
(2007) 08 AP CK 0014
In the Andhra Pradesh High Court
Case No : SA No. 1163 of 1998

Mattaparthi Satyanarayana	Vs	APPELLANT
Panchayat Samithi, P. Gannavaram and Another		RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2008) 1 ALD 197

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Giri, for M. Sivananda Kumar, for the Appellant; Government Pleader for Arbitration, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri M. Giri representing Sri M. Sivananda Kumar, learned Counsel representing the appellant and Ms. E. Kavitha, learned Assistant Government Pleader for Arbitration.

This Court on 26.9.2003 made the following order:

Admit.

The following substantial questions of law arise for decision and consideration in this second appeal.

1. Whether in the absence of a specific covenant for payment of interest though payment is withheld unjustly (as concurrently found by the lower Court as well as the lower appellate Court), the plaintiff is not entitled to claim interest from the date the amount is payable till the date the suit is launched by applying the provisions of Interest Act?
2. Whether the absence of interest clause in a covenant would be a hurdle for the Courts to grant interest even when the Courts concurrently held that the withholding of payment is unjust?

2. The only question, which had been argued in elaboration by both Sri Giri, the learned Counsel representing the appellant and the learned Assistant Government Pleader for Arbitration is in relation to the quantum of interest, which had been granted by the Courts below. It is pointed out that in the light of the facts and circumstances while positively recording a finding relating to the liability of the defendants to pay the amount, granting 5 1/2% interest per annum from the date of suit till the date of realization cannot be sustained. However, the learned Assistant Government Pleader for Arbitration would point out that in the light of the nature of the transaction since the Court of first instance and also the appellate Court exercised the discretion properly, the same not to be disturbed by this Court.

Heard the Counsel.

3. The substantial questions of law, on the strength of which the Second Appeal had been admitted, had already been referred to supra. The parties hereinafter would be referred to as plaintiff and defendants.

4. It is needless to say that the plaintiff had preferred this Second Appeal only being aggrieved of the quantum of interest and the other findings recorded by both the Court of first instance in OS No. 5 of 1984 on the file of Subordinate Judge, Razole and AS No. 44 of 1990 on the file of I Additional District Judge, East Godavari, at Rajahmundry on the aspect of liability being concurrent findings and since no Second Appeal as such had been preferred by the defendants, the said findings had attained finality. The only question left over is relating to the quantum of interest.

5 The plaintiff filed the suit for recovery of the security deposit, interest thereon, costs of the steel and interest thereon and for other appropriate reliefs. It was averred in the plaint as hereunder:

The plaintiff is a contractor doing contract works of the Government, local Bodies, Panchayat etc. A bridge had to be constructed over Sankhyana Drain within the limits of Munjavarapu Kottu Gram Panchayat. Construction of the said work was started in the inception from the 1st defendant by initiating the work in 1964. The work was given by the defendant as a nominated work to Gannavarapu Bhaskara Rao and Padala Rama Rao, but the work was not completed by the said contractors and subsequently the name of the plaintiff was recommended by the 1st defendant or the said work and the plaintiff undertook to complete the unfinished construction of the said bridge on the undertaking given by D1 and D2 to the effect that all the material like cement, iron etc., to be supplied either by the 1st defendant or by the 2nd defendant. Even though the initial estimate was Rs. 40,000/- by the time of the contract was entrusted to the plaintiff, it was revised to an estimate of Rs. 93,500/- and administrative sanction has been given by the Government and technical sanction was accorded by the Superintending Engineer of the 2nd defendant and the 1st defendant issued proceedings in RC 2124/64 dated 21.12.1971. As per the said

