPCOT) for settling the case as per the existing scheme for settling the dispute under OTS and that in respect of the petitioner, the 2nd respondent has approached the 1st respondent which cannot be considered for settling the case.

29. Heard the learned counsel for the petitioner and the respondents and perused the materials available on record.

30. The facts are not is dispute. The property has been purchased by the 2nd respondent from the petitioner in 2012 by a registered sale deed dated 20.01.2012 vide Doc.No.891 of 2012. The purchase was made when there were OTS scheme proposals was pending before the 1st respondent(SIPCOT). The sale was registered after the amount of Rs.54 lakhs was paid to the 1st respondent(SIPCOT) and duly acknowledged. The receipt given by the 1st respondent(SIPCOT) vide Receipt No.558 dated 27.09.2011 shows receipt of Rs.54 lakhs. It indicates that it as received from the petitioner towards OTS amount. It has been shown on accounted as sundry deposits. The petitioner paid an amount of Rs.31.87 lakhs, prior to letter dated 13.01.2011. Therefore, another sum of Rs.58,00,000/- (Rs.54,00,000/- + Rs.4,00,000/- was paid . In all, a sum of Rs.89,87 lakhs has been paid. Therefore, the only legal question to be answered is whether the 1st respondent(SIPCOT) is justified in still asking the petitioner and the 2nd

respondent to pay the balance amount that was outstanding as per the EP proceedings after the payments were received under OTS Scheme.

31. E.P.No.2 of 1994 in SFCOP No.11 of 1991 is said to be pending before the District Court, Chengalpet. The 2nd respondent has filed application for termination of the EP proceedings on the ground that the amount has been paid. Under Section 63 of the Indian Contract Act, 1872, the promisee may be dispense with or remit, wholly or in part, the performance of any promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit. In the context of Section 63 of the Indian Contract Act, 1872, the law has been settled that a person cannot approbate or reprobate an amount which has been paid and accepted without any demur. There will be a valid discharge of the liability.

32. In Keshavlal Lallubhai Patel and Ors. Vs Lalbhai Trikumlal Mills Ltd., 1959 SCR 213, AIR 1958 SC 866 it was held as under:

> "The true legal position in regard to the extension of time for the performance of a contract is quite clear under s. 63 of the Indian Contract Act. Every promisee, as the section provides, may extend time for the performance of the contract. The question as to how extension of time may be agreed upon by the parties has been the subject-matter of some argument at the Bar in the present appeal. There can be no doubt, we think, that both the buyer and the seller must agree to extend time for the delivery of goods. It would not be open to the promisee by his unilateral act to extend the time for performance of his own accord for his own benefit."

33. In M/s Kailash Nath Associates Vs Delhi Development Authority 2015 (4) SCC 136observed the above passage the court held observed as follows:

> However, such is not the position here. In the present case, the appellant is the promisor and DDA is the promisee. In such a situation, DDA can certainly unilaterally extend the time for payment under Section 63 of the Contract Act as the time for payment is not for DDA's own benefit but for the benefit of the appellant. The present case would be covered by two judgments of the

Supreme Court. In Citi Bank N.A. v. Standard Chartered Bank, (2004) 1 SCC Page 12, this Court held:

> "50. Under Section 63, unlike Section 62, a promise can act unilaterally and may
>
> (i) dispense with wholly or in part, or
>
> (ii) remit wholly or in part, the performance of the promise made to him, or
>
> (iii) may extend the time for such performance, or
>
> (iv) may accept instead of it any satisfaction which he thinks fit."

34. Similarly in S. Brahmanand v. K.R. Muthugopal, (2005) 12 SCC 764 the Supreme Court held:

> "34. Thus, this was a situation where the original agreement of 10-3-1989 had a "fixed date" for performance, but by the subsequent letter of 18-6- 1992 the defendants made a request for postponing the performance to a future date without fixing any further date for performance. This was accepted by the plaintiffs by their act of forbearance and not insisting on performance forthwith. There is nothing strange in time for performance being extended, even though originally the agreement had a fixed date. Section 63 of the Contract Act, 1872 provides that every promisee may extend time for the performance of the contract. Such an agreement to extend time need not necessarily be reduced to writing, but may be proved by oral evidence or, in some cases, even by evidence of conduct including forbearance on the part of the other party. [See in this connection the observations of this Court in Keshavlal Lallubhai Patel v. Lalbhai Trikumlal Mills Ltd., 1959 SCR 213 : AIR 1958 SC 512, para 8. See also in this connection Saraswathamma v. H. Sharad Shrikhande, AIR 2005 Kant 292 and K. Venkoji Rao v. M. Abdul Khuddur Kureshi, AIR 1991 Kant 119, following the judgment in Keshavlal Lallubhai Patel (supra).] Thus, in this case there was a variation in the date of performance by express representation by the defendants, agreed to by the act of forbearance on the part of the plaintiffs. What was originally covered by the first part of Article 54, now fell within the purview of the second part of the article. Pazhaniappa

