
(2003) 03 AP CK 0062

In the Andhra Pradesh High Court

Case No : AS No. 1835 of 1988 and Cross Objections

Block Development Officer, Panchayat Samithi and Another	APPELLANT
Vs	
M. Sambaiah	RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2003) 4 ALD 396 : (2003) 5 ALT 260

Hon'ble Judges : B.S.A. Swamy, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : Government Pleader for Commercial Taxes and Panchayatraj, for the Appellant; Government Pleader for Commercial Taxes and Panchayatraj in Cross Objections, D. Srinivas, for Respondent No. 1, P. Raghavender Reddy, SC for ZPPs, MPPs for Respondent No. 2 and M.V. Ramana Reddy in Appeal and in Cross Objections, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—Aggrieved by the judgment and decree dated 13.4.1988 passed in O.S. No. 482 of 1983 on the file of Additional Subordinate Judge, Guntur, the defendants have filed this appeal.

2. The plaintiff in O.S.482/1983 has filed cross objections as the Court below did not grant the interest claimed by him on Rs. 1,16,022/- from the date of completion of the work till the date of the plaint. The parties hereinafter referred to are as they are arrayed in the suit.

3. The plaintiff was entrusted with the work relating to levelling of house sites in 17 blocks of four plots each in Harijanawada of Palaparru with estimated costs of Rs. 10,000/- for each block on nomination basis. He was permitted to proceed with the work by the defendants on estimated rates under the guidance of Supervisor-II (Pr) and P.S. Prattipadu. The plaintiff executed the required agreement for the said works. He completed the works within the stipulated time i.e., 30-9-1980. The defendants made part payment of Rs. 1,500/- in the month

of August, 1980. The total value of the work done by the plaintiff is Rs. 1,58,000/-. In spite of repeated demands, the defendants failed to pay the balance of Rs. 1,43,000/-. So the plaintiff issued notice u/s 80 of CPC on 27-9-1982. After receiving the notice, the defendants made part payment of Rs. 74,966/- on 19-9-1983. Since the defendants failed to pay the balance amount, the plaintiff filed the suit for recovery of Rs. 1,16,022/- with interest thereon @ 12 per cent per annum.

4. The defendants filed written statements contending that the plaintiff did not attend the levelling of plot Nos. 1, 4, 5, 8, 11, 72 and 73 and that the beneficiaries themselves got the plots levelled. Therefore, the plaintiff was not entitled to claim any amount for levelling the said plots. It is also contended by them that the plaintiff received Rs. 74,966/- on 19-9-1983 towards full satisfaction of his claim and therefore he was not entitled to claim any further amounts from them. Basing on the above pleadings, the Trial Court settled the following issues for trial:

(1) Whether the plaintiff is not entitled to claim the amount as stated in the plaint?

(2) Whether the discharge pleaded by the defendant in para 4 of the written statement is true?

(3) To what relief?

5. On behalf of the plaintiff, he got himself examined as P.W.1 and marked Exs.A-1 to A-4. On behalf of the defendants, DWs.1 to DW.4 were examined and Exs.B-1 to B-24 were marked. On considering the evidence and on hearing the learned Counsel for the plaintiff and the defendants, the learned Additional Subordinate Judge decreed the suit of the plaintiff for a sum of Rs. 67,836/- with proportionate costs and with subsequent interest at 6 per . cent from the date of the plaint till the date of realization while refusing to grant interest from 30-9-1980, the date on which the plaintiff completed execution of the works. Feeling aggrieved by the judgment and decree, the defendants have filed the appeal and whereas the plaintiff has filed the cross objection.

6. Learned Counsel for the appellants/ defendants contends that the respondent/ plaintiff having accepted the measurements recorded in check measurement book (Ex.B-1) cannot be permitted to contend that he attended the work more than what was recorded therein. It is also contended by him that the respondent/ plaintiff received Rs. 74,966/- under EX.B-24 towards full satisfaction of the claim and so he is not entitled to claim the suit amount. It is further contended by him that the lower Court has not appreciated the evidence brought on record, both oral and documentary, in right perspective and thereby erred in granting decree for Rs. 67,834/-. Learned Counsel for the respondent/ plaintiff submits that the respondent/plaintiff received Rs. 74,966/- towards part satisfaction of his claim and therefore he is entitled to claim the balance amount. He further submits that the lower Court failed to note that the respondent/ plaintiff is

entitled to claim interest from the date on which he completed the work i.e., 30-9-1980 and therefore the lower Court erred in not granting interest on the amount due from 30-9-1980. The points that arise for consideration are that

(1) Whether the respondent/ plaintiff received Rs. 74,966/- towards full satisfaction of his claim?

