
(2002) 12 MAD CK 0049
In the Madras High Court
Case No : O.S.A. No. 63 of 1998

South East Asia Marine Engineering and Construction Ltd.	APPELLANT
Vs	
Oil Natural Gas Corpn. Ltd. and Rolv Berg Drive A/S	RESPONDENT

Date of Decision : 31-12-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 35 Rule 4(1)
Contract Act, 1872 — Section 175(3), 65, 70

Citation : (2003) 1 LW 631 : (2003) 1 MLJ 519

Hon'ble Judges : S. Jagadeesan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : V. Ramachandran, for K. Sudhan, for the Appellant; P. Rathinadurai, For 1st respondent, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—The appellant who is the plaintiff in C.S. No. 538/1992 has filed the above Appeal, aggrieved by the dismissal of the

said suit, in the judgment dated 29.1.1998.

2. The 1st respondent entered into a contract with the 2nd respondent on 26.6.1987 to carry out non-destructive test in Indian Off-shore water

comprising of East and West Coast. A memorandum of understanding was entered between the Peerless leasing (P) Ltd and the 2nd respondent

on 19.6.87 to form the joint venture to be named as ""Peerless Drive(P)Ltd"" and the 2nd respondent should assign the contract they have got from

the 1st respondent to the said joint venture company which should perform the said contract. On that basis a joint venture agreement was entered

into between the appellant and the 2nd respondent. The 2nd respondent on 21.11.1988 applied for extension of the contract which expired by

efflux of time, for a further period of 240 days with effect from 1.10.88 and sought for instruction for deployment of DSV ""British Providence"" and for assignment of the contract in favour of the appellant. In the telex letter of intent of the 1st respondent dated 11.4.89, the contract was extended for a period of one year on the same rates, terms and conditions of the contract dated 26.6.87 subject to the approval of the Government of India for redeployment of the 2nd respondent's vessel ""British Providence"". Subsequently, the 1st respondent issued another telex on 20.4.89 on the same line. Pursuant to the joint venture agreement with the 2nd respondent, the appellant claimed that they purchased on 24.6.1989 a Vessel called ""British Providence"", from the second respondent, subsequently renamed as ""Drive Ocean"". In view of the rejection of the permission by the Government of India and expiry of the date of mobilisation of the Vessel on 12th May 1989, the appellant, as requested by the 1st respondent, deployed their Vessel to Madras Off-shore on 27.7.1989 and handed over its possession to the 1st respondent. The entire operation from 27.7.1989 to 15.1.1990 was carried out by the appellant at their cost and expenses and the 2nd respondent assigned the contract to the appellant. The entire operation as required by the 1st respondent was carried out by the appellant. In view of the Merchant Shipping Act as well as under the Joint Venture agreement, the 2nd respondent could not act as a contractor directly under the 1st respondent with Indian Flag Vessel, as the 2nd respondent was prohibited under the Joint Venture Agreement to carry on and/or undertaking any off-shore business in India in their name. It is also stated that the 2nd respondent did not have any coastal licence nor was allowed under the Indian Laws to carry on coastal trade in India. The 2nd respondent raised invoice towards the expenses while performing the contract for a sum of US Dollars 20,97,219.40 and a sum of Rs. 1,35,805.45 in Indian Currency. The said amount was payable to the appellant as the appellant alone executed the work. In view of certain disputes between the respondents, the 2nd respondent informed the 1st respondent not to pay the amount. So, the appellant filed a suit in C.S. No. 306/1991 on the file of the Civil Judge, Dehradun for declaration regarding their entitlement for the amounts due to them from the 1st respondent. The said suit was dismissed as withdrawn subsequently. Meanwhile, the 1st respondent filed a suit under Order 35 of CPC in C.S.

No. 910/1991 in this Court. Though originally the value of the contract was mentioned as Rs. 3,28,19,538.18, in the terms of Indian Rupee

subsequently the figure was amended to Rs. 2,75,38,710.11 and the said amount was permitted to be withdrawn by the appellant. Thereafter the

appellant came forward with the present suit stating that the appellant is entitled to the entire claim made by the 2nd respondent, which was agreed

by the 1st respondent, and the appellant filed the present suit claiming a sum of Rs. 4,00,20,928.06 with subsequent interest only against the 1st

respondent though the 2nd respondent was impleaded as 2nd defendant in the suit.

