

(1994) 06 MAD CK 0006

In the Madras High Court

Case No : Appeal No. 809 of 1993

Madras Ennore Foundry Limited, by Managing Director,
Ennore, Madras-57

APPELLANT

Vs

Sri Ayyanar Aluminium Steel Rolling Mills

RESPONDENT

Date of Decision : 29-06-1994

Acts Referred:

Sales of Goods Act, 1930 — Section 61, 61(2)

Citation : (1994) 06 MAD CK 0006

Hon'ble Judges : Thangamani, J;Srinivasan, J

Bench : Division Bench

Advocate : Venkatachalam for M/s King and Patridge, for the Appellant; R. Indumathi for M/s S. Parthasarathy, for the Respondent

Judgement

Srinivasan, J.—Defendant who has suffered a decree in the trial Court has preferred this appeal. The defendant placed an order on

4.2.1982 under Ex. A-1 for supply of aluminium scrap sheet cutting ingots and aluminium scrap boring ingots, with the plaintiff. Pursuant to the

order, the plaintiff had supplied goods to the value of Rs. 12,77,172.51.00. The payment for the supplies should be made within thirty days from

the date of receipt of the bill in respect of the supply or from the date of approval of the goods received, whichever is later. Supplies were effected

under bills dated 11.3.1982, 19.3.1982, 31.3.1982 and 15.4.1982. There were two other supplies later. We will mention about the same a little

later. For the supplies made, the defendant did not pay within the agreed tune. Hence, the plaintiff claims interest at the rate of 18% per annum on

the amount due. The defendant disputed its liability to pay interest. A notice was sent on 1.7.1982 under Ex. A-8 by the plaintiff's lawyer to the

defendant calling upon the defendant to pay the amount. The defendant only sent the principal amount, but not the interest and bank charges. The defendant's liability came to Rs. 41,622.49. The defendant by letter dated 7.7.1982 marked as Ex. A-9 cancelled the contract regarding the balance quantity of 10 tons unilaterally. The plaintiff claimed that the cancellation of the contract would amount to breach of contract and therefore prayed for damages in a sum of Rs. 10,000/-. The plaintiff also claimed interest due for she delayed payment. Thus, a claim was made for a total sum of Rs. 51,622.49. In the written statement, the defendant's contention was that there was (sic) agreement to pay the amount within thirty days from the date of supply and that there was no agreement to pay interest on delayed payments. It was the further contention of the defendant that as the plaintiff delayed the supply of goods, the defendant was entitled to cancel the contract and there was no breach of contract on its part. The plea in the written statement is that the plaintiff wanted to alter the terms of the contract by making the claim for interest and bank charges and therefore, the defendant chose to cancel the contract.

2. The trial Court held that the plaintiff is entitled to interest on delayed payments at the rate of 12% per annum, but negated the claim for bank charges. The trial Court also found that the plaintiff is entitled to damages in a sum of Rs. 10,000/-. Consequently, a decree was passed for a sum of Rs. 24,000/- in favour of the plaintiff. It is that decree which is challenged in this appeal.

3. Learned Counsel for the appellant contends that Ex. B-1 dated 3.2.1982 shows the terms on which the plaintiff offered to supply the goods.

That document does not refer to any liability on the part of the defendant to pay the value of the goods within thirty days from the date of supply;

nor does it provide for interest on the delayed payments. It is also contended that Ex. A-1 under which the defendant placed an order for fifty tons

of goods with the plaintiff did not provide for payment of any interest. Learned Counsel for the appellant contends that the plaintiff has failed to

prove any trade usage or custom and consequently, the defendant is not liable to pay interest. As regards damages, the contention of Learned

Counsel is that the plaintiff has not proved the damages suffered. It is also contended that the defendant was entitled to cancel the contract, as the

plaintiff failed to supply the goods in time as agreed. It is the argument of Learned Counsel that the entire goods should have been supplied within a period of two months from the date of Ex. A-1 and as the plaintiff had not done it, the defendant was entitled to cancel the contract.

