

**HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
HON'BLE JUSTICE NAGESH BHEEMAPAKA**

COMCA.No.1 of 2022

Counsel for the appellant: Sri Kishore Rai Sohni, learned Senior Counsel.

Counsel for the respondent: Sri Avinash Desai, learned Senior Counsel.

JUDGMENT: (*Per Justice Moushumi Bhattacharya*)

The Commercial Court Appeal arises out of a judgment dated 10.06.2021 passed by the Commercial Court, at Hyderabad in a Suit filed by the respondent (C.O.S.No.38 of 2016) for recovery of Rs.38,90,99,890/- with interest *pendente lite* and future interest.

2. The Commercial Court decreed the Suit in favour of the respondent holding that the respondent is entitled to recover an amount of Rs.38,90,99,890/- and is also entitled for interest @ 15% p.a. during the pendency of the Suit and interest @ 6% p.a. till realization of the suit debt on the principal sum. The appellant/defendant was also directed to pay costs.

3. The appellant has challenged the impugned judgment on three grounds.

4. Learned Senior Counsel appearing for the appellant/defendant submits that the respondent/plaintiff was appointed to execute a drinking water project at Kadapa, which is presently in Andhra Pradesh and hence the Suit would be hit by section 105 of The Andhra Pradesh Reorganisation Act, 2014 (The Reorganisation Act, 2014). Counsel submits that the Suit

should have been transferred to the appropriate Court in Andhra Pradesh as per the Central Government Notification dated 02.06.2014 which was done in similar Suits pending on the appointed date under The Reorganisation Act, 2014. Counsel relies on a Full Bench decision of this Court in *Andhra Pradesh High Courts Advocate Association Vs. Union of India*¹ in support of his contention.

5. The third point taken on behalf of the appellant is that the Commercial Court could not have awarded *pendente lite* interest @ 15% p.a. on the R.A. Bills amounting to Rs.19,06,73,561/-. Counsel relies on section 34 of The Code of Civil Procedure, 1908 (CPC) to urge that the interest awarded is unreasonable since it was awarded outside the purview of section 34 of the CPC.

6. Learned Senior Counsel appearing for the respondent/plaintiff objects to the grounds taken by the appellant for assailing the impugned judgment. Counsel relies on section 20 of the CPC to argue that the registered office of the appellant/defendant was at Fateh Maidan, Hyderabad at the time of institution of the Suit in 2016 and that the registered office of the appellant continues to be in Hyderabad as on date. Counsel places reliance on the Cause Title in the present Appeal, filed in 2021, where the appellant has shown its registered office as located in Hyderabad. Counsel also submits that the allotment of work, contract and communications were sent and

¹2019 SCC OnLine TS 1253

received by the appellant from the appellant's office at Hyderabad. Counsel further submits that The Reorganisation Act, 2014 will not apply to the present case since the respondent/plaintiff filed the Suit in 2016 after the appointed date (02.06.2014). On the point of interest, counsel submits that the respondent/plaintiff is entitled to claim interest since the contract is commercial in nature even if it did not stipulate payment of interest.

7. We have heard learned Senior Counsel appearing for the parties and considered the documents placed before us including the import of The Reorganisation Act, 2014.

8. The facts relevant to the adjudication are as follows.

8.1 The appellant (defendant) and the respondent (plaintiff) entered into an Agreement on 24.09.2008 for execution of a drinking water project at Kadapa, Andhra Pradesh - Somasila Drinking Water Supply Scheme. The project was for a total consideration of Rs.99,99,67,736/-. The respondents furnished a security deposit of Rs.1,74,99,440/- and performance Bank Guarantee of Rs.74,99,760/- for the defect liability period. The respondent also obtained an Execution All-risk Policy of Rs.12,52,381/-.

8.2 The respondent commenced work and raised the first RA bill on 31.12.2008 for Rs.14,31,32,488/-. Clause 68 of the Agreement

provides for payment to be made by the appellant within 14 days from the date of each certification.

