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APPEAL (CAD) NO.19 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02 / 02 / 2024

JUDGMENT PRONOUNCED ON : 13 / 02 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL (CAD) NO.19 OF 2023

AND

CMP NO.21600 OF 2023

M/s.Karthik Raja Exports (Proprietor concern)
Represented by its Proprietor Mr.R.Shanmugam
Having office at R 23-A/A2,
Ambattur Industrial Road, Anna Nagar West,
Chennai – 600 101.

... Appellant /
Defendant

Vs.

M/s.Andavar Exports (Proprietor Firm)
Represented by its Proprietor Mr.S.Vigneswaran
No.14, Jayaraj Street, Indira Nagar,
Poonamallee Town and Taluk,
Thiruvallur District, Chennai – 600 056.

... Respondent /
Plaintiff



APPEAL (CAD) NO.19 OF 2023

PRAYER: First Appeal filed under Section 13 of Commercial Courts Act, 2015 read with Section 96 of the Code of Civil Procedure, 1908, praying to set aside the decree and judgment dated 07.01.2023 in Commercial O.S.No.43 of 2020 on the file of Principal District Court, Tiruvallur.

For Appellant / Defendant : Mr.P.Muthusamy
For Respondent / Plaintiff : Mr.G.Dilipkumar

J U D G M E N T

R.SAKTHIVEL, J.

The appellant herein is the defendant in Commercial O.S.No.43 of 2020 on the file of the learned 'Principal District Judge, Tiruvallur' (henceforth 'Trial Court' for the sake of brevity).

2. Feeling aggrieved with the decree and judgment dated January 7th, 2023 passed by the Trial Court in Commercial O.S.No.43 of 2020, the appellant herein / defendant therein has preferred this appeal.

3. For the sake of convenience, the parties will be referred to as per their array in the suit i.e., appellant herein and respondent herein will be referred to as defendant and plaintiff respectively.



APPEAL (CAD) NO.19 OF 2023

4.The case of the plaintiff is that the plaintiff operates a

Granite processing factory at Pidarithangal Village, Poonamallee Taluk;

that the defendant is engaged in Granite quarrying at Kunnam and

Semangalam Villages of Vanoor Taluk, Villupuram District; that the

plaintiff had deposited a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only)

as advance money with the defendant for supply of raw Granite for its

export business; that as per their agreement, a portion of the advance is to

be routinely adjusted towards the price of materials when placing the

orders; that the defendant had been sending statement of accounts by

e-mail as per which as on December 2nd, 2017, a sum of Rs.26,72,505/- is

standing to the credit of the plaintiff in the hands of the defendant; that by

the end of December 2017, the defendant was not able to supply raw

Granite due to cessation of mining activities caused by failure of obtaining

Clearance Certificate from the concerned authority; and that due to the

failure of supply of materials by the defendant, the plaintiff was not able to

meet the demands of his foreign customers and consequently, the plaintiff



APPEAL (CAD) NO.19 OF 2023

sustained loss of Rs.5,00,000/-. Further, as per the statement of accounts,

the defendant is liable to repay a sum of Rs.26,72,505/-; that despite oral

demand, the defendant did not repay the amount and hence, the plaintiff

issued a legal notice on August 22nd, 2019 demanding refund of the balance

advance amount deposited as security with interest; that the defendant after

receiving the legal notice, sent a reply dated September 11th, 2019, wherein

the defendant admitted his liability of a sum of Rs.26,72,505/- due to the

plaintiff, but denied the liability to pay interest on the said amount from the

date of default in supplying materials; and that hence, the plaintiff filed a

Commercial Original Suit in O.S.No.43 of 2020 for recovery of

Rs.26,72,505/- with interest at 18% per annum from December 2nd, 2017

i.e. from the date of cessation of supply of material.

