IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

S.A. NO. 428 OF 2021

M/s.Metal Forms Private Limited … Appellant / Appellant / Plaintiff

Versus

1.M/s. Shiv Machine Tools
A Partnership Firm
Represented by its Managing Partner
Mr.Vijay.V. Shah
Old No. 67, New No. 102,
Armenian Street, Chennai - 600 001.

2.Vijay.V.Shah
Managing Partner
M/s. Shiv Machine Tools
Having Office at
Old No. 67, New No. 102
Armenian Street, Chennai - 600 001. ... Respondents/ Respondents / Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated 6th July, 2019 made in A.S.No. 07 of 2017 on the file of the IV Additional

City Civil Court, Chennai, modifying the Judgment and Decree dated 6th September, 2016 made in O.S.No.3347 of 2006 on the file of the XIII Assistant City Civil Court, Chennai.

For Appellant	:	Mr.R.Bharath Kumar
For Respondents	:	No Appearance

JUDGMENT

The plaintiff has filed this Second Appeal under Section 100 of the Code of Civil Procedure, 1908, against the Judgment and Decree dated 06th July, 2019 passed by the 'IV Additional City Civil Court, Chennai' [hereinafter 'First Appellate Court'] in A.S.No.07 of 2017, modifying the Judgment and Decree dated 06th September, 2016 passed in O.S.No. 3347 of 2006 by the 'XIII Assistant City Civil Court, Chennai' [hereinafter 'Trial Court'].

2.For the sake of convenience, hereinafter, the parties will be referred to as per their array before the Trial Court.

3.Mr.R.Bharath Kumar, learned Counsel for the appellant / plaintiff is before this Court through Video Conferencing mode and there is no representation on behalf of the respondents.

4.<u>**Case of the Plaintiff**</u>**:**

4.1. The plaintiff is a registered company under the Companies Act, 1956, carrying on business of fabrication for more than 20 years. On the first week of July 2005, they were in urgent need of two numbers of power press machines. Hence, the plaintiff placed Purchase Order Nos.125 and 126 dated 11.07.2005 for the purchase of two *Mankoo* make power press machines, one with 250 tons capacity and another with 100 tons capacity, for the value of Rs.7,60,000/- and Rs.3,75,000/- respectively. The plaintiff paid a sum of Rs.2,83,750/- by way of Cheque bearing No.905402, dated 12.07.2005 drawn on Tamil Nadu Mercantile Bank Limited towards 25% advance payment for the aforesaid machineries. The defendants failed to consign the said power press machines within the time period agreed between the plaintiff and the defendants in the contract. The defendants deliberately failed to supply the machines without any valid or acceptable reasons. Due to the non-supply of machines, the plaintiff could not fulfil the time bound orders placed by their reputed customers. Hence, the plaintiff issued Legal Notice dated September 19, 2005 calling upon the defendants to repay the advance money along with 18% interest. The defendants issued Reply dated November 21, 2005, denying their liability. Therefore, the plaintiff filed the Suit for recovery of money paid by him to the defendants *viz.,* a sum of Rs.3,18,288/- with interest at the rate of 18% per annum on Rs.2,83,750/- from the date of plaint till the date of realization and for costs.

5.Case of the Defendants:

5.1. The sum and substance of the Written Statement filed by the defendants is that the first defendant is the distributing agent of 'M/s.Mankoo Machine Tools Private Limited' (henceforth 'Mankoo Pvt. Ltd.'). Mankoo Pvt. Ltd. has not been added as a party to the Suit and hence, the Suit is bad for non-joinder of just and proper party.

5.2. That apart, the plaintiff placed two orders vide Purchase Order Nos.125 and 126 dated 11.07.2005, one for 250 tons capacity machine and another for 100 tons capacity machine with their own terms, without referring to the proposals dated 01.07.2005 and 11.07.2005 given by the defendants. One of their terms is that the transportation is on the plaintiff. The plaintiff has not prescribed any time limit in their purchase order. The defendants never agreed to deliver the machines to the plaintiff within one week. On receiving the plaintiff's purchase order, the defendants placed purchase order for the said machines with Mankoo Pvt. Ltd. vide Purchase Order No.SMT/3732 dated 14.07.2005, by making necessary payment. The defendants had performed their part of the contract by placing the orders with Mankoo Pvt. Ltd. immediately after receiving purchase order from the plaintiff and there is no default on the defendants.

5.3. On information from the defendants, the plaintiff's Company Engineer went to Ludhiana to inspect the said 250 tons machine on 03.08.2005 *i.e.,* after the expiration of the alleged deadline for delivery. The said conduct of the plaintiff shows that time is not an essence of the contract, and that the plaintiff knew that there was a chance of reasonable delay for making such kind of costly and heavy machine.

5.4. Further, in compliance with the plaintiff's Purchase Order No.126 dated 11.07.2005, the defendants made arrangement to purchase 100 tons capacity machine from Mankoo Pvt. Ltd., and in turn on 26.07.2005, on good faith, Mankoo Pvt. Ltd. dispatched the said 100 tons machine through ‘M/s.Patel Roadways Limited’ to the defendants. But the plaintiff did not take delivery of the said 100 tons machine up to 15.08.2005, after its arrival on 13.08.2005 on payment of balance 75% price amount as agreed. On the other hand, on 16.08.2005, the plaintiff cancelled the orders for both, the said 100 tons and 250 tons machines arbitrarily. In fact, the conduct of the plaintiff would show that the plaintiff is unwilling to purchase the power press machines. Further, since time frame has not stipulated as one of the clause in the purchase order, the delay cannot be pinned down on the defendants. Hence, the defendants neither committed any breach of contract nor caused any delay. Accordingly, they prayed to dismiss the Suit.