proceedings, the plaintiff also executed an agreement in favour of the 1st defendant and also deposited under receipt No. 182/71-72, dated 15.12.1971. Subsequently the plaintiff started the said work as per the approved design. While the work was in progress, the supervisor of the 1st defendant and also the Zilla Parishad Supervisor were present throughout and the work was finished under their directions and supervision. Even though cement and steel, which is necessary as per the approved design, should be supplied by the 1st defendant, supplied some steel and cement and the plaintiff was obliged to purchase the remaining steel in the open market as and when necessary and also submitted the bills to the defendant. The steel which was purchased by the plaintiff was utilized as per the bills submitted and the authorities of the defendants 1 and 2 came and inspected and check measured the work taken. There is no necessity for the plaintiff to get prior approval of the bills by the 2nd defendant and then only utilize the said steel before the work is completed. It is the duty of the 1st defendant to get sanction, if any, and approval of the bills if necessary before the steel was actually utilized in the construction work. The steel which is necessary for the bridge was not available with the defendants 1 and 2 and at the request of the officials of the defendants 1 and 2, the plaintiff obliged to purchase the steel in the open market with a view to complete the bridge work as early as possible in the interest of Gram Panchayat and the villagers of Munjavarapu Kottu. The contract entered into for the construction of the bridge is only between the plaintiff and the 1st defendant and the plaintiff has nothing to do with the 2nd defendant and all the amounts which are due and payable to the plaintiff are that of the 1st defendant alone. As and when the work was in progress and for the portion of completed work, necessary bills have been submitted and the 1st defendant in addition to the initial security deposit of Rs. 500/-, collected another sum of Rs. 1,975/-. Thus, in all an amount of Rs. 2,475/- lying with the 1st defendant as security deposit from 21.2.1976 onwards without being refunded to the plaintiff. The bridge work was completed long before 21.2.1976. Final payment with regard to the construction work of the bridge was paid on 4.3.1976 and even though necessary bills were sent to the 1st defendant claiming the security deposit amount of Rs. 2,475/- long back on or before 21.2.1976, the bill was sanctioned for a part alone and the rest of the amount as per the bills also has not been paid to the plaintiff and even though several representations have been made, the amount due has not been paid and the plaintiff got issued a notice u/s 80 CPC on 1.9.1980 to D1 and D2. They failed to pay the amount. To the said registered notice, the 2nd defendant in its communication C7/ 6407/80, dated 13.9.1980 addressed to the 1st defendant, directed the 1st defendant to take necessary action for refund of the amount due and payable to the plaintiff duly observing all usual formalities urgently, but the 1st defendant sent a reply to the plaintiffs advocate in its reference C.2164/ 64, dated 26.1.1981 in which it admitted that the amount is payable to the plaintiff namely Rs. 2,475/- towards the security deposit and also the amount of Rs. 6,578.51 ps being the amount incurred by the plaintiff towards the cost of the steel utilized for the construction of the bridge, but stated that the said amount

was withheld and deposited under Samithi funds alleging that the purchase of the steel was not done duly observing the departmental formalities and the technical authorities did not approve the quotations. The ground alleged by D1 for non-payment of the amount is not legal and valid. It is not for the plaintiff to get the quotations accepted. It is for the 1st defendant who undertook the liability to pay the cost of the steel and it is its look out to get the bills sanctioned. Both the defendants cannot penalize the plaintiff and drag on the payment of the amount indefinitely. In view of the clear admission that the amount payable to the plaintiff is lying with D1 for the benefit of the plaintiff, the 1st defendant must be treated as a trustee of the plaintiff holding the amount on behalf of the plaintiff. The final communication by the 1st defendant was issued on 26.1.1981 to the plaintiff's advocate stating as to why the amount was withheld and plaintiff received the same. The plaintiff is entitled to claim the suit amount on or before 26.1.1984. Even otherwise in any view there is no limitation to the plaintiff to recover the amount from both the defendants or either of the defendants. The 1st defendant did not see the amount was paid as early as possible and hence the plaintiff is entitled to claim interest at the rate of 12% per annum from 21.2.1976 onwards till date of payment.

6. The 1st defendant filed written statement denying the allegations made in the plaint and further pleaded as hereunder:

It is true that the plaintiff is a contractor doing contract works of the Government, Local Bodies, Panchayats etc. The construction work of the bridge over Sankhyana drain which lies within the limits of Munagavarapu Kottu Gram Panchayat was first entrusted to Gannavarapu Bhaskara Rao on nomination basis. The contractor executed the work to certain extent and expired during October, 1967 and as such the balance work was further entrusted to Sri Padala Rama Rao of P. Gannavaram during July, 1968 and he executed further work to a little extent and later on refusal to complete the work stating that the rates are increased. As such a fresh estimate for completion of the balance work was prepared with an estimated cost of Rs. 93,500/- after obtaining necessary departmental sanction, the work was entrusted to the plaintiff, who is a registered contractor executing the work in local bodies in 1971-72. The work was completed by the plaintiff during 1975-76. It is a fact that an amount of Rs. 2,475/- is recovered from the plaintiff in different spells as security deposit which is a normal departmental practice so as to ensure no breach of agreement and for the proper completion of the work and also to safeguard against any excess payment because of erroneous calculations noticed subsequently. There is no agreement as such as alleged by the plaintiff that the 1st defendant to supply cement and steel required for the execution of the work. There is no provision for departmental supply and it is also not known whether the then Engineering Official or the then Block Development Officer instructed the plaintiff to buy the above material from the open market. It may be fact that the Samithi might have supplied cement and steel to the plaintiff as and when they are available with the Samithi. But there is no obligation on the part of the 1st defendant to

supply the same to the plaintiff since there is no condition in the agreement. So it is for the plaintiff to purchase and execute the work and he will be entitled to the rate provided in estimate. The defendant Panchayat Samithi may not have any objection to pay the costs of the iron and steel according to the agreement conditions. The plaintiff has purchased steel on his own accord in private firm without observing the departmental formalities such as obtaining sealed quotations and purchasing from the firm which offered lowest rates that too after approval from DI. The steel purchased by the plaintiff was recorded and checked and measured by the appropriate technical authorities. It is not known how the steel brought by the plaintiff was allowed to be utilized on the work. Apart from the payment under question, the other bills are paid to the plaintiff as and when they are presented. The work was finally paid on 4.3.1976 keeping a total amount of Rs. 2,475/- as security deposit as precautionary measure for guarding against erroneous payment. The audit of Panchayat Samithi accounts raised objection in payment of bills on the above work. As such the amount could not be refunded. The plaintiff is not entitled to ask for any reliefs. There is no relief which the plaintiff can get against the 1st defendant or against the 2nd defendant. The suit as framed is not maintainable under law and there is no valid suit notice. The suit is barred by time.