4. On the question of interest, S. 61 (2) of the Sale of Goods Act contains a provision that in the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price to the seller. While interpreting this Section, the Supreme Court has held in *Kurapati Venkata Mallayya and Another Vs. Thondepu Ramaswami and Co. and Another*, that under S. 61 of the Sale of Goods Act, the seller is entitled to interest from the date of transaction to the date of suit. Following the judgment of the Supreme Court, this Court held in *The State of Madras Vs. M.A.S. Mehta*, that on the buyer's failure to abide by the terms of the contract the seller will be entitled to get interest on the price payable by the buyer. In that case, payment of the price should have been made within 15 day from the date of delivery of goods. The learned Judge held that from the time when the period of 15 days expired after the delivery of goods, the buyer was liable to pay interest on the price of the goods,

5. A similar view was expressed in *Lakshmi Kanta Jha Vs. Bhuneshwar Prasad Narain Singh and Others*, . In that case supply was made to the defendant upto 20.6.1954, but the defendant had delayed the payment for nearly three years, and the plaintiff was obliged to file a suit for recovery of the amount. It was held that the Court on its discretion can award interest to the plaintiff at a reasonable rate on the amount of price under S. 61 (2) of the Sale of goods Act. The Court held that the fact that in the notice of demand, the plaintiff had not put forward any claim for interest, did not call for an interference with the award of interest by the lower court and the award of interest was in accordance with law.

6. Learned Counsel for the appellant invites our attention to the judgment of this Court in *A.K. Srinivasa Naidu Vs. S. Jayarama Reddiar Firm*, A Division Bench of this Court held that seller is entitled to claim interest on the price of goods, provided there was no contract to the contrary between the parties. That is provided in the Section itself. On the facts and circumstances of that case, the Court held that the account books of the

plaintiff showed that there was a contract to the contrary, inasmuch as during the long course of dealings, there was no payment of interest and the parties had accepted the position that no interest will be payable. On the facts and circumstances of that case, the Court held that the plaintiff was not entitled to claim interest on the amount due. However, the Court said that even in the absence of a contract between the parties, the plaintiff is entitled to collect interest at 6% per annum on the net amount due, provided he makes a demand for that purpose.

7. A single Judge of Andhra Pradesh High Court held in *M/s. Lakshmi Co. v. Surender Gori* (AIR 1989 NOC 135) that when there is no agreement for payment of interest and there is no evidence to show any trade practice to charge interest, the plaintiff is not entitled to interest from the date of supply to the date of suit. With respect, we are unable to agree with the proposition as found in the said short notes, which runs counter to the language of S. 61 of the Sale of Goods Act. The said Section says that unless there is a contract to the contrary, the Court can award interest.

8. Learned Counsel for the appellant relied on the judgment of a learned single judge of Punjab High Court in *Ram Lal Harnam Dass Vs. Bal Krishen and Others*, . In that case, a displaced creditor firm started for recovery of an amount proceeding under the Displaced Person (Debts Adjustment) Act against the debtor. The parties dealt with each other for a number of years and the nature of transactions was that the plaintiff-firm sold dry fruits and the debtor-firm purchased them. The creditor-firm's account books showed that all the debit items related to price of goods supplied to the debtor-firm and all the credit items consisted of monies received from it. The balance due was the price of the goods supplied to the debtor-firm. Consequently, u/s 61 (2) of the Sale of Goods Act, the court granted interest at the rate of 6% per annum on the last debit entry in the account books produced by the creditor. This ruling does not in any way help the appellant in the present case.

9. We find on the facts of this case that there was an agreement to pay the sale price within thirty days from the date of supply of goods. There is nothing on record to show that the goods supplied by the plaintiff were ever disapproved or rejected by the defendant. The defendant has not, in

fact, examined any witness to give evidence in its support. The uncontradicted evidence of the plaintiff shows that there is a trade usage for

payment of interest. In the circumstances, applying the provisions contained in section 61(2) of the Sale of Goods Act, we hold that the plaintiff is

entitled to interest on delayed payments. In spite of the demand made for payment of interest, the defendant had not chosen to pay but denied the

claim. Hence, the suit was necessitated and there was no error in the grant of interest by the trial Court.