6.At trial, one K.Baskar, was examined as P.W.1 and Ex-A.1 to Ex-A.13 were marked on the side of the plaintiff. On the side of the defendants, D.W.1-Suresh J.Shah and D.W.2-Hitesh V.Shah were examined and Ex-B.1 to Ex-B.31 were marked.

7.After full-fledged trial, the Trial Court partly decreed the Suit directing the defendants to pay a sum of Rs.2,92,750/- to the plaintiff with cost. The Trial Court, with regard to interest and other aspects, dismissed the Suit by observing that there is no specific clause for default interest in the contract. Not being satisfied with the Judgment and Decree passed by the Trial Court, the plaintiff preferred an appeal in A.S.No.07 of 2017 before the First Appellate Court. The First Appellate Court after hearing both sides concluded that the plaintiff is entitled to post decree interest. It allowed the Appeal Suit in part and modified the Judgment and Decree of the Trial Court, directing the defendants to pay a sum of Rs.2,92,750/- with subsequent interest thereon at the rate of 6% per annum from the date of decree passed by the Trial Court till the date of realization with cost of the Suit.

8.Feeling aggrieved with the Judgment and Decree of the First Appellate Court, the plaintiff has preferred this Second Appeal. This Second Appeal was admitted on 06.08.2021 on the following Substantial Questions of Law:-

> *"(a) Whether the 1st Appellate Court is right in refusing to award pendente lite interest for the Suit claim from the date of Plaint till date of Decree overlooking Section 34 of Civil Procedure Code?*

(b) *Whether the Judgment and Decree of the Courts below, declining to award of interest from the date of Plaint when more specifically the delay is largely attributable to the defendants which are explicitly clear from their own conduct in protracting the proceedings for almost ten years?*

(c) *Whether the Judgment and Decree of the Courts below are justified and correct in restricting the Plaintiff to get the benefits of interest from the date on which the suit is decreed which is nothing short of shutting a litigant to drive the fruits of decree prospectively instead of retrospectively?"*

9.Mr.R.Bharath Kumar, learned Counsel for the appellant / plaintiff would submit that though there was no contract for default interest, the plaintiff is entitled to*pendente lite* interest and post decree interest. The Trial Court and the First Appellate Court have miserably failed to exercise their discretion in favour of the plaintiff. He would further submit that the Trial Court and the First Appellate Court have failed to consider the conduct of the defendants in conducting the case. The intention of the defendants is to drag on the proceedings and bend the plaintiff. He would further point out that the plaintiff presented the Plaint on 29.03.2006 and the Trial Court passed the Judgment and Decree on 06.09.2016. The Suit was pending for more than ten years. Accordingly, he prays to allow the Second Appeal and award *pendente lite* interest on the Suit Claim Amount. He relies on the decision of this Court in ***Enkay Visions (P) Ltd -vs- Doordarshan by its Director General***, reported in ***2021 (1) CTC 577***.

10. Despite the sufficient opportunities given to the respondents, they did not appear and contest the Second Appeal.

11. Heard appellant side's arguments and perused the materials available on record.

12. On perusal of the Trial Court's records, it is seen that the defendants dragged on the Suit proceedings by filing various memos seeking adjournments. The Trial Court and the First Appellate Court have failed to consider the conduct of the defendants in defending the Suit. Further, this is a Suit for recovery of money. The transactions held between the plaintiff and the defendants are commercial transactions.

Hence, the Trial Court and the First Appellate Court considering the nature of the Suit and also the conduct of the defendants, ought to have exercised their discretion to award interest in favour of the plaintiff. It is settled position of law that, though there is no contract between the parties with respect to payment of interest in case of default, the Court has power to award *pendente lite* interest and post decree interest in appropriate cases bearing in mind the facts and circumstances thereof. Considering the facts and circumstances of this case, especially the nature of the transactions between the plaintiff and the defendants, this Court is of the view that the plaintiff is entitled to get *pendente lite* interest also. This view is fortified by the decision of this Court relied on by the appellant's Counsel *viz.,* ***Enkay Visions' Case*** (*supra*). It is apposite to extract the relevant Paragraph therein which is Paragraph No. 22 hereunder:

> *"22. ... Section 34 of CPC is clear and explicit that whenever interest is awarded, it may be awarded from the date on which the plaint was instituted and not on the date when decree will be passed by the Court after conducting a trial in the suit. It is needless to mention that the rate at which interest is to be awarded is a discretion vested in the Court depending upon the nature of transaction between the parties and other attendant facts and circumstances of the case, but interest must*

be awarded only from the date on which plaint was presented and restricting it from the date of decree is undesirable. ...”

13. Further, the First Appellate Court as well as the Trial Court awarded a sum of Rs.9,000/- towards pre-Suit legal expenditure *viz.,* Notice, *etc.,* on top of the Principal Amount of Rs.2,83,750/-, using their discretionary powers. The defendants have not preferred an appeal over the Judgment and Decree of the Trial Court as well as the First Appellate Court. Hence, the same shall not be disturbed by this Court. Substantial Questions of Law are answered accordingly.

14. In view of the narrative thus far, the Second Appeal is allowed by modifying the Judgment and Decree passed by the First Appellate Court as well as the Trial Court as hereunder:-

> The defendants are directed to pay a sum of Rs.2,92,750/- along with interest at the rate of 6% per annum on the Principal Amount of Rs.2,83,750/- from the date of plaint till the date of realization.

15. Considering the facts and circumstances of the case, the appellant/plaintiff is entitled for cost throughout the proceedings.

30.10.2024

Index : Yes
Internet : Yes
Neutral citation : Yes
Speaking order : Yes
MSM/TK

R. SAKTHIVEL, J.

MSM/TK

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