4.1.The defendant filed a written statement wherein he has stated that the plaintiff had deposited a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) as security with the defendant for the supply of raw



APPEAL (CAD) NO.19 OF 2023

Granite for plaintiff's export business; that there is an agreement between

the plaintiff and the defendant dated June 29th, 2015; that the defendant

was supplying materials to the plaintiff as and when orders were placed by

the plaintiff; that due to the Government notification for want of

Environmental Clearance Certificate, the defendant could not run the

business temporarily; that consequently, the defendant could not supply the

materials as agreed to the plaintiff; and that subsequently when the

defendant obtained clearance from the Environment Department and

offered to supply the materials to the plaintiff, the plaintiff committed

breach of agreement by not accepting the offer of the defendant. Further

stated that the defendant totally refunded a sum of Rs.20,00,000/- (Rupees

Twenty Lakhs Only) to the plaintiff partly on November 10th 2017, and

partly on December 2nd, 2017; that the defendant is even now ready to

supply the materials as agreed and therefore, the question of returning the

money does not arise at all; that the original agreement dated June 29th,

2015, is in the custody of the plaintiff; that as per the agreement, the said



APPEAL (CAD) NO.19 OF 2023

amount i.e., Rs.50,00,000/- paid by the plaintiff to the defendant shall be 'interest free advance' and therefore, the plaintiff is not entitled to claim interest on Rs.26,72,505/-; and that therefore, the suit claim is not correct and the plaintiff is not entitled to claim subsequent interest as claimed in the plaint.

4.2. Based on the pleadings, the Trial Court framed the following issues:

- “1. Whether the plaintiff is entitled for refund of advance amount with interest?*
- 2. Whether this Court is having jurisdiction to try this suit?*
- 3. To what other reliefs the parties are entitled for?”*

4.3. On the side of the plaintiff, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.4 were marked. On the side of the defendant, the defendant was examined as D.W.1 and Ex-B1 (Photocopy of agreement dated June 29th, 2015) was marked through cross examination of P.W.1.



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4.4. After hearing both sides, the Trial Court decided that the plaintiff was ready to purchase the Granite from the defendant, but the defendant has breached the contract because of his inability to supply the raw Granites and hence, the defendant cannot say that the advance is interest free; and that as per the statement of accounts, the defendant is liable to pay a sum of Rs.26,72,505/- as on December 2nd, 2017 to the plaintiff and accordingly, the defendant is liable to pay the suit amount with interest. Issue no.(i) was answered accordingly in favour of the plaintiff, by the Trial Court.

4.5. As far as the second issue is concerned, the Trial Court held that originally the suit was filed before the Principal District Judge, Tiruvallur and the same was made over to III Additional District Judge, Tiruvallur. The defendant raised a plea therein that the dispute between the parties is a commercial dispute. Hence, the suit was transferred to the



APPEAL (CAD) NO.19 OF 2023

Principal District Judge, Tiruvallur, which is having jurisdiction to try the commercial original suits. Hence, the Trial Court held that the Court has jurisdiction.

4.6. Accordingly, the learned Principal District Judge, Tiruvallur, decreed the suit without costs and directed the defendant to pay to plaintiff a sum of Rs.36,26,589/- together with interest at 18% per annum on the principal amount of Rs.26,72,505/- from the date of plaint till the date of decree and subsequent interest at 6% per annum from the date of decree till the date of realization.

4.7. Feeling aggrieved with the judgment and decree, the defendant has preferred this Appeal.

5. Mr. P. Muthusamy, learned counsel for the appellant / defendant has argued that the defendant had been supplying Granite to the plaintiff as per their orders; that in 2017, due to requirement of



APPEAL (CAD) NO.19 OF 2023

Environmental Clearance, all the quarries running in Tamil Nadu including

the defendant's, ceased to operate for sometime; that thereafter, the defendant, after getting clearance from the Environment Department, was ready to supply the raw materials to the plaintiff, but, the plaintiff was not ready to accept the raw materials; and that the plaintiff alone breached the contract and accordingly, the plaintiff is not entitled to get back the advance amount. He further submitted that as per the agreement (Ex-B.1), the plaintiff is not entitled to claim advance amount from the defendant, while the defendant is ready to supply Granite to the plaintiff for the advance amount. He further submitted that the advance amount shall not carry any interest and the plaintiff is not entitled to get interest for the advance amount as per the agreement (Ex-B.1); that in short, it is an interest free and standing advance; and that the Trial Court, without considering the said fact erred in awarding interest at 18% per annum for Rs.26,72,505/- from December 2nd, 2017. Accordingly, he prayed to allow the appeal and set aside the judgment and decree passed by the Trial Court.