3. The 1st respondent contested the suit contending inter alia that the suit as framed without any prayer against the 2nd respondent is not

maintainable. In view of the decree passed in C.S. No. 910/1991, in which the controversy was resolved, the appellant is not entitled to maintain

the suit against them without seeking relief in respect of their entitlement as against the 2nd respondent, as the 2nd respondent had accepted the

amount as mentioned in C.S. No. 910/1991. Referring to the suit in O.S. No. 306/1991 on the file of the Civil Judge, Dehradun, it is stated that

since the said suit was dismissed, the appellant is precluded from reagitating the same matter. The question of ownership of vessel is not relevant

for the 2nd respondent to carry out their obligation under the contract. There is no jural relationship of any kind between the 1st respondent and

the appellant. The quantum of compensation claimed by the appellant is wrong and incorrect. The conversion rate at Rs. 26.04 per U.S. Dollar

was not the prevailing rate at the material point of time. The rate has to be worked out as provided in the Letter of Intent dated 20.4.1989 which,

in turn, refers to the contract dated 25.6.1987. This averment was made without prejudice to the earlier contention made by the 1st respondent.

The amount was properly calculated on the basis of the invoices given by the 2nd respondent and deposited in C.S. No. 910/1991 and so no

amount is due from the 1st respondent. The Letter of Intent dated 11.4.1989 was given independent of the contract dated 25.6.1987, which

contract was only for the period of one year and had expired by efflux of time by 25.6.1988. No permission was granted for assignment of contract

in favour of the appellant. Even the extension was subject to the approval of the Government of India and the same was not forthcoming, and so

there could not be any enforceable contract even at the instance of the 2nd respondent. Though the appellant came forward with the plea that their contract was assigned to the appellant by the 2nd respondent, such assignment could not be valid as it was without consent of the 1st respondent, and it cannot be enforced against the 1st respondent. The claim of interest as well as rate of interest by the appellant cannot be sustained as the 1st respondent is not liable to pay any interest as claimed. Moreover, the 1st respondent did not pay the amount only as instructed by the 2nd respondent and it is the 1st respondent who filed a suit in C.S. No. 910/1991 and deposited the amount. On that basis the 1st respondent prayed for dismissal of the suit with costs.

4. Though no prayer was sought for against the 2nd respondent, the 2nd respondent also filed written statement admitting most of the averments in the plaint, but denied that the 2nd respondent illegally and wrongfully claimed the payment in respect of the work done by the appellant. Ultimately, it is stated that they have no objection to the decree being passed in favour of the appellant without cost against the 2nd respondent.

5. On behalf of the appellant, one U.K. Sarkar, Deputy General Manager of the appellant was examined as P.W.1. On behalf of the 1st respondent, one J.K. Joshi, Deputy manager in the Department of Mineral Management was examined as D.W.1. Both the parties marked their documents to support their cases.

6. The learned Judge, appreciating the above pleadings framed three issues and decided all the issues commonly. The learned Judge, discussing oral and documentary evidence, found that as the assignment of contract in favour of the appellant by the 2nd respondent was not approved by the Government, and so the services of the appellant was only on behalf of the 2nd respondent, that the appellant have not established that the services were done by them to the 1st respondent independent of the contract and no evidence is available to establish the quantum of compensation.

Referring to the suit filed before the Civil Judge, Dehradun, the learned Judge found that the appellant is not entitled to the amount claimed in the plaint in view of the dismissal of the said suit, without obtaining any leave to file a fresh suit. The learned Judge also found that when the extension of the contract was one not approved by the Government as well as by the

Reserve Bank, the person who did service can only claim by way of compensation for the services done, and the 1st respondent is also not liable for payment of interest for the delayed payment of amount as the amount was not paid only as instructed by the 2nd respondent and so the appellant cannot make any claim for interest. Ultimately, the learned Judge found that the appellant is not entitled to claim making calculation on the basis of exchange rate for U.S. Dollars and so the question of conversion and deciding the relevant date for conversion does not arise for consideration. Ultimately, on the above said findings, the learned Judge dismissed the suit.

