

State of Karnataka Vs. Coimbatore Premier Constructions

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Court : Karnataka

Decided On : Aug-11-1987

Reported in : ILR1988KAR457; 1988(1)KarLJ249

Judge : Bopanna and ;Swami, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 7 Rule 11(C); Civil Rules of Practice, 1967 - Rule 14; [Contract Act, 1872](#) - Sections 55 and 63

Appeal No. : R.F.A. Nos. 48 of 1976 and 14 of 1978

Appellant : State of Karnataka

Respondent : Coimbatore Premier Constructions

Advocate for Def. : K.N. Haridasan Nambiar, Adv.

Advocate for Pet/Ap. : V.G. Sabhahit, Adv., HCGP

Disposition : Appeal partly allowed

Judgement :

K.A. Swami, J.

1. R.F.A.No. 14/1978 is filed by the plaintiff and R.F.A. No. 48/1976 is filed by the defendants. In this Judgment the parties will be referred to with reference to the position assigned to them in the trial Court. As both the appeals arise out of the

same suit, they are disposed of by this common Judgment.

2. O.S.No. 94/1972 was filed by the plaintiff for recovery of a sum of Rs. 48,409-06 being the amount due towards the work contract entrusted to it under Ex.P. 10. The case of the plaintiff is that the defendants illegally terminated the contract and illegally forfeited the earnest money deposit and also failed to pay the amount towards the work done under the contract Ex.P. 10. Therefore, under all the heads together, the plaintiff prayed for a decree for recovery of the aforesaid sum.

3. The defendants disputed the claim made by the plaintiff and contended that the contract was terminated in accordance with the provisions contained therein ; that the plaintiff failed to perform the contract within the time stipulated in the contract; therefore the work was got done through the Department and as well as by the other contractor. The defendants even claimed certain sums by way of set-off. The defendants further pleaded that after setting off the amounts due by the plaintiff to the defendants only a sum of Rs. 5068-80 was due to the plaintiff. They also set up a plea that the suit was barred by time.

4. On the basis of the pleadings of the parties, the trial Court framed various issues numbering 18. It is not necessary to reproduce them.

5. Among other things, the trial Court has held that the plaintiff is a registered partnership firm and it is properly described in the plaint. Hence the suit, as brought, is maintainable. It has also held that the time was not of the essence of the contract and it lapsed when extra work was entrusted to the plaintiff; that the execution of the work was delayed due to floods; that the work done by the plaintiff was not contrary to specifications; that the contract was not validly terminated ; that the defendants were not entitled to claim Rs. 924-30 by way of set-off ; that the defendants failed to prove that they were entitled to forfeit the earnest money deposit of the plaintiff on account of the default committed by it; that the suit was not barred by time. On the whole, the trial Court has come to the conclusion that the plaintiff is entitled to a sum of Rs.19,942-47, the details of which are as follows:

Amounts withheld from intermediary bills ..Rs.5039-00 Refund of earnest money deposit ..Rs.4623-00 Amount due to the plaintiff in respect of claim at Sl. No. II of

the plaint..Rs.4224-23

----- Rs. 13286-23Amount due in respect of claim at Sl. No. 1 of the plaint
5054-34

----- Rs. 18940-57DEDUCTIONS: Hire Charges ..Rs. 1825-00Royalty
..Rs. 215-10

-----Rs.2040-10 2,040-10

-----Netamount due to the plaintiffRs. 16,900-47B/FRs. 16,900-
47Intereston the above at 12% p.a. from 6-11-1970 to 24-5- 1972 3,042-00

-----TotalRs. 19,942-47

6. Being aggrieved by the decree, the defendants have come up in appeal i.e., R.F.A.No. 48/76 and the plaintiff also has come up in appeal in R.F.A.No. 14/78 against that portion of the decree by which certain portion of its claim has been rejected. Therefore, both the appeals are heard together.

7. Having regard to the contentions urged by Sri V.G. Sabhahit, learned High Court Government Pleader appearing for the appellants in R.F.A.No. 48/76 and respondents in R.F.A.No. 14/78, the following points arise for consideration :

1) Whether the suit was in time ?

2) Whether time was of the essence of the contract ?

3) Whether the Court below was right in holding that the State was not entitled to forfeit the earnest money deposit ?