APPEAL (CAD) NO.19 OF 2023

6.Per contra, Mr.G.Dilipkumar, learned counsel for the

respondent/plaintiff has submitted that the defendant admitted that Ex-A.1

is the statement of accounts sent by defendant; that as per Ex-A.1, totally a

sum of Rs.20,00,000/- has been repaid to the plaintiff by the defendant in

view of the payments made on November 10th, 2017 and December 2nd,

2017; and that as per Ex-A.1, a sum of Rs.26,72,505/- of advance money

of the plaintiff is available with the defendant. Further submitted that the

defendant has failed to supply the goods from December 2nd, 2017 and that

the plaintiff is entitled to get back the advance amount from the defendant

with interest since the transaction between the plaintiff and defendant are

commercial transactions; that if the defendant had supplied all the goods as

and when the plaintiff ordered, only in such circumstances, the defendant

is not liable to pay interest for the advance amount; and that since the

defendant has breached the agreement, the defendant is liable to pay

interest. The learned counsel further submitted that the Trial Court, after

considering the entire evidence carefully, has passed the judgment and



APPEAL (CAD) NO.19 OF 2023

decree in favour of the plaintiff and therefore, there is no need to interfere with the same.

7.This Court has considered the submissions made on either side and perused the materials available on record.

8.The points that arise for consideration are as follows:

(i)Whether the defendant is liable to pay a sum of Rs.26,72,505/- to the plaintiff?

(ii)If point no.(i) is answered in affirmation, whether the plaintiff is entitled to claim interest for the advance amount?

(iii)Whether the Trial Court's decree and judgment is liable to be interfered with?

Point No.(i)

9.The plaintiff is operating a Granite processing factory and the defendant is running a quarry. The plaintiff and the defendant entered



“1.The Party of the Second Part has paid an advance amount of Rs.50,00,000/- (Rupees Fifty Lakhs Only) as 'interest free advance' to the Party of the First Part as on 29th June 2015.

2.The Party of the First Part shall supply the Processed Dimentional Kunnam Granite Blocks, on the basis of first come preferentially first serve basis, whenever the material is available in the Quarry. There will be no specific quantity to be supplied to the Part of the Second Part, since the material is a natural product.

3.The Party of the First Part shall supply the export quality material for export purpose, as well as the factory sizeable material to the Party of the Second Part's Factory situated at Pidarithangal Village, Poonamallee, Chennai – 600056 and the price fixed for the said material is as follows:

0.300CBM&UP :Rs.1,03,000/- Per CBM–Delivery–Ex–Quarry

0.300CBM BELOW:Rs.67,000/- per CBM–Delivery–Ex–Quarry

4.On completion of each marking, the Party of the Second Part will deduct / adjust Rs.10,000/- (Rupees Ten Thousand Only) Per CBM of the material upto Rs.20,00,000/- from the advance amount of Rs.50,00,000/- (Rupees Fifty Lakhs Only) and pay the balance amount of the material cost to the Party of the First Part. The Balance advance amount of Rs.30,00,000/- (Rupees Thirty Lakhs Only) will be standing / Permanent (Interest free) advance.”



APPEAL (CAD) NO.19 OF 2023

As per the Agreement dated June 29th, 2015, a sum of Rs.30,00,000/- will

be standing as 'standing / Permanent (Interest free) advance'.

9.2.The plaintiff has marked statement of accounts (Ex-A.1).

In the statement of accounts, payment on November 10th, 2017 and December 2nd, 2017, viz., a sum of Rs.15,00,000/- and Rs.5,00,000/- respectively, were duly entered. Moreover, it is stated that the copy of said statement of account was sent by the defendant to the plaintiff. The said fact was not disputed by the defendant. In fact, the defendant admitted that a sum of Rs.26,72,505/- is available with him as advance money to the credit of the plaintiff.