7. Learned Senior Counsel appearing for the appellant submitted that the appellant is claiming only the amount as agreed by the 1st respondent to pay to the 2nd respondent for the same work which was done actually by the appellant. According to him, merely because the appellant is an Indian Company, the 1st respondent cannot refuse to pay the quantum of amount agreed to pay to the 2nd respondent. Learned Senior Counsel submitted that the appellant is not enforcing the contract entered into between the respondents, he claims that the appellant is entitled to the amount as the appellant did the work to the 1st respondent. Referring to the finding of the learned Judge that the appellant has not established the quantum of compensation by producing the accounts, learned Senior Counsel submitted that such production of accounts is not necessary when the 1st respondent themselves fixed the value of the work in the contract and the appellant is entitled for the decree. He referred to Sections 65 and 70 of the Indian Contract Act in support of his submission. He also tried to sustain the claim of the appellant on the basis of implied contract with the 1st respondent, as the 1st respondent agreed to re-deploy their vessel to discharge the obligation under the contract entered into with the 2nd respondent. Referring to the suit C.S. No. 910/1991, the learned Senior Counsel submitted that since the said suit was inter pleader suit, any order passed in the said suit cannot be construed as res judicata to claim more quantum of amount.

8. Learned counsel for the 1st respondent submitted that there is no privity of contract between the appellant and the 1st respondent. If at all, the appellant can claim compensation only against the 2nd respondent. Though there

is a provision for assignment of contract under the agreement, no approval was obtained either by the appellant or by the 2nd respondent from the 1st respondent. Till the filing of the suit before the Civil Judge, Dehradun, the appellant did not make any claim against the 1st respondent. The claim was only against the 2nd respondent. According to the learned counsel, if at all, the appellant could claim compensation only under Sec.65 of the Contract Act, and the appellant has not established the quantum of compensation as held by the learned Judge by adducing necessary evidence. Referring to the suit filed before the Civil Judge, Dehradun, learned counsel further submitted that the said suit was dismissed as withdrawn without giving any liberty to file suit, and so the appellant cannot sustain the present suit. His further submission was that the appellant cannot claim any amount on the basis of fluctuation in exchange rate of U.S. Dollars and if at all, the appellant can claim the amount which was agreed with the 2nd respondent, which in fact, the appellant received the said amount as it was deposited in C.S. No. 910/1991. Since he withdrew the said amount without any protest, the appellant cannot make any further claim in the present suit. With respect to payment of interest, learned counsel further submitted that in the contract it is specifically contemplated that the 2nd respondent is not entitled for any interest for delayed payment. Furthermore, the 2nd respondent asked the 1st respondent not to pay money and so interest cannot be claimed against the 1st respondent as if the 1st respondent had delayed the payment. On that basis, learned counsel submitted that the learned Judge has rightly dismissed the suit and so it does not call for any interference.

9. From the above said pleadings and arguments, the points for determination to be decided in this Appeal are:-

(1) Whether the appellant is entitled to claim the suit amount from the 1st respondent?

(2) Whether the appellant can sustain the suit quantifying the amount on the basis of fluctuation in the exchange rate of U.S. Dollars, though no such contract was entered into between the appellant and the 1st respondent?

(3) Whether the appellant is entitled for interest as claimed?

(4) To what relief the appellant is entitled to?

10. It is not in dispute that no contract was entered into between the appellant

and the 1st respondent. Originally the contract was entered into under Ex. P11, dated 25.6.1987 between the respondents 1 and 2 for providing NDT Vessel with such unit and personnel as specified in Annexure-I of the contract for the purpose of operating D.P., alongside jacket/ other location as per the requirement of the 1st respondent. The scope of the work in detail is mentioned in Clauses 3.01 to 3.9 of the contract. The said contract was for a period of one year commencing from 2.5.1987. It is also not in dispute that the 2nd respondent is a foreign Company.