4) Whether the trial Court was right in holding that the plaintiff was entitled to all the amount in respect of his claim at Sl.No. 2 of the plaint and also the amount due in respect of Sl.No. 1 of the plaint ?

5) Whether the trial Court is right in awarding interest at 12% from 6-11-1970 to 24-5-1972 ?

6) Whether R.F.A.No. 14/78 is entitled to succeed ?

POINT NO. 1 :

8. The undisputed facts of the case are as follows:

The plaint was presented on 22-5-1972 with a Court fee stamp of Rs.1/- paid on the plaint. It was not placed before the Presiding Officer of the Court for a considerable time by the Chief Ministerial Officer of the Court for consideration as to whether the plaintiff should be granted time for payment of deficit Court fee. However, before it was placed before the Presiding Officer of the Court, the plaintiff on 20-10-1972 paid the deficit Court fee of Rs. 3702/- along with the valuation slip. On 14-11-1972 the plaint was placed before the Presiding Officer of the Court and the following order was passed :

'14-11-1972: Sri K.N. Haridasan Nambiar files this suit under Order 7 Rule 1 r/w Section 80 of the Code of Civil Procedure and prays to pass a decree against the defendants for the sum of Rs.49,360/- together with current interest and Court costs. Court fee paid on the plaint is sufficient. The suit is in time. Issue summons to the defendants by 30-11-1972.'

8.1. Sri Sabhahit, learned Government Pleader contends that as there was no order passed by the Court fixing time for payment of deficit Court fee, the plaint must be deemed to have been filed only on 20-10-1972, the date on which the deficit Court fee was paid, in as much as in the absence of an order of the Court fixing time for payment of deficit Court fee, the benefit of Section 149 of the C.P.C. is not available; hence the suit is barred by time. There is no doubt that the plaint was not placed before the Presiding Officer of the Court immediately it was filed and there was no application filed by the plaintiff for grant of time to pay the deficit Court fee. The plaint was placed before the Presiding Officer of the Court only on 14-11-1972. Under Order 7 Rule 11(c) of the C.P. Code, the Court has no option but to fix time within which the plaintiff is required to supply the requisite

stamp paper to make good the deficit Court fee. In this regard the learned Counsel places reliance on Section 4 of the Karnataka Court Fees and Suits Valuation Act, 1958 and submits that as the plaint was written upon the paper insufficiently stamped, it was not entitled to be acted upon. Therefore, in the eye of law, there was no valid filing of the plaint and it could be deemed to have been filed only on 20-10-1972 when the deficit Court fee was made good.

8.2. It is not in dispute in this case that if the plaint is deemed to have been filed on 20-10-1972 the suit will be barred by time in as much as, as per the finding recorded by the trial Court, the cause of action arose on 17-5-1969, the date on which the work was taken over by the Department and entrusted to another contractor. From that date the suit ought to have been filed within three years. On the contrary, if the date of presentation of the plaint i.e., 22-5-1972 is taken as the date of institution of the suit, it would be in time, as the Court reopened on that day after summer vacation. The Supreme Court had occasion to consider the effect of Section 4 of the Central Court Fees Act in *MANNANLAL v. CHHOTKA BIBI (dead) BY HERL. R. AND OTHERS* AIR 1971 SC 3174. It is held by the Supreme Court as follows :

' 12. The above Section therefore mitigates the rigour of Section 4 of the Court Fees Act and it is for the Court in its discretion to allow a person who had filed a memorandum of appeal with deficient Court fee to make good the deficiency and the making good of such deficiency cures the defect in the Memorandum not from the time when it is made but from the time when it was first presented in Court.

13. In our view in considering the question as to the maintainability of an appeal when the Court fee paid was insufficient to start with but the deficiency is made good later on the provisions of the Court Fees Act and the Code of Civil Procedure have to be read together to form a harmonious whole and no effort should be made to give precedence to provisions in one over those of the other unless the express words of a statute clearly over-ride those of the other.