8.3 The appellant delayed certification of the RA bill and also failed to make payment according to the stipulated contractual time. The respondent however continued to execute the project and raised the second RA bill on 28.02.2009 for Rs.15,13,63,174/-. The appellant did not pay any amounts to the respondent and the respondent continued to work in excess of Rs.30,00,00,000/- without receiving any payment from the appellant. The appellant eventually made payments for the first RA bill in two instalments with the final payment received on 18.05.2009. The respondent continued to execute the project and raised the third RA bill on 13.07.2009 for Rs.2,02,11,186/-.

8.4 In December, 2009, the appellant directed the respondent to provisionally stop the work. The respondent *vide* letter dated 21.01.2010 requested the appellant for resumption of work. The appellant did not reply to this letter.

8.5 The respondent raised the fourth RA bill on 05.02.2010 for Rs.1,86,33,520/- for the work done till December, 2009. The appellant had in the meantime certified RA bill Nos.3 and 4 after December, 2009 by which time the respondent had completed work

amounting to Rs.17,13,85,853/-. The appellant failed to make payments for the work done.

8.6 The appellant started communicating with the Government of Andhra Pradesh in the meantime with respect to making payments to the respondent which would be evident from the letters written by the appellant on 27.09.2010, 27.11.2010, 02.04.2012 and 15.01.2013. The Government admitted the liability towards the respondent. The respondent was also shown as a creditor for the unpaid amount of Rs.20,83,08,286/- in the audited books of the appellant for the Financial Year 2013-14 and 2014-15. The appellant finally informed the respondent by letter dated 12.02.2013 that the project would be closed as the work was held up due to absence of funds from the Government of Andhra Pradesh. The respondent issued a notice dated 19.05.2014 and filed CP.No.217 of 2014 in the High Court which is pending as on date. The respondent filed the Suit on 08.02.2016 for recovery of amounts with interest *pendente lite* and future interest.

9. We propose to first deal with the issue of whether the respondent/plaintiff was entitled to the amounts claimed along with interest.

The Plaintiff's Entitlement to Recovery of Amounts

10. The admitted facts have been stated above. The letters written by the appellant to the Government of Andhra Pradesh show that there was no fault on the part of the respondent in executing its part of the bargain. The respondent continued to perform its work in accordance with the terms of the Agreement executed between the parties despite not receiving the amounts raised in the four RA bills. The appellant continued to violate Clause 68 of the Agreement in terms of payment within the agreed timelines.

11. It is nobody's case that the respondent abandoned the work or that the appellant expressed any dissatisfaction with the respondent's work. Moreover, the respondent commenced execution of the work from 2008, i.e., since the parties entered into an Agreement and raised its first RA bill on 31.12.2008, the second RA bill on 28.02.2009, the third RA bill on 13.07.2009 and the fourth RA bill on 05.02.2010. Therefore, the respondent continued to execute the contract for two years without receiving any payment for the substantial amounts contained in the RA bills, save and except payments for the first RA bill in two instalments and that too on 18.05.2009 after a delay of 5.5 months from the date of submission of the first RA bill. The respondent filed the Suit in 2016 i.e., eight years after it commenced executing the contract. The impugned judgment was pronounced five years later on 10.06.2021.

12. There is also no dispute that the amounts raised in the RA bills were admitted amounts which would be evident from the appellant's numerous letters to the Government of Andhra Pradesh on 27.09.2010, 27.11.2010, 24.02.2012 and 05.01.2013 categorically admitting its liability to the respondent. The appellant's letter to the respondent on 12.02.2013 asking the respondent to take back the pipes which were supplied to the site stating that the project would be closed due to absence of funds from the Government of Andhra Pradesh is also testimony to the respondent being fully in the clear with regard to its performance obligations.

13. Therefore, there is no doubt that the respondent/plaintiff was entitled to claim interest on the admitted amount for non-payment of the three RA bills since the RA bills were raised during 2008-2010 and the Suit was filed eight years after the first RA bill. In any event, the respondent is entitled to claim interest even in the absence of any interest clause in the Agreement. The Court agrees with the contention of the respondent that interest @ 15% p.a. during the pendency of the Suit is reasonable in respect of commercial transactions as contemplated by the Agreement dated 24.09.2007.