11. In the said contract in Clause 5.1 it is mentioned as follows:-

5.1: 1st phase of the Contract period was from the date of on-hire survey to 31st May'87. The vessel offered on 29.5.87 for on-hire survey, was

deficient in certain respects as such could not be accepted by Commission. In 2nd phase, the vessel after duly removing deficiencies, which was

noted by Commission's team who visited British Providence on 31.5.87 and conveyed to the Contractor vide letter dated 17.6.87, would be

mobilized by Contractor for on-hire survey on 1.10.87 (subsequent to mobilization of the vessel at Bombay after custom clearance and dock

formalities etc.) at Contractor's cost and expenses. The period of Contract would now be 240 days approx. from date of acceptance after on-hire

survey but shall end by 31st May 1988. Commission shall have the option to extend the contract for a further period of one more working season

(upto eight months) between 1st October 1988 to 31st May 1989 on the same rates, terms&conditions mentioned in the contract by giving 7 days

notice in writing to the Contractor before expiry of the Contract period mentioned above.

Clause 11.0 deals with remuneration and terms of payment. The 1st respondent shall pay towards the contract for vessel and equipment, operating

charges/Vessel charges as per Annexure II. According to the said clause, the 1st respondent shall not be liable for payment of interest on delayed

payment. Clause 24.0 gives power to terminate the contract by the 1st respondent. Clause 32.0 deals with assignment of contract by the 2nd

respondent and if the 2nd respondent wants to assign the contract to another contractor, it can be done only with written approval from the 1st

respondent for such assignment and notwithstanding such assignment, the 2nd respondent shall remain responsible for the execution of the work

and shall not relieve the contractor for any or all of the contract from duties and responsibilities under the contract. No clause mentioned in the

contract contemplates a condition that the 2nd respondent must own a Vessel having Indian flag.

12. On the basis of these conditions mentioned in Ex. P11, we have to deal with the case on hand. The period of contract under Ex.P11 expired

on 25.6.1988 and so the 2nd respondent requested for extension of the same. So the first respondent extended the contract under Ex. P13 dated

11.4.89 for further period of one year on the same rates, terms and conditions of the original contract for the same vessel which is mentioned as

British Providence". It is also stated that the said Letter of Intent was subject to Government's approval for redeployment of the 2nd

respondent's Vessel. The joint venture agreement, Ex. P10 was entered into between the appellant and the 2nd respondent only on 12.10.1988,

after the period of original contract came to an end. So, the appellant cannot claim that the said joint venture agreement was entered into pursuant

to the contract dated 26.6.1987.

13. Under the said Letter of Intent, Ex. P13 & P14 the 2nd respondent was advised to mobilise the Vessel at Madras on or after 12th May 1989

at the risk and cost of the 2nd respondent. From the said documents, it is clear that the contract was issued for redeployment of 2nd respondent's

Vessel "British Providence". It is not in dispute that the 2nd respondent was the owner of the said Vessel on that day. In the letter marked as Ex.

D1, dated 26.7.1989, the 2nd respondent requested the 1st respondent to accept the said letter as their official notification, informing the 1st

respondent of the availability of "msv. Drive Ocean" for the Hire Survey. This letter was written on the basis that the appellant acquired the Vessel

British Providence" of the 2nd respondent in May 1989 and renamed as "Drive Ocean" and it became an Indian Vessel. The above facts clearly

establish that the acquisition of the vessel by the appellant was not pursuant to the contract Ex.P11 which came to an end on 25.6.1988, but such

purchase of the vessel by the appellant from the 2nd respondent in conformity with their internal arrangement was subsequent to the said

agreement.