10. We do not also see any mistake in granting interest at 12% per annum on the amount due to the plaintiff. It is quite normal and cannot be said

to be excessive. Hence, the grant of decree for Rs. 14,006/- towards interest in favour of the plaintiff is justified.

11. As regards the termination of the contract, we find that the plaintiff had only claimed interest because the defendant had delayed the payment.

It is because of the defendant's failure to perform its part of the contract, the plaintiff had to claim interest. That cannot be a reason for the

defendant's cancellation of the contract. The defendant claims to have cancelled the contract because the plaintiff, according to the defendant

wanted to introduce new terms of contract such as payment of interest and bank charges as the claim for interest is disputed. The cancellation of

the contract is wholly unjustified. Hence, the plaintiff will be entitled to claim damages for such cancellation. There is no evidence on the side of the

defendant in support of its case. Hence, we accept the documents produced on the side of the plaintiff.

12. Learned Counsel for the appellant draws our attention to the judgment of a Division Bench of this Court in Subbaraya Reddi v. Manikka

Koundan and others (1911 (1) M.W.N. 265). In that case, it was held that S. 39 of the Indian Contract Act confers on a party to the contract the

right to put an end to the contract in case of default on the part of the other party to the contract to perform his promise in its entirety. Learned

Counsel contends that in the present case, the plaintiff failed to perform its part of the contract as he made supply beyond the period specified in

Ex. A-1. There is no merit in this contention. It is because of the defendant's failure to make payments within the agreed time, the plaintiff who

awaited for such payments, did not make further supply. We have already referred to the four supplies in March for which payments were made

by the defendant only on 8.5.1982, 9.6.1982. 20.6.1982 and 27.6.1982 respectively. In spite of non-payment of money for those supplies, the plaintiff made further supplies on 27.4.1982 and 18.5.1982 for which payments were made thereafter only on 3-7-1982. In those circumstances, the defendant cannot contend that the plaintiff had committed default which entitled the defendant to cancel the contract. We have already pointed out that the claim of interest made by the plaintiff is justified and therefore, the defendant cannot make it a reason for cancellation of the contract. Consequently the cancellation of the contract by the defendant on 7.7.1982 under Ex. A-9 is unwarranted and unjustified.

13. Learned Counsel for the appellant refer to the decision *Wali Mahammad Vs. Manik Chandra Raul*, It is stated that when the contract stipulates that supply should be made within ten days or earlier the intention of the parties is to make time the essence of the contract and where there is failure to make such supply, the contract could be terminated by the buyer and just because the buyer had extended the time on certain occasions it does not mean that he can always extend the time. The crucial fact in that case was that there was a notice issued by the buyer to the seller calling upon him to make the supply within a particular time failing which the contract would be terminated. There was no such notice in the present case. The defendant chose to cancel the contract on the ground that the plaintiff was claiming interest. In fact Ex. A-9 dated 7.7.1982 refers only to the claim of the plaintiff for interest and bank charges. On the facts and circumstances of the case, we agree with the learned Judge that the cancellation of the contract by the defendant is illegal and therefore, the plaintiff is entitled to claim damages.

14. Learned Counsel for the appellant contends that the plaintiff has not proved the damages suffered by it. It is submitted that what was produced before the Court was only a photo copy of the account sheets and the defendant cannot be mulcted with the ability on the basis of the said copies. Exs. A-22 and A-23 are the relevant documents. The learned trial Judge has pointed out that the original account book was produced in court and that genuineness of Ex. A-22 is not challenged. No evidence is adduced in this regard. The plaintiff's witness P.W. 1 has spoken in support of it in his evidence and it is only through him the original account book was marked. That has been referred to by the learned Judge in the judgment. That

statement has to be accepted and therefore, it is clear that the original accounts were produced before the Court. The accounts are corroborated

by the evidence of P.W. 1. In the circumstances, the learned Judge is justified in relying upon the accounts and holding that the plaintiff has suffered

damages of Rs. 10,000/-. We agree with the finding of the learned Judge. In the result, the appeal fails and is dismissed with costs.