Chettiyar v. South Indian Planting and Industrial Co. Ltd. [AIR 1953 Trav Co 161] was a similar instance where the contract when initially made had a date fixed for the performance of the contract but the Court was of the view that "in the events that happened in this case, the agreement in question though started with fixation of a period for the completion of the transaction became one without such period on account of the peculiar facts and circumstances already explained and the contract, therefore, became one in which no time was fixed for its performance" and held that what was originally covered by the first part of Article 113 of the Limitation Act, 1908 would fall under the second part of the said article because of the supervening circumstances of the case."(at Page 777)

35. Ultimately, the court held as under:

Based on the facts of this case, it would be arbitrary for the DDA to forfeit the earnest money on two fundamental grounds. First, there is no breach of contract on the part of the appellant as has been held above. And second, DDA not having been put to any loss, even if DDA could insist on a contractual stipulation in its favour, it would be arbitrary to allow DDA as a public authority to appropriate Rs.78,00,000/- (Rupees Seventy Eight Lakhs) without any loss being caused. It is clear, therefore, that Article 14 would apply in the field of contract in this case and the finding of the Division Bench on this aspect is hereby reversed.

36. The court also referred to Section 7 (a) of The Contract Act, 1872 which reads as under:-

"74. Compensation for breach of contract where penalty stipulated for.- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.-A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.-When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of any condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.-A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested."

37. The Hon'ble Court ultimately summarized the portion in para 43 as follows:

On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:- Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the Court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the Court cannot grant reasonable compensation.

Reasonable compensation will be fixed on well known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.

The Section applies whether a person is a plaintiff or a defendant in a suit.

The sum spoken of may already be paid or be payable in future.

The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application.

38. Illustration (b) and (d) to Section 63 of The Indian Contract Act, 1862 reads as under:-

(b).“A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged. (b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.”

(d).“A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount. (d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount."

39. Since the amount paid of Rs.58,00,000/-

(Rs.54,00,000/- + Rs.4,00,000/-) was equal to the amount of the OTS offered by the 1st respondent, its appropriation can be only against amounts under OTS and not against the amount decreed even though the payment was a slightly delayed. The law will presume that the payment of Rs.54,00,000/- by the petitioner to 1st respondent SIPCOT was in discharge of the OTS amount. It was therefore inequitable on the part of the 1st respondent to demand amounts over and above the OTS amount and reject the OTS of dis merely because there was a delay.

40. Once the 1st respondent offered, a fresh term to settle the amount vide its proposal dated 13.01.2011, the past transaction and liabilities faded out particularly in the light of subsequent tender of the amount of Rs.58,00,000/- by the petitioner and the 2nd respondent and its acceptance by the 1st respondent. The offer in the OTS letter dated 13.01.2011 and its acceptance though acted belatedly signaled a novation of the earlier liability incurred applying the principle of novation under Section 62 of The Contract Act, 1872.

41. Even if the earlier contract survived, the liability stood discharged in terms of illustration (b) and (d) to section 63 of The Indian Contract Act 1872 is applied to the facts of the case. On the other hand, if it were to be inferred that the liability stood substituted under the fresh offer under OTS dated 13.01.2011 the 1st respondent could no longer press for the amount decreed by the District Court, Chengalpet by its Judgment and Decree dated 12.10.1993.

42. At best, the 1st respondent will be entitled to further interest on delayed payment of OTS amount as its lending rate for the period after the expiry of 30 days from 13.01.2011 till the actual date of payment of Rs.54,00,000/- .

43. The first respondent is entitled to claim reasonable compensation for the delay in payment of OTS amount on 27.09.2011, after expiry of the 30th day from 13.01.2011. Therefore, the rejection of the OTS vide the impugned communication dated 20/03/2013 by the first respondent is unsustainable.

44. The first respondent is therefore directed to calculate the interest to be paid by the petitioner and/or the second respondent as the case may be, who has purchased the property from the petitioner. Apart from the interest, the first respondent /Sipcot is entitled for the reasonable amount towards compensation for the delay.

45. In my view, 10% of the OTS amount of Rs.54,00,000/- over and above the interest on the delayed payment could be considered as a reasonable amount of compensation to be paid to the 1st respondent /Sipcot.

46. Under such circumstances, the impugned order/communication dated 30.03.2013 of the first respondent/Sipcot is quashed. Consequently, the first respondent/Sipcot is directed to calculate the interest at its lending rate to be paid by the petitioner for the period commencing from the expiry of the 30th day i.e. for the period between on 13.02.2011 and 28.09.2011 being the delayed period for payment of Rs.54,00,000/- towards interest. The first respondent/Sipcot may at it discretion charge another sum equivalent to 10% of Rs.54,00,000/- towards offset any other loss caused to it as indicated above. This exercise shall be carried out by the first respondent/Sipcot within a period of 30 days from the date of receipt of a copy of this order.

47. The writ petition stands allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

arb/kkd

To:

The Principal Secretary/Chairman and
Managing Director,
State Industries Promotion Corporation of
Tamil Nadu Limited,
19A Rukmani Lakshmipathy Road,
Post Box No.7223, Egmore,
Chennai - 8.

+1cc to Mr.K.N.Pandian, Advocate SR.No.24477

+1cc to Mr.S.Vijayakumar, Advocate SR.No.24476

+1cc to Mr.Sudarsana Sundar, Advocate SR.No.24843

W.P.No.17543 of 2013
and
M.P.Nos.1 & 2 of 2013

SR II(CO)
GMY(02/07/2021)