14. As mentioned, the contract under Ex. P11 was extended under Ex.P13 dated

11.4.1989. According to the said document as stated above, the contract was extended for a period of one year on the same terms and conditions of the said contract for the same vessel. Even the said document Ex. P13 referred to the vessel only as ""British Providence"". Even after transfer of vessel ""British Providence"" in favour of the appellant and renamed as ""Drive Ocean"", the 2nd respondent in Ex. P15 letter to the 1st respondent, informed the 1st respondent that they are going to re-deploy ""Drive Ocean"" by them. They also explained why they did not deployed the said vessel early. From the above, it is clear that at no point of time, the first respondent accepted the service of the appellant on the basis of the contract. Even Assuming if the appellant has a separate contract with the second respondent, the same, admittedly, was not accepted or approved by the first respondent. Moreover, the contract in favour of the second respondent was terminated by the first respondent under the telex marked as Ex.D2 dated 5.1.90. No document whatsoever is produced by the appellant to show that there is a privity of contract between the appellant and the first respondent. Even the memorandum of understanding between the second respondent and the appellant to carry on the second respondent's obligation in the contract was not approved by the first respondent. We can safely rely on Ex.P16 dated 19.5.1989, the letter of the appellant to the 2nd respondent, Ex.P17 dated 6.6.1989 the letter of the 2nd respondent to the 1st respondent and Ex.P29 dated 2.09.89 the letter of the appellant to the 1st respondent to come to such a conclusion. Under Ex.P44 the letter of the appellant dated 19.3.1990, the appellant had admitted that no approval was granted for assignment of the contract during the period of deployment of the vessel and so they are not in a position to raise an invoice in their name. Learned Senior counsel relied on the letter of the first respondent dated 17.8.89 marked as Ex.P24 in support of his submission that the first respondent impliedly consented for carrying on the work. Such a submission cannot be accepted in view of the fact that in the contract Ex.P11, it is specifically stated that such an assignment should be approved in writing by the first respondent. So merely relying on Ex. P24, it cannot be contended that there was an implied consent with the first respondent so as to enable them to enforce the terms of the contract under Ex.P11 regarding payment.

15. Though the appellant filed a suit claiming the amount calculating the exchange rates of U.S. Dollars to Indian money, PW1 categorically admitted in the evidence that the appellant is trying to enforce the terms of the contract Ex.P11 itself. The said evidence would establish that the appellant filed a suit only to enforce the contract Ex.P11 as extended under Ex, .P13 for which the appellant has no locus standi as the appellant is not a party to the contract. The Division Bench of this Court in which one of us (S.J.J.,) is a party, while considering similar facts in the judgement in L. Venkatesan Proprietor Vs. S.K. Puniyakodi & Others 2002 (1) TLNJ 193 held as follows:

On the contrary, learned counsel for the respondents herein contended that there is no privity of contract between the appellant and the respondents herein. The agreement pertaining to the joint promotion is only between the first defendant and the respondent herein. Whatever the work done by the appellant herein may be with regard to the entrustment of the same by the first defendant in the suit to the appellant herein. Hence, the appellant can make a claim only against the first defendant alone. The plaint also does not disclose any cause of action against the respondents herein. Hence, there is absolutely no need to interfere with the order of the learned Single Judge, who allowed the application filed by the respondents herein only on the ground that there is no privity of contract between the appellant and the respondents herein and if at all any claim is made by the appellant herein, it can only be against the first defendant in the suit.

It is further held , following the judgement in Aries Advertising Bureau Vs. C.T. Devaraj (dead) by LRs., and in Shri Nand Kishore Prasad Vs.

State of Bihar and Others, , that if there is no privity of contract then the suit against such of those, who are not parties to the contract, is not maintainable.

16. Learned senior counsel referring to Section-70 of the Indian Contract Act contended that even if they cannot enforce the contract Ex.P11, they are entitled for the compensation as contemplated under the said provision as the appellant lawfully did the work to the first respondent which the appellant did not do the same gratuitously. Section-70 of the Indian Contract Act reads as follows:

70. Obligation of person enjoying benefit of non-gratuitous act.- Where a person lawfully does anything for another person, or delivers anything to

him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in

respect of, or to restore, the thing so done or delivered.

17. To attract the above, there should be three conditions:

1. Something should be done or delivered lawfully;

2. The same should be for the benefit of the other party; and the said party enjoyed the said benefit

3. The same was not done or delivered gratuitously;

So, to get benefit under Section-70 of the Act all the above three conditions are to be satisfied. It is well settled that between the person claiming

compensation and the person against whom it is claimed there must be some lawful relationship which must arise not because a party claiming

compensation has done something for the party against whom the same is claimed, but because what was done by the former was accepted and

enjoyed by the latter. Further more, the person claiming compensation must be obliged to do such a work. Section-70 prevents the unjust

enrichment.