14. Apart from the decisions bearing on the point, there can, in Our opinion, be no doubt that Section 4 of the Court Fees Act is not the last word on the subject and the Court must consider the provisions of both the Act and the Code to harmonise

the two sets of provisions which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it. If the deficiency is made good, no possible objection can be raised on the ground of the bar of limitation ; the memorandum of appeal must be treated as one filed within the period fixed by the limitation Act subject to any express provision to the contrary in that Act and the appeal must be treated as pending from the date when the memorandum of appeal was presented in Court. In our view, it must be treated as pending from the date of presentation not only for the purpose of limitation but also for the purpose of sufficiency as to Court fee under Section 149 of the Code. If such a construction be accepted, the bar of Section 3 of the Abolition of Letters Patent Appeals Act of 1962 would not operate in the instant case.'

Therefore, it is now settled position of law that Section 4 of the Court Fees Act is not the last word on the subject. Section 4 of the Court Fees Act has to be read with Section 149 and Order 7 Rule 11 (c) of the C.P.Code. All these provisions are to be considered together and harmoniously too. The learned Counsel has also placed reliance on Rule 14 of the Karnataka Civil Rules of Practice, 1967 (hereinafter referred to the 'Rules of Practice').

8.3. In the light of the aforesaid contentions and also in the facts and circumstances of the case, the question that arises for consideration is whether in a case where the plaint presented is written upon paper insufficiently stamped and the plaintiff voluntarily without an order of the Court fixing time within which the requisite stamp paper has to be supplied to make good the deficit Court fee, supplies the requisite stamp paper and makes good the deficit Court fee and thereafter the plaint is placed before the Presiding Officer of the Court and the Court passes an order noticing the fact that the Court fee paid is sufficient and directs issue of summons to the defendants, the Court must be deemed to have granted time to the plaintiff for supply of requisite stamp papers to make good the deficit Court fee either upto the date the plaintiff had paid the deficit Court-fee or upto the date on which an order is passed directing issue of summons to the defendants. The provisions contained in Rule 11(c) of Order 7 of the C.P.C. are mandatory. There is no discretion or option left with the Court, but to fix time within

which the plaintiff is required to supply sufficient stamp papers to make good the deficit Court fee, in a case where the plaint presented is written upon paper insufficiently stamped. Thus the Court must fix time for payment of deficit Court fee. Even then if the plaintiff fails to supply sufficient stamp paper, it will be open to the Court to reject the plaint straight away on noticing that the Court fee paid on the plaint is insufficient and the plaintiff has failed to pay the deficit Court fee within the time fixed. This view of ours, apart from receiving support from the clear wordings of Rule 11(c) of Order 7 of the C.P.Code also receives support from several precedents. In *ACHUT RAMCHANDRA PAI AND OTHERS v. NAGAPPA BAB BALGAYA AND OTHERS*, AIR 1914 Bombay 249 a Division Bench of that Court held that:

'Where a plaintiff or an appellant is within time in the actual presentation of his plaint or memorandum of appeal, though matters cannot be carried further owing to the document being insufficiently stamped, he is entitled to some further time for the payment of Court-fee.'

It was further held that:

'Where the plaintiff or appellant was within time in the actual presentation of his plaint or memorandum of appeal, though matters could not then be carried further owing to the document being insufficiently stamped, yet the party should be entitled to some further time for the payment of Court fees, It seems hardly necessary to observe that the obligation imposed by the law of limitation and the obligation to pay the requisite fees are matters which stand on a very different basis.'

It was further held that:

'... But when a particular document is a plaint or memorandum of appeal, then the Court's discretion must be exercised in accordance with the special provisions of Order 7 Rule 1(c). Thereafter, Section 149 would come into play, and would operate to produce this effect, that upon the payment of the requisite fee within the time allowed by the Court, the document in respect of which such fee was payable, would have the same force and effect as if such fee had been paid in the

first instance.'

In RADHAKANTA SAHA AND OTHERS v. DEVENDRA NARAYAN SANA AND OTHERS AIR 1922 Calcutta 506 it was held :

'The provisions of this Rule are mandatory and they require that where a plaint is written upon paper insufficiently stamped, the Court is bound to give the plaintiff time to make good the deficiency. The rule can be brought into operation at any stage of the suit.'

Again in KOTAM REDDI SUBBA REDDI v. PERUMA REDDI VENKATANARASIMHA REDDI AND OTHERS, AIR 1937 Madras 266 the Court went a step further and held :

'A Court has no jurisdiction to return a plaint presented with an insufficient stamp. It is incumbent upon the Court to receive it, fix a time within which the deficiency should be made up and if it is not complied with within the time allowed, to reject it.'