7. On the strength of the above pleadings, the Court of first instance settled the following issues:

1. Whether there is any agreement between the plaintiff and the defendant to supply cement and steel for execution of the work as alleged by the plaintiff?
2. Whether prior approval of the bills by the 2nd defendant is necessary for the utilization of the steel?
3. Whether the plaintiff has to get sanction and approval of the construction work before the work is completed?
4. Whether the work was finally paid on 4.3.1976?
5. Whether the suit is not maintainable for want of statutory notice?
6. Whether the suit is barred by time?
7. To what relief?

On behalf of plaintiff, PWs. 1 and 2 were examined and Exs. A1 to A12 were marked and on behalf of the defendants DW. 1 was examined and Ex. B1 was marked. The Court of first instance recorded reasons in detail commencing from Paragraphs 7 to 16 and ultimately decreed the suit with costs with subsequent interest at 5 1/2%. The defendants carried the matter by way of appeal AS No. 44 of 1990 on the file of I Additional District Judge, East Godavari, Rajahmundry and the appellate Court at Paragraph 9 framed the following points for consideration:

1. Whether there is any agreement between the plaintiff and the defendants to

supply the cement and steel for execution of the work as alleged by the plaintiff?

2. Whether prior approval of the bills by the 2nd defendant is necessary for utilization of the steel?

3. Whether the plaintiff has to get sanction and approval of the construction of the work before the work is completed?

4. Whether the contract work was finally paid on 4.3.1976?

5. Whether the suit is not maintainable for want of statutory notice?

6. Whether the suit is barred by time?

7. To what relief?

The appellate Court proceeded to discuss with the points for consideration commencing from paragraphs 11 to 21 and ultimately allowed the appeal decreeing the suit for a sum of Rs. 9,053.51 ps with proportionate costs and interest at 5 1/2% per annum from the date of suit till the date of realization. Aggrieved by the same, the present second appeal is preferred.

8. No doubt relating to the liability of the defendants to make payments at least part of the amount, concurrent findings had been recorded and the appeal was partly allowed to the extent indicated above by the lower appellate Court. However, it appears that the plaintiff being aggrieved of granting of lesser interest had not preferred any independent appeal and it also appears that the appellant had not raised any cross-objections in the said appeal preferred by the defendants - AS No. 44 of 1990. It is pertinent to note that at Paragraph 12 the contentions of the plaintiffs before the appellate Court had been recorded and the said contentions read as hereunder:

The Counsel for the plaintiff contended that as per the agreement, the defendant has to supply the material such as steel, cement etc., for the execution of the contract work and if the defendant fails to supply the said material, the plaintiff can purchase the material and he can complete the contract work and contended that the steel purchased by the plaintiff which was used for the construction of the work was supervised by the defendant authorities and there is no need for prior approval of the bills by the 2nd defendant and contended that the lower Court on considering the material evidence available on record has rightly held issues 1 to 3 in favour of the plaintiff and against the defendant. Therefore, the said findings of the lower Court are not erroneous and that therefore the same are not liable to be interfered with.

It appears that this ground of granting only,,, an interest of 5 1/2% per annum instead of higher interest, at least 12% or 18% or 24%, in view of the nature of transaction had not been canvassed before the appellate Court. The question to be decided is whether granting of interest at 5 1/2% by both the Court of first of first instance or the appellate Court to be disturbed in the facts and circumstances of the case.

9. It is no doubt true that though granting of interest may be discretionary, the same to be based on sound principles of law. It is stated that the controversy concerned is with the contract works. However, in the light of the peculiar facts since the Court of first instance granted 5 1/2% interest and the same was confirmed even by the appellate Court and the said quantum of interest of 5 1/2% had not been challenged either by way of independent appeal or at least by way of cross-objections by the plaintiff in AS No. 44 of 1990, which had been preferred by the defendants, this Court in a second appeal may not be justified in disturbing the said finding relating to granting of interest at 5 1/2%. Hence, this Court is not inclined to express any opinion relating to the aspect whether granting of interest of 5 1/2% in the facts and circumstances would be just and proper inasmuch as the said question was not agitated by the plaintiff at the appellate stage.

10. In the result, the second appeal shall stand dismissed. There shall be no order as to costs.