18. Even in State of West Bengal Vs. B.K. Mondal and Sons, it is held that,

Therefore, in our opinion, all that the word "lawfully" in the context indicates is that after something is delivered or something is done by one

person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of

S.70 gives rise to a claim for compensation.

While dealing with the claim against the State, in the said judgment it is held as follows:

In regard to the claim made against the Government of a State under S.70, it may be that in many cases the work done or the goods delivered are

the result of a request made by some officer or other on behalf of the said Government. In such a case, the request may be ineffective or in valid

for the reason that the officer making the request was not authorised under S.175(3), or, if the said officer was authorised to make the said request

the request becomes inoperative because it was not followed up by a contract

executed in the manner prescribed by S.175(3). In either case the things has been delivered or the work has been done without a contract and that brings in S.70. A request is thus not an element of S.70 at all though the existence of an invalid request may not make S.70 inapplicable. An invalid request is in law no request at all, and so the conduct of the parties has to be judged on the basis that there was no subsisting contract between them at the material time.

19. The Learned Judge of this Court, in *The Life Insurance Corporation of India, Madras Vs. K.A. Madhava Rao*, , considering the void contract and its enforceability against the Government under Sec. 70 of the Act, held as follows:

I am clearly of the opinion that those decisions cannot help the respondent in this case. In those cases the question of enforcement against the Government or the statutory bodies, of contracts which were not entered into the form prescribed by the statute came up for consideration. There when one party claimed to recover compensation for the work done by him the other party contended that there was no valid, binding and enforceable contract under which the claim could be made, and the courts had very rightly held that as the direction in the statute that the contract with a statutory body should be made in a specified form and manner, was mandatory and not merely directory or obligatory, all contracts contravening the direction were not binding, as against the statutory bodies, though such contracts may be enforced against the particular officer who actually entered into the contract, and that Section 70 of the Contract Act would apply to such contracts. The principles laid down in those decisions will not, therefore, apply to the facts of this case, where the statute forbids the work being done by the respondent when he was not an agent and payment of commission or reward for such work done by the respondent.

20. Since the appellant re-deployed the vessel only on the basis of the contract with the 2nd respondent, the appellant cannot make a claim under Sec.70 of the Act against the 1st respondent. The Apex Court in *Alopi Parshad and Sons Ltd. Vs. Union of India (UOI)*, held as follows:

For work done or services rendered pursuant to the terms of a contract compensation quantum meruit cannot be awarded where the contract

provides for the consideration payable in that behalf. Quantum meruit is but reasonable compensation awarded on implication of a contract to remunerate, and an express stipulation governing the relations between the parties under a contract, cannot be displaced by assuming that the stipulation is not reasonable.

21. The above decision is followed in *Puran Lal Sah Vs. The State of U.P.*, and held as follows:

13.....The principle of quantum meruit is rooted in English law under which there were certain procedural advantages in framing an action for

compensation for work done. In order to avail of the remedy under quantum meruit, the original contract must have been discharged by the

Defendant in such a way as to entitle the Plaintiff to regard himself as discharged from any further performance and he must have elected to do so.

The remedy it maybe noticed is however, not available to the party who breaks the contract even though he may have partially performed part of

his obligation. This remedy by way of quantum meruit is restitutory that is it is a recompense for the value of the work done by the Plaintiff in order

to restore him to the position which he would have been in if the contract had never been entered into. In this regard it is different to a claim for

damages which is a compensatory remedy aimed at placing the injured party, as near as may be in the position which he would have been in, had

the other party performed the contract. This Court had in *Alopi Parshad and Sons Ltd. Vs. Union of India (UOI)*,

Compensation quantum meruit is awarded for work done or services rendered when the price thereof is not fixed by a contract. For work done

or services rendered pursuant to the terms of a contract compensation quantum meruit cannot be awarded where the contract provides for

consideration payable in that behalf". Though in that case the basis of the principle was not explained, it nonetheless lays down that where work is

done under a contract pursuant to the terms thereof no amount can be claimed by way of quantum meruit. In the view we have taken on the facts

of the case we do not propose to examine the decisions cited at the Bar in this behalf. The claim of the Appellant for higher rates which in fact was

by way of damages has been rightly disallowed by the High Court.