It was further held :

'There is nothing illegal in permitting a plaintiff to file a plaint with stamps of a denomination smaller than the one required under the rules, if the requisite stamps are not available.'

The above decisions which are quite in conformity with the provisions contained in Rule 11 (c) of Order 7 of the C.P.C. also lay down that when a plaint presented is written upon paper insufficiently stamped, the Court has no option but to fix a date within which the plaintiff is required to make good the deficit Court fee. It is only thereafter, if the plaintiff fails to pay the deficit Court fee, the Court is entitled to reject the plaint on that ground.

8.4. In the instant case, the situation that was obtaining on the date the deficit Court fee was voluntarily paid by the plaintiff without an order of the Court fixing time for payment of deficit Court fee was that the plaint written upon paper insufficiently stamped had been presented and no time was fixed by the Court for payment of deficit Court fee. The plaintiff voluntarily paid the deficit Court fee on

20-10-1972. of course the records do indicate that the matter as to presentation of the plaint written upon paper insufficiently stamped had not been placed before the Court until 14-11-1972. There is no doubt that the Chief Ministerial Officer of the Court, for the reasons best known to him, failed in the discharge of his duty in not placing the matter before the Presiding Officer of the Court immediately on presentation of the plaint. Rule 14(1) of the Rules of Practice makes it incumbent upon the Chief Ministerial Officer of the Court to enter the plaint or original petition on presentation in Register No. VIII and examine and place the matter before the Presiding Officer of the Court for orders, if the examination of the same reveals that the plaint or original petition should be returned for presentation to the proper Court or be rejected because it does not disclose a cause of action or appears to be barred by any law or is undervalued or insufficiently stamped or for any other reason. In the instant case, the Chief Ministerial Officer has kept back the plaint without placing it before the Presiding Officer of the Court from 22-5-1972 to 14-11-1972 for quite a long time. If he had only placed it before the Presiding Officer of the Court, the Court had no option but to fix time for payment of deficit Court fee. Whenever a plaint or original petition is presented with deficit Court fee or involves matters enumerated in Rule 14 of the Rules of Practice, the Chief Ministerial Officer of the Court should place the plaint or original petition before the Presiding Officer of the Court the very day of its presentation or the very next working day. This the Presiding Officer of the Court should insist upon and in case of failure on the part of the Chief Ministerial Officer to place it before him, in the absence of satisfactory explanation, it is nothing but serious dereliction of duty calling for disciplinary action. The Presiding Officer of the Court must be vigilant and he must exercise effective control over the Chief Ministerial Officer of the Court and check the suit register at regular intervals atleast once a week. Then only the observance of Rule 14 of the Rules of Practice in breach can be prevented. Failure to do so gives rise to several unhealthy practices affecting the image of Administration of Justice.

8.5. Even assuming for the sake of argument that the deficit Court fee paid by the plaintiff without an order of the Court could not have been taken note of on 14-11-1972, the Court could not have passed any order on 14-11-1972 except the one fixing time for payment of deficit Court fee. As on that date deficit Court fee had

already been paid, the Court noticed the fact of payment of sufficient Court fee on 14-11-1972 and directed issue of summons to the defendants. Under such circumstances, the only inference consistent with justice and fair-play, that could be drawn is that the Court must be deemed to have granted time to the plaintiff to pay the deficit Court fee upto 20-10-1972 on which date the deficit Court fee was paid or on 14-11-1972 on which date the Court took note of payment of deficit Court fee and directed issue of summons to the defendants. However, here we would like to make it clear that the same result does not follow in a case where the plaintiff fails to make good the deficit Court fee within the time fixed by the Court for that purpose. In such a case, having regard to the facts and circumstances of the case it is open to the Court to exercise its discretion either to grant further time for making good the deficit Court fee or reject the plaint on that ground.

8.6. In the instant case, having regard to the peculiar facts of this case, we must also bear in mind while considering this contention of the defendants that the action or inaction of the Court or its officers should not be allowed to cause injustice to the parties. The hand which promises to do justice and justice only should not become a cause for injustice. Here is a case in which there is inaction on the part of the Chief Ministerial Officer of the Court in not placing the plaint before the Presiding Officer of the Court on presentation of the same. Such inaction should not be made a ground to penalise the plaintiff and to hold on that ground that the suit is barred by time. That will be nothing but travesty of justice.