14. The object of awarding interest is to put a party back to the same position as the party was before the breach occurred and to mitigate the financial damage suffered by the party. It is undisputed that the respondent was not only made to wait for payment for eight long years i.e., till the claim made in the Suit, but also that the respondent was forced to negotiate with

the appellant for payment and write innumerable letters to the appellant for clearing the four RA bills.

15. We accordingly hold that the respondent/plaintiff was not only entitled to recover the money as paid for in the Suit but was also entitled to interest awarded by the Commercial Court in the impugned judgment.

The Point with regard to the Limitation

16. The Suit is within limitation as the plaint was presented on 08.02.2016 within the period of limitation from the letter dated 12.02.2013 (written by the appellant to the respondent with regard to closure of the project). The appellant/defendant also acknowledged its liability through the letters to the Government of Andhra Pradesh which would attract section 18 of The Limitation Act, 1963 which pertains to the effect of acknowledgment in writing and contemplates a fresh period of limitation from the time of acknowledgement of liability in writing. This was also recorded by the Court in the order dated 24.09.2024. The respondent would also have the benefit of exclusion of time for the purpose of computing limitation during the prosecution of other proceedings against the appellant.

The Argument on Jurisdiction.

17. The stand of the appellant is that the Trial Court should have transferred the matter to the High Court of Andhra Pradesh. The argument is based on the place of performance of contract being at Kadapa, Andhra Pradesh. The appellant also relies on section 105 of The Reorganisation Act, 2014 for transfer of proceedings to the appropriate Court.

18. We have heard the respondent/plaintiff on these grounds and our answer is as follows.

19. Section 105 of The Andhra Pradesh Reorganisation Act, 2014 provides for transfer of pending proceedings and clarifies as under:

“Section 105:

(1) Every proceeding pending immediately before the appointed day before a court (other than High Court), tribunal, authority or officer in any area which on that day falls within the State of Andhra Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of the State of Telangana, stand transferred to the corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1) it shall be referred to the High Court at Hyderabad and the decision of that High Court shall be final.

(3) In this section—

(a) "proceeding" includes any suit, case or appeal; and

(b) "corresponding court, tribunal authority or officer" in the State of Telangana means—

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

(ii) in case of doubt, such court, tribunal, authority, or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Andhra Pradesh to be the corresponding court, tribunal, authority or officer.”

20. “Appointed day”, is defined under section 2(a) of The Reorganisation Act, 2014 as the day on which the Central Government notifies the same in the Official Gazette. The Central Government issued the Notification on 02.06.2014. Hence, the appointed day is 02.06.2014. The respondent/plaintiff filed the COS in 2016 which is hence after the “appointed day”.

21. Therefore, since COS.No.38 of 2016 was not pending on the “appointed day” there was no question of transfer of COS under section 105 of The Reorganisation Act, 2014.

22. Second, the transfer of proceedings contemplated under section 105 of The Reorganisation Act, 2014, pertains to proceedings from the erstwhile State of Andhra Pradesh to the State of Telangana provided the subject matter exclusively falls within the State of Telangana. This would be clear also from section 105(1) of the 2014 Act. Therefore, the transfer is only in one direction, i.e., from the State of Andhra Pradesh to the State of Telangana, if falling under section 105(1) and not the other way around. Thus, the appellant’s contention that the Suit should have been transferred from the State of Telangana to the State of Andhra Pradesh (in the reverse

direction) is not within the contemplation of section 105(1) of the 2014 Act and is therefore without basis.

23. Section 105 of the 2014 Act would not apply to the Suit filed by the respondent for the above reasons.

24. As opposed to the contention of the appellant, section 20 of The Code of Civil Procedure, 1908 would fully apply to the facts of the present case.

25. Section 20 of the CPC provides for the territorial jurisdiction for institution of a suit under sub-section (a), where the defendant/s actually and voluntarily resides or carries on business or personally works for gain at the time of commencement of the suit.