22. In the present case even though the appellant had deployed its vessel, it was

done only on behalf of the 2nd respondent, and so the appellant cannot claim that they have done something lawfully to the 1st respondent and so entitled for compensation under Section-70 of the Indian Contract Act.

23. If at all the appellant can claim compensation it can be only under Section-65 of the Indian Contract Act, which reads as follows:

65. Obligation of person who has received advantage under void agreement, or contract that becomes void.- When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

According to the said provision, for the work done on the basis of the agreement between the appellant and the 2nd respondent, the appellant has to claim compensation only against the 2nd respondent, as the said contract between them had become unenforceable as against the 1st respondent, as the assignment in favour of the appellant was not approved by the 1st respondent. As a matter of fact, till filing of the suit before the Civil Judge, Dehradun in Suit No. 306 of 1991, the plaint of which is marked as Ex.D3 dated 10.5.1991, the appellant made claim only against the 2nd respondent. For the first time, the said claim was made against the first respondent also in the said suit. So, the appellant cannot sustain the suit against the 1st respondent independently.

24. In the suit filed under Ex.D3, the appellant sought for declaration declaring that the appellant is entitled to receive payment from the first respondent herein in respect of the service rendered to the exclusion of the 2nd respondent herein. It is not in dispute that the subject matter in the said suit and in the present suit are one and the same. The said suit was ultimately dismissed as withdrawn on 12.4.1993, a copy of the order was marked as Ex.P52. No leave was granted to the appellant to file a fresh suit for the same claim and also on the same cause of action. So, the learned Judge is correct in holding that the plaintiff cannot sustain the present suit for the same claim on the same cause of action by specifying the quantum of amount since the earlier suit was dismissed as withdrawn without any leave to file a fresh suit.

25. The first respondent filed the suit in O.S. No. 910/91 under Order 35 Rule 1

to 5 of C.P.C., seeking a decree directing the defendants therein

to inter plead together concerning their claim to the sum of Rs. 3,28,19,536.10 being the amount payable for service rendered for the appellant

herein by the Vessel British Providence later renamed as Drive Ocean for the appellant between 27.7.1989 and 15.1.1990 at Madras. In para-21

of the plaint in C.S. No. 910/1991, the first respondent herein set out the cause of action as follows:

The cause of action for this suit arose at Madras on 27-7-1989 when the vessel was deployed at Madras and from then onwards day by day

upto 1-1-1990 during which period the vessel rendered service and on 16-1-1990 when the vessel was withdrawn and on which day the liability

arose and in o about June, 1991 when the amount in definite sum was ascertained. The cause of action has arisen partly within the ordinary original

civil jurisdiction of this Honourable court where the work was done and partly outside at Bombay where both the defendants are carrying on their

usual business. In the circumstances leave is sought for under clause 12 of the Letters Patent.

According to the above averment the total liability on the part of the first respondent was ascertained. Subsequently the quantum of amount was

modified to Rs. 2,75,38,710.11 on the basis of the claim made by the 2nd respondent after making certain deductions. In the said suit, Ex.P3

dated 29.1.1992, a joint memo was filed by the appellant and the 2nd respondent and according to the said memo, the appellant was permitted to

withdraw the amount and ultimately in the decree marked as Ex.P6, dated 29.4.1992, the appellant was permitted to withdraw a sum of Rs.

2,75,38,710.11. It is also stated in Clause-3 of the decree in C.S. No. 910/1991 that,

the plaintiff herein be and is hereby discharged from this suit C.S. No. 910/91

But, nowhere either the appellant or the 2nd respondent herein reserved any right to claim more than that of the amount mentioned in Ex.P6. The

said amount was fixed on the basis of the scrutiny made by the Finance Department and deductions were made from the invoices of the second

respondent. The statement of account regarding the said invoices was marked as Ex.D30. The 2nd respondent has not challenged the said

quantum of amount as they have accepted the deductions made by the Finance

Department from their invoice and the ultimate quantum was arrived at Rs. 2,75,38,710.11. When the 2nd respondent themselves did not make any such claim over and above the said amount, the appellant cannot now make a claim as if the first respondent is liable to pay more amount on the basis of the fluctuations in exchange rate.