8.7. Accordingly, Point No. 1 is answered in the affirmative and against the defendants. It is held that the plaint must be deemed to have been presented on 22-5-1972. As such the suit was filed well within time.

POINT NO. 2:

9. A condition in the work contract that time is of the essence of the contract and the work has to be executed within the time stipulated in the contract is not by itself determinative of the condition that time is of the essence of the contract. It all depends upon the various terms of the contract and the surrounding circumstances reflecting the conduct of the parties to the contract. Therefore, it is necessary to examine the relevant terms of the contract-Ex.P.10.

9.1. Clause 2 of the contract provides as follows:

'The time allowed for carrying out the work as entered in the tender shall be strictly observed by the contract and shall be reckoned from the date of handing over the site to the contractor. The work shall throughout the stipulated period of the contract be proceeded with, with all due diligence (time being deemed to be the essence of the contract on the part of the contractor) and the contractor shall pay as compensation an amount equal to one per cent or such smaller amount as the Superintending Engineer or other competent authority (whose decision in writing shall be final) may decide, of the amount of the estimated cost of the whole work as shown by the tender for every day that the work remains uncommenced or unfinished after the proper dates. And further to ensure good progress during the execution of the work, the contractor shall be bound, in all cases in which the time allowed for any work exceeds one month to complete.

of the work in of the timedo dodo doNote :- The quantity of the work to be done within a particular time to be specified above shall be fixed and inserted in the blank space kept for the purpose by the officer competent to accept the contracts after taking into consideration the circumstances of each case and the contractor shall abide by the programme of detailed progress laid down by the competent authority.

The following proportions shall usually be found suitable :-

In $\frac{1}{4}$, $\frac{1}{2}$, $\frac{3}{4}$ of the time

Reasonable progress of earth work $\frac{1}{6}$, $\frac{1}{2}$, $\frac{1}{4}$ of the total value of the work to be done. Reasonable progress of masonry work. $\frac{1}{10}$, $\frac{4}{10}$, $\frac{8}{10}$ of the total value of the work be done.

In the event of the contractor failing to comply with these conditions (except for reasons beyond his control) he shall be liable to pay as penalty of an amount equal to one per cent or such smaller amount as the Superintending Engineer or other competent authority (whose decision in writing shall be final) may decide of the said estimated cost of the whole work for every day that the due quantity of

work remains incomplete; provided always that the total amount of penalty to be paid under the provisions of this clause shall not exceed 7 1/2 per cent of the estimated cost of the work as shown in the tender.'

Clause 5 provides for extension of time for completion of the work. The said clause reads thus:

'If the contractor shall desire an extension of the time for completion of the work on the ground of his having been unavoidably hindered in its execution or on any other ground, he shall apply in writing to the Executive Engineer before the expiration of the period stipulated in the tender or before the expiration of 30 days from the date on which he was hindered as aforesaid or on which the cause for asking for extension occurred, whichever is earlier and the Executive Engineer or other competent authority may, if in his opinion, there are reasonable grounds for granting an extension, grant such extension as he thinks necessary or proper. The decision of such competent authority in this matter shall be final.'

Clause 13 provides for alteration in or addition to the original specifications, drawings, designs and instructions that may become necessary: It also provides that additional work which the contractor may be directed to do in the manner specified in Clause 13 is treated as part of the work and has to be carried out by the contractor on the same conditions in all respects in which he has agreed to do the main work. The limit for additional quantity of work is fixed at 10% of the main work. Clause 13 further provides for directing the contractor to do more than 10% of the main work as additional work.

9.2. Clause 14 provides that the time limit for the completion of the work shall be extended commensurate with the increase in its cost occasioned by alterations or additions and the certificate of the Executive Engineer or other competent authority as to such proportion shall be conclusive. In addition to this the contract also provides for payment of penalty by the contractor in the event of delay in execution of the work.