(2) Whether the respondent/ plaintiff is entitled to claim interest on the balance amount due to him from 30-9-1980 or from any subsequent date and if so at what rate?

First Point:

7. (a) The facts of the case lie in a narrow compass. The plaintiff was entrusted with the levelling of blocks 1 to 17 in the year 1980 and he was to complete the work by 30-9-1980. The estimated cost of the work was Rs. 1,70,000/-. The plaintiff completed the work before the due date and claimed the amounts. The plaintiff was to get Rs. 1,58,000/-. The plaintiff was given paddy worth of Rs. 15,000/- in the month of August, 1980. He issued Ex.A-1 notice on 27.9.1982 to the defendants claiming the balance of amount. The defendant received the notice and paid him Rs. 74,966/-. The plaintiff filed the suit for recovery of balance amount with interest thereon. The defendants took the plea that the plaintiff did not attend to levelling of plots 1, 4, 5, 8, 11, 72 and 73 and that the said work was attended by the allottees themselves and therefore the plaintiff was not entitled to claim any amount for levelling of the said plots. Further plea of the defendants is that the plaintiff received Rs. 74,966/- towards full satisfaction of the claim.

7. (b) DW.1 ISK Sudhakar was the then Additional Assistant Engineer in Panchayat Raj Department, Prattipadu. He admits in his cross-examination that he has no proof of beneficiaries themselves raising levels of the plots. For better appreciation we may refer the cross-examination of DW.1 in his own words and it is thus;

"The beneficiaries of plots 1, 4, 5, 8, 11, 72 and 73 levelled their sites even before we entered into agreements with plaintiff. Plot Nos. 1, 4, 5, 8, 11, 72 and 73 were not entrusted to the plaintiff for levelling the house sites. We gave the estimates for the work to be done. The total estimates of blocks 1 to 17 was Rs. 1,70,000/-. I did not give any estimate for the said 8 plots. Ex.B-2 does not contain any demarcation that the above said 8 plots were levelled by the beneficiaries and that the levels of those plots need not be raised. Ex.B.2 does not contain demarcating which plots were entrusted to plaintiff for levelling. I do not remember today about the said facts. The work had to be completed by 30-9-1980. I took the measurements on 24.7.1980. I did not give any notice in writing about the non-execution of the work by plaintiff in the above said 8 plots. But I informed him orally. When the agreements are in force nobody would enter into the premises to execute any work. The beneficiaries who executed the work of those 8 plots were not paid any money for levelling. There is a possibility that

the earth carted by the plaintiff could be taken by anybody else. There is no written proof that the beneficiaries of those 8 plots raised the levels by carting the earth. There is no written proof that those 8 beneficiaries carted the earth from a particular place. The work is to be super checked by Executive Engineer. There is no time for super check in the earth work. The department would allow % of the total levelling for sinkage. There is no provision for theft of the earth carted by the contractor."

The evidence of DW.1 is crystal clear that he has no proof of the beneficiaries themselves levelling the plots bearing Nos. 1, 4, 5, 8, 11, 72 and 73. The defendant mainly relied on the measurements noted in Ex.B-1 check measurement book. DW.1 claims to have noted the measurements on 29.7.1980. There is no proof on record to show that DW.1 noted the measurements of the levelling work in the presence of plaintiff. DW.3 inspected and checked the levelling works on 27.8.1983. The plaintiff signed on Ex.B-1 check measurement book under protest. It is to be noted that the verification of measurement by DW.3 is after the issuance of notice by the plaintiff claiming the amount for the works attended by him. It is also to be noted that the levelling work was completed on 30-9-1980 whereas P.W.3 inspected and checked the measurement on 27.8.1983. Therefore, no reliance can be placed on Ex.B-1 check measurement book. The lower Court considered this aspect in right perspective and refused to consider the measurements noted in Ex.B.1 check measurement book. The plaintiff received Rs. 76,966/- on 19.9.1983 i.e., after issuing suit notice to the defendants. It is the contention of defendants that the plaintiff received Rs. 74,966/- towards full satisfaction of his claim. The defendants did not place on record any proof to show that the plaintiff received Rs. 74,966/- towards full satisfaction of his claim. The lower Court appreciated the evidence brought on record in right perspective and held that the plaintiffs received Rs. 74,966/- towards part satisfaction of his claim. We do not see any reason to disturb the finding of the lower Court on this aspect.