9.3.The contention of the defendant is that the defendant is ready to supply Granite to the plaintiff; and that the defendant has not breached the contract and therefore, defendant is not liable to pay back the advance amount and any interest thereon. D.W.1 in his cross examination



APPEAL (CAD) NO.19 OF 2023

has admitted that an advance amount of Rs.50,00,000/- has been paid to

him. He has further admitted that he was unable to conduct quarrying

activities from December 2nd, 2017. No document was produced to suggest

that the defendant was ready to supply the Granite goods to the plaintiff

any time after April 1st, 2017. No evidence was produced to suggest as to

when the defendant got the environmental clearance and when he proposed

his readiness to supply Granite. In the facts and circumstances of the case,

this Court concludes that it is the defendant who has breached the

agreement and not the plaintiff and hence, the defendant is liable to repay

the advance amount as per Ex-B.1. Point No.(i) is answered accordingly in

favour of the plaintiff.

Point Nos.(ii) and (iii)

10.As alluded to *supra*, as per Ex-B.1 Agreement, a sum of

Rs.30,00,000/- shall be maintained in credit of the plaintiff with the

defendant as “Standing / Permanent (Interest free) advance.” The



defendant was not able to send the Granite to the plaintiff since December

2nd, 2017 and thereby, breached the agreement. Admittedly, the transaction

held between the plaintiff and the defendant is a commercial transaction.

Here, in view of the facts and circumstances of the case, it can be inferred

that the parties intended to regard the said amount as “Standing /

Permanent (Interest free) advance” only within their regular course of

business without any relevance to contractual breach. Hence, this Court is

of the view that there is no specific bar against grant of interest in Ex-B.1

agreement in case of contractual breach. Further, the plaintiff has made a

specific claim to the defendant vide Ex-A.2 Legal Notice dated August

22nd, 2019 demanding the refund of Rs.26,72,505/- 'with interest' at the rate

of 18% per annum from December 3rd, 2017.

10.1.Essentially, since the defendant has breached the

agreement, the plaintiff has made a specific claim with interest at the rate

of 18% per annum to the defendant only through Ex-A.2 Legal Notice.



APPEAL (CAD) NO.19 OF 2023

Ex-B.1 agreement is silent regarding the interest on the advance amount

paid to the defendant by the plaintiff in the case of breach of contract and

hence, there is no express bar against interest in case of contractual breach.

Hence, this Court concludes that the defendant is liable to pay interest

from the date of issuance of Ex-A.2 Legal Notice i.e. August 22nd, 2019.

The Trial Court has awarded interest from the date of breach i.e. from

December 2nd, 2017. This Court is of the view that awarding interest from

December 2nd, 2017 is inaccurate. To that extent alone, the judgment and

decree of the Trial Court is to be interfered with. Point nos.(ii) and (iii) are

answered accordingly.

11.Resultantly, **this Appeal is partly allowed** and the

appellant herein / defendant is directed to pay a sum of Rs.26,72,505/-

(Rupees Twenty Six Lakhs Seventy Two Thousand Five Hundred and Five

Only) to the respondent herein / plaintiff with interest at the rate of 18%

per annum from August 22nd, 2019, till the date of Trial Court decree and



APPEAL (CAD) NO.19 OF 2023

thereafter, with interest at 6% per annum for the aforesaid sum of

Rs.26,72,505/- from the date of Trial Court decree till the date of

realization. To the above extent alone, the Trial Court's judgment and

decree is modified. Considering the facts and circumstances of the case,

there shall be no order as to costs. Consequently, connected miscellaneous

petition is closed.

[R.SUBRAMANIAN, J.]

[R.SAKTHIVEL, J.]

13 / 02 / 2024

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order

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To

The Principal District Court

Tiruvallur.



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APPEAL (CAD) NO.19 OF 2023



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APPEAL (CAD) NO.19 OF 2023

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
APPEAL (CAD) NO.19 OF 2023

13 / 02 / 2024