10. Thus from the aforesaid terms of the contract it is clear that even though the contract provides that the time is of the essence of the contract and it shall be

strictly observed by the contractor and it is reckoned from the date of handing over the site to the contractor, it nevertheless provides for extension of time for completion of the work and payment of penalty for the delay in execution of the work. It also enjoins the contractor to do additional work not exceeding 10% of the main work. In the instant case, it has come on record that the additional work which the contractor was asked to do was of such magnitude that it was more extensive than the main work entrusted to the contractor under the contract. Under such circumstances, time cannot be construed to be of the essence of the contract and the contracting party must be deemed to have waived it by reason of entrustment of additional work involving more extensive work than the main work. The position of law is well-settled.

11. In *HIND CONSTRUCTION CONTRACTORS v. STATE OF MAHARASHTRA*, : [1979]2SCR1147 the Supreme Court while considering the works contract containing more or less similar terms, held that time was not of the essence of the contract. The relevant observations are as follows:

'.....In the latest 4th Edn. of Halsbury's Laws of England in regard to building and engineering contracts, the statement of law is to be found in Vol.4 Para 1179, which runs thus :-

'1179. Where time is of the essence of the contract. The expression time is of the essence means that a breach of the condition as to the time for performance will entitle the innocent party to consider the breach as a repudiation of the contract. Exceptionally the completion of the work by a specified date may be a Condition precedent to the contractor's right to claim payment. The parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation as to time will be fundamental. Other provisions of the contract may, on the construction of the contract, excludes an inference that the completion of the works by a particular date is fundamental, time is not of the essence where a sum is payable for each week that the work remains incomplete after the date fixed, nor where the parties contemplate a postponement of completion.

Where time has not been made of the essence of the contract or by reason of waiver, the time fixed has ceased to be applicable, the employer may by notice fix a reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed.'

8. It will be clear from the aforesaid statement of law that even where the parties have expressly provided that time is of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; for instance, if the contract were to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract. The emphasised portion of the aforesaid statement of law is based on LAMPRELL v. BILLERICAY UNION (1849) 3 Exch 283 at P.308 ; WEBB v. HUGHES (1870) 10 Eq.281 and CHARLES RICKARDS LTD. v. OPPENHAIM (1950) 1 KB 616.....'

12. A Division Bench of this Court (of which my Lord Justice Bopanna was a Member) in RALICK AGENCIES -ENGINEERING CONTRACTOR v. HINDUSTAN AERONAUTICS LTD., RFA No. 111 of 1975 DD 3-4-1987 has held that it is well settled that a mere term in the contract relating to construction of building that the time is of the essence of the contract, cannot render it a time-bound contract unless the parties by their subsequent conduct or intention clearly make it so. On the facts and circumstances of the case, it has been held that time was not of the essence of the contract since the parties had mutually agreed for extension of time for completion of the work by subsequent agreement. In the instant case it has already been pointed out that the contract itself provided for extension of time for completion of the work and provided for payment of penalty in the event of delay in execution of the work. It also provided for entrustment of additional work. Accordingly, the contractor was asked to do additional work of greater magnitude. Under these circumstances we are of the view that though the contract provided that time was of the essence of the contract the parties never intended to treat

time being of the essence of the contract by their conduct in entrusting additional work of great magnitude. Therefore the condition that time was of the essence of the contract must be deemed to have been waived by the contracting parties. Accordingly Point No. 2 is answered in the negative and it is held that time was not of the essence of the contract.

POINT NO. 3 :

13. This point need not detain us any longer. The trial Court has held that the State was not entitled to forfeit the earnest money deposit made by the plaintiff. However, the learned Government Pleader has placed reliance on one of the clauses of the contract providing for forfeiture of the earnest money deposit. It is not possible to accept the contention of the Government Pleader.

14. The law is well-settled on the point. In *FATEH CHAND v. BALKISHAN DASS*, : [1964]1SCR515 the Supreme Court held thus:

'....In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the Court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture....'

15. Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties predetermined, or where there is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The Section does not confer a special benefit upon any party; it merely declares the Law that notwithstanding any term in the contract pre-determining damages or providing for forfeiture of any property by way of penalty the Court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the Court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression 'to receive from the party who has broken the contract' does not predicate that the jurisdiction of the Court to adjust amounts which have been paid

by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The Court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach.'