26. Black's law Dictionary defines "interpleader" as follows:-

Interpleader": An equitable proceeding to determine the rights of rival claimants to property held by a third person having no interest therein.

Balish v. Parnham, 82 Nev.133, 546 P.2d 1297, 1299. When two or more persons claim the same thing (or fund) of a third, and he, laying no

claim to it himself, is ignorant which of them has a right to it, and fears he maybe prejudiced by their proceeding against him to recover it, he may

join such claimants as defendant's and require them to interplead their claims so that he may not be exposed to double or multiple liability. A

defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. Interpleader in federal court is

governed by the federal Interpleader Act, 28 U.S.C.A. § 1335, and Fed. R. Civil P.22. Similar statutes and court rules govern interpleader in

state courts.

27. The relevant provision in the CPC relating to interpleader suits are Sec.88 and Order 35(1) to (5). While rejecting the submission that suit

cannot be decreed if any dispute regarding the dues is raised, the Division Bench of the Andhra Pradesh High Court in the decision in Inuganti

Sobhanadrirao and Another Vs. Muthangi Jaggayya and Others, , held as follows:

The learned Advocate General also pointed out that Order 35, Rule 4(1) CPC provides for the Court passing an order discharging the plaintiff

from all liability to the defendants in respect of the thing claimed, and that such an order cannot be passed as in the present case, where the amount

due is in dispute, and therefore, an interpleader suit is not maintainable. But it has to be noticed that the word used is "may" so that it is only in a

case where the amount is not in dispute and where the plaintiff pays into Court the entire amount that the Court may declare that the plaintiff is

discharged from all liability; but where the amount is in dispute, the Court may declare that the plaintiff is discharged from liability only to the extent

of the amount admitted (Rs. 30,000 in the present case) and leave the parties to

settle their disputes for the balance otherwise or in other proceedings.

In the present case no such dispute was raised and prayed for the grant of leave to settle the dispute in other proceedings.

28. It is not in dispute that the total contract amount payable to the 2nd respondent was fixed by the first respondent under the contract Ex.P11.

So, the 2nd respondent is entitled only for the specified quantum of U.S. Dollars though the payment was distributed to various periods. In so far

as the 2nd respondent is concerned, the consideration of the contract was a fixed one. So, the first respondent quantified the amount in C.S. No.

910/91 by converting U.S. Dollars into rupee value taking into the conversion rate on the date of Ex.P11 dated 25.6.87. For this conversion and

quantification the 2nd respondent did not object. The appellant came forward with the suit only on the basis that the first respondent is liable to pay

in Rupee equal to the value of U.S. Dollars fixed on the basis of increase in exchange rate for which there is no agreement between the parties. As

stated already, the amount payable to the 2nd respondent was quantified and the 2nd respondent did not object to the same. So, the appellant

even assuming that he could claim the amount from the first respondent he cannot claim over and above the amount quantified by the first

respondent payable to the 2nd respondent, especially when the appellant has not reserved any right to claim more amount when they withdrew the

amount deposited by the first respondent in C.S. No. 910/91. So even on that ground, the suit filed by the appellant has to be rejected.

29. With respect to the interest, as rightly found by the learned Judge, the appellant is not entitled to claim any such interest. Under Ex.P43 letter

dated 2.3.90, the appellant requested the first respondent not to pay the amount to the 2nd respondent. Since there is a dispute between the

appellant and the 2nd respondent, the first respondent filed inter pleader suit in C.S. No. 910/91 and deposited the amount. So, the question of

paying interest will not arise as claimed apart from the fact that in Ex.P11 it is specifically stated that no interest is payable for the belated payment

by the first respondent.

30. In view of the above, we do not find any reason to interfere with the judgement and decree of the learned Judge. Hence, the appeal is

dismissed with costs.