26. In the present case, the appellant/defendant had its registered office at Fateh Maidan, Hyderabad and also carried on business and resided in that place. The registered office of the defendant was at Hyderabad not only at the time of institution of the Suit in 2016 but continued to be in Hyderabad at the time of filing of the Appeal, as indicated in the Cause Title. The respondent/plaintiff hence fulfilled the requirement of section 20(a) of the CPC for the reasons stated above.

27. Moreover, the allotment of work, communications between the appellant and the respondent as well as the request for foreclosure of contract on 12.02.2013 undisputedly forms part of the cause of action. All

these letters were issued from the appellant/defendant's office at Hyderabad. The Agreement dated 24.09.2008 was executed in Hyderabad further giving rise to the cause of action in Hyderabad. Section 20(c) of the CPC provides that every suit shall be instituted in the Court within whose jurisdiction the cause of action, wholly or in part, arises. There is hence, no dispute that the Commercial Court at Hyderabad had territorial jurisdiction over the Suit.

28. The Full Bench decision of this Court in *Andhra Pradesh High Court Advocates Association* (supra), relied on by counsel appearing for the appellant is not relevant for the objection to jurisdiction as the said decision was pronounced in respect of matters pending in the High Court for the State of Telangana. The Full Bench interpreted section 40(3) of the 2014 Act, which relates to transfer of proceedings of the High Court at Hyderabad to the High Court of Andhra Pradesh and the right to appear/act in the proceedings transferred to the High Court of Andhra Pradesh. Section 40(3) carves out an exception from the application of section 40(1) and (2), taking away the jurisdiction of the High Court at Hyderabad in respect of certain matters in the State of Andhra Pradesh. The proviso to section 40(3) confers the Chief Justice of the High Court at Hyderabad with the power to transfer certain matters to the High Court of Andhra Pradesh.

29. The Full Bench held that the Chief Justice of High Court at Hyderabad would have the power to transfer all the cases under section

40(3) of the 2014 Act to the High Court of Andhra Pradesh. Therefore, the Full Bench decision pertaining to section 40(3) of the 2014 Act would not have any application to the present Appeal since the prerogative of transfer has been given only to the Chief Justice of the High Court at Hyderabad and in any event pertained only to the orders passed by the High Court at Hyderabad which was a common High Court at that point of time before the date referred to in section 30(1) of the 2014 Act i.e., till 31.12.2018.

30. It is relevant to mention that the President *vide* order dated 26.12.2018 constituted a separate High Court for the State of Andhra Pradesh from 01.01.2019 in accordance with section 30(1) of the 2014 Act.

31. It is also relevant to state that the appellant did not take any objection with regard to lack of jurisdiction of the Commercial Court on the ground of The Reorganisation Act, 2014 before the Commercial Court itself. The third issue framed is whether the Civil Court would have the jurisdiction to entertain the claim of the plaintiff as with regard to the Arbitration Clause in the Agreement between the parties. The appellant/ defendant's contention before the Trial Court was that the Suit was not maintainable in view of the Arbitration Clause. Therefore, the plea of lack of jurisdiction under the 2014 Act is a new plea taken by the appellant only in the Appeal.

32. Therefore, the objections raised on behalf of the appellant/defendant are rejected for the reasons as stated above.

33. We have in any event carefully considered the impugned judgment dated 10.06.2021 and do not find any error therein. The Commercial Court has given clear findings for decreeing the Suit with costs and directing the appellant/defendant to pay Rs.38,90,99,890/- and also holding that the respondent is entitled to interest @ 15% p.a. during the pendency of the Suit and interest @ 6% p.a. till realization of the suit debt. We do not find any reason to interfere with these findings including the quantum of interest awarded on the principal amount.

34. COMCA.No.1 of 2022, along with other connected applications, is accordingly dismissed. Interim orders, if any, shall stand vacated. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

NAGESH BHEEMAPAKA, J

October 01, 2024

Note: LR copy to be marked.
B/o. *BMS*