Again in UNION OF INDIA v. RAMAN IRON FOUNDRY, : [1974]3SCR556 this principle was reiterated thus:

'The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach and stipulations by way of penalty and according to this principle even if there is a stipulation by way of liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him, the stipulated amount being merely the outside limit. It, therefore, makes no difference in the present case that the claim of the appellant is for liquidated damages. It stands on the same footing as a claim for unliquidated damages. Now the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a Court or other adjudicatory authority. When there is a breach of contract, the party who commits the breach does not eo instant incur any pecuniary obligation nor does the party complaining of the breach becomes entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages. That is not an actionable claim and this position is made amply clear by the amendment in Section 6(e) of the Transfer of Property Act.....'

That being the position, the State was not entitled to forfeit the earnest money deposited under the contract. Accordingly, Point No. 3 is answered in the affirmative.

POINT NO. 4 :

15. As far as these two amounts are concerned, once it is held that the time is not of the essence of the contract, the plaintiff will be entitled to be paid in terms of the contract for the work done by it. These two claims relate to the work done by the plaintiff. They are dealt with by the trial Court in paragraph 21 and 22 of its judgment. The quantum of work done by the plaintiff is not disputed before us. The value that has been arrived at is on the basis of the schedule rates of contract prevailing on the date the work was done. Therefore, we do not see any justification to take a view different from the one taken by the trial Court. Accordingly this point is also answered in the affirmative in other words, against the defendants and in favour of the plaintiff.

POINT NO. 5 :

16. The trial Court has awarded interest at the rate of 12% from 6-11-1970 to 24-5-1972. In *SPECIAL LAND ACQUISITION OFFICER v. P. VEERABHADRAPPA*, : [1985]154ITR190(SC) (2) KAR 411 the Supreme Court had occasion to refer to the rate of interest prevailing in the relevant years. In para 14 of the Judgment it is stated thus:

'14. It would be unrealistic to adhere to the traditional view of capitalized value being linked with gilt-edged securities when investment in fixed deposits with Nationalised Banks, National Savings Certificates, Unit trusts and other forms of Government securities and even in the share market in the shape of blue chips command a much greater return. More secure the capital and regular the return, lesser the rate of interest. Most secured kind of investment is Government securities or deposits with scheduled banks or Unit Trust or National Savings Certificates. The rate of interest on Government of India bonds for a period of 30 years in 1972 yielded 5.75% per annum. As per the Government of Karnataka publication called 'Finance Accounts of 1972-73' the rate of interest on the Mysore State Development Loans issued in the years 1967, 1968, 1969, 1970, 1971 and 1972 was uniformly 5 3/4% return. The rate of interest on fixed deposits with State Bank of India for a period ranging from 3 years up to 5 years yielded 7% while the rate on fixed deposits above 5 years was 7.25%. The rate of dividend payable on unit trusts in 1972 was 8.25% per annum. National Savings Certificates 7 years,

2nd issue yielded tax free interest at 6% on maturity. 7 years 3rd issue 6% tax free payable annually and 7 years 4th issue 7.5% payable annually but subject to income tax.'

17. Thus during the relevant period, the rate of interest was only 5 3/4. That being so, the trial Court is not justified in awarding 12% interest from 6-11-1970 to 24-5-1972. The appropriate rate of interest could have been 6%. Accordingly we hold that the trial Court is not right in awarding interest at the rate of 12%. The interest ought to have been awarded only at 6%. Point No. 5 is answered accordingly.

POINT NO. 6 :

18. On going through the relevant evidence on record and on examining the reasons given by the trial Court, we are of the view that the trial Court is justified in rejecting certain portion of the claim of the plaintiff. In addition to this the findings recorded on points 1 to 5 are sufficient to dismiss R.F.A.No. 14/78. Accordingly point No. 6 is answered in the negative.

19. For the reasons stated above, the R.F.A.No. 48/76 is allowed in part. Instead of 12% from 6-11-1970 to 24-5-1972, the interest shall be calculated on the sum of Rs. 16,900-47 at the rate of 6% per annum from 6-11-1970 till the date of institution of the suit. Thereafter from the date of the suit till the date of realisation the plaintiff shall be entitled to interest at 6% on the sum of Rs. 16,900-47 Subject to this modification, the decree passed by the trial Court in all other respects stands confirmed. R.F.A. No. 14/78 is dismissed. However, in these Appeals, the parties shall bear their own costs.

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