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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.07.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRVARTHY**

**W.A(MD)NO.1137 OF 2023
and
C.M.P(MD)No.8668 of 2023**

- 1.The Secretary to Government,
Public Works Department,
Fort St.George,
Chennai -9.
 - 2.The Engineer in Chief,
P.W.D Water Resources Organization,
Tallakulam,
Madurai -2.
 - 3.The Chief Engineer,
P.W.D Water Resources Organization,
Tallakulam,
Madurai – 2.
 - 4.The Executive Engineer,
P.W.D.Water Resources Organization,
Anti Sea Erosion Division,
Nagercoil. :Appellant/Respondents 1 to 4
- .vs.
- M.Krishnakumar :Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
praying this Court to set aside the order passed by this Court in
W.P(MD)No.12500 of 2011, dated 19.07.2022.



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For Appellants :Mr.M.Lingadurai
Special Govt.Pleader

For Respondent :Mr.B.Brijesh Kumar

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR,J.**]

This Writ Appeal is directed against the order of the learned Single Judge in allowing the Writ Petition in W.P(MD)No.12500 of 2011.

2.The brief facts which are necessary to dispose of the Writ Appeal is as follows:

The respondent in this Writ Appeal is a Contractor. He entered into an agreement for construction of Rubble mount sea wall at Rajakkamangalam Thurai, Kanyakumari District. As per the contract, he had commenced the work on 11.02.2008 and has to complete the work within a year. It is admitted that the respondent has completed the work within a period of six months and submitted the Bill for payment. Despite the bill was submitted by the respondent, it was not settled by the second appellant as per the terms of the agreement. In fact, there was a long delay in return of the EMD even after completion of the work. It is in the



said circumstances, the respondent has filed a Writ Petition earlier for issuance of a Writ of Mandamus directing the second respondent to pay the final amount for the work done by the Petitioner with interest. It is admitted that by order, dated 16.02.2010, the Writ Petition was allowed directing the Petitioner to give another representation to the second respondent within a period of 15 days with a further direction to the second respondent to consider the representation and settle the payment within a period of three months thereafter. Even after the said direction of this Court for settlement of dues within three months on the representation of the Petitioner, there was further delay and it is now admitted that the payment was made only in the year 2011. The respondent/Writ Petitioner thereafter submitted a representation for payment of interest for the delayed payment from July 2008 to February 2011. Earlier, the Writ Petition filed by the respondent in W.P(MD)No.6292 of 2011 was allowed with a direction to the respondent therein to consider the request of the respondent herein and dispose of the same within a period of eight weeks. The representation of the Petitioner was rejected by the fourth appellant on 10.08.2011 on the ground that there was no clause in the agreement for payment of interest. It was this order which was challenged by the respondent herein/Writ Petitioner in W.P(MD)No.12500 of 2011.



3.The learned Single Judge allowed the Writ Petition on the admitted facts that there was delay in settlement of the dues. The learned Single Judge found that the amount was settled with a delay for no reason whatsoever and that therefore, the respondent is entitled for interest for the delayed payment. Though the respondent claimed interest at the rate of 12% pa., the learned Single Judge granted interest at the rate of 9% pa., for the delayed payment for the period from 01.08.2008 to 31.01.2011. This Court finds no reason to interfere with the decision of the learned Single Judge.

4.The decision of the Honourable Supreme Court in the case of **Alok Shanker Pandey .vs. Union of India and others reported on (2007) 3 Supreme Court Cases 545** is relied upon by respondent for the proposition that Court is empowered to award interest at 12% for the belated payment. The Honourable Supreme Court found that the delay in payment or settlement of dues is an unfair trade practice.

5.The learned Special Government Pleader appearing for the appellants submit that there is no time limit fixed for payment or settlement of dues to the Contractor as per the terms of the



agreement. This argument cannot be countenanced in view of Section 46 of the Indian Contract Act, which reads as follows:

'46. Time for performance of promise, where no application is to be made and no time is specified:--- Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.'

6. The amount payable on the execution of the contract is the consideration and it is a promise which has to be fulfilled. When no time is fixed for payment of dues or fulfillment of promise, the promise should be performed within a reasonable time. On the execution of the work within the stipulated time, the respondent is entitled to the amount payable for the work forthwith. Having regard to the nature of work executed, the contract between the appellants and the respondent is commercial and therefore the learned Single Judge ought to have allowed interest at the rate of 12% p.a instead of 9%pa. In view of the settled principles of law, this Court is not inclined to interfere with the order of the learned Single Judge and no ground whatsoever is made out for interference and as such, the appeal is devoid of merits.



7. Accordingly, the Writ Appeal is dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is dismissed.

[S.S.S.R.,J.] [D.B.C.,J.]
24.07.2023

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NCC: Yes/No
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S.S.SUNDAR, J.
AND
D.BHARATHA CHAKRAVARTHY, J.

vsn

JUDGMENT MADE IN
W.A(MD)NO.1137 OF 2023
and
C.M.P(MD)No.8668 of 2023

24.07.2023