8(a). Second Point: The plaintiff issued Ex.A-1 suit notice dated 27.8.1982 claiming Rs. 1,77,320/-. The defendant paid Rs. 74,966/- in the form of cash and Rs. 15,000/- in the form of kind. The total worth of the work attended by the plaintiff was Rs. 1,58,000/-. Therefore, the plaintiff was to get the balance of Rs. 67,834/- as on the date of the filing of the suit. The lower Court did not grant interest on the said amount from the due date on the ground that there was no agreement to pay interest. For better appreciation I may refer to para 12 of the judgment of the Court below and it is thus:

"12. The advocate for the plaintiff argued that the plaintiff is entitled to the interest at 12 per cent per annum from 30-9-1980. There is no term in the agreement for payment of interest. The defendants were demanded under the original of Ex.A-1. Hence, I hold the plaintiff is entitled to the interest at 6 % p.a. from the date of plaint till realization. The defendant paid Rs. 15,200/- and also Rs. 74,966/- total Rs. 90,166/-. the contract works executed and completed by

the plaintiff was Rs. 1,58,000/-. The defendants made payments of Rs. 90,166/-. Hence, the defendants are liable to pay Rs. 67,834/-. As there is no agreement to pay the interest under the agreements, the plaintiff is not entitled to interest from 30-9-1980 till the date of suit. The plaintiff is entitled to the interest at 6 per cent per annum from the date of plaint till the date of realization over the principal sum of Rs. 67,834/-. In view of the above said discussion, I hold the plaintiff is entitled to the interest at 6 per cent per annum from the date of plaint till the date of realization over the principal sum of Rs. 67,834/-. The plaintiff is not entitled to the interest from 30-9-1980 till the date of the suit. In view of my finding on issue No. 2 and in view of the above said discussion on the 1st issue, I hold the plaintiff is entitled to Rs. 67,834/- with proportionate costs."

As seen from the above referred para of the judgment, the lower Court did not allow interest on the ground that there was no agreement to pay interest between the parties. Admittedly, the plaintiff completed the levelling works by 30-9-1980. As the defendants did not pay the amount, he issued notice Ex.A-1 dated 27.9.1982 claiming the amount due to him. Learned Counsel for the appellants/defendants contends that awarding of interest preceding the date of filing of the suit is not within the ambit of Section 34 of CPC and therefore the lower Court is justified in disallowing interest. She placed reliance on the decision of our High Court in APSRTC represented by its Managing Director, Hyderabad and another v. B. Vijaya and Ors. . The cited case relates to awarding of interest on the compensation amounts payable to road victims. Therefore the cited decision is of no application to the facts of the case on hand. Interest is awarded to the party only for being kept out of the money which ought to have been paid to him. Courts have held that the interest can also be awarded by a Court on equity. In order to invoke the doctrine of equity, it is necessary in the first instance to establish the existence of circumstances which attract equitable jurisdiction, such as non-performance of a contract of which equity requires specific performance, or whether the owner is deprived of his property without paying price thereof, or where money has been improperly detained and not paid to the person who is entitled to it or, where an employer withholds terminal benefits of an employee even after retirement without any valid reason etc.

(b) The interest Act (14 of 1998) applies where interest is not otherwise payable by law. The following among other conditions must be fulfilled before the interest can be awarded under the Act:

- (1) there must be a debt or a sum certain:
- (2) it must be payable at a certain time or otherwise;
- (3) these debts or sum must be payable by virtue of written contract at a certain time;
- (4) there must have been a demand in writing claiming interest.

(c) The plaintiff completed the levelling work on 30-9-1980 and demanded the

defendants to pay the amounts due to him by issuing Ex.A-1 notice on 27.9.1982. The amount payable to the plaintiff has been withheld by the defendants without any justifiable reason. Doctrine of equity demands the payment of interest on the amounts unjustifiably retained by the appellant/defendants. Hence, the plaintiff is entitled to claim interest on Rs. 67,834/- from 27.9.1982. The rate of interest from the date of suit is in the discretion of the Court. Though the rate of interest for the aforesaid period is discretionary, the Court should in the exercise of the discretion award interest at the contractual rate, unless it would be inequitable to do so. The rate of interest from the date of decree to the date of payment is also in the discretion of the Court. Under the proviso to Section 34 of CPC, the rate of interest may exceed six per cent where the liability in relation to the sum so had arisen out of the commercial transaction, but shall not exceed the contractual rate of interest or where there is no contractual rate of interest, or the rate at which the monies are lent or advanced by nationalized banks in relation to commercial banking. Admittedly the liability of the appellant/ defendant arises out of a commercial transaction. We feel that the interest at 12 per cent per annum on Rs. 67,834/- is just and reasonable from the date of payment to the date of decree to the date of payment.

9. In the result, this appeal is dismissed while allowing the cross-objection in part and consequently the respondent/plaintiff is entitled to claim interest on Rs. 67,834/- at the rate of 12 per cent from the date of suit notice i.e., 27-9-1982 to the date of realization.