

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16<sup>TH</sup> DAY OF JULY, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

COM.AP. NO 59 OF 2021

BETWEEN:

KARNATAKA POWER CORPORATION LIMITED  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE COMPANIES ACT  
OFFICE AT NO.82, SHAKTHI BHAVAN,  
RACE COURSE ROAD, BANGALORE-560001.  
REPRESENTED BY ITS AUTHORISED SIGNATORY  
MR. KABADE D.R.

...APPELLANT

(BY SRI. AJAY J. NANDALIKE, ADVOCATE)

AND:

M/S KARAMCHAND THAPAR AND  
BROS (COAL SALES) LTD.,  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT:  
THAPER HOUSE, NO.25,  
BRABOURNE ROAD, CALCUTTA - 700001

ALSO AT:

'BADAMI HOUSE'  
SRI. NARASIMHARAJA SQUARE,  
BANGALORE-560002,  
REPRESENTED BY ITS BRANCH MANAGER

AND POWER OF ATTORNEY HOLDER,  
MR. AMARNATH VHAVALA

... RESPONDENT

(BY SRI. S.S.NAGANAND, SENIOR ADVOCATE FOR  
SRI. SRIRANGA, ADVOCATE FOR C/R)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 21.12.2019 PASSED IN COMP.O.S.NO.3343/1986 TO THE EXTENT THE PLAINTIFF IS ENTITLED TO RECOVER A SUM OF INR 53,59,711.31/- FROM THE DEFENDANT WITH INTEREST AT 12% PER ANNUM FROM THE DATE OF THE SUIT TILL REALIZATION AND ETC.

THIS COMMERCIAL APPEAL COMING ON FOR ORDERS THIS DAY, **SATISH CHANDRA SHARMA. J.**, DELIVERED THE FOLLOWING:

#### JUDGMENT

This Commercial Appeal is arising out of judgment dated 21.12.2019 passed by LXXXII Additional City Civil and Sessions Judge, Bangalore in Com. O.S. No.3343/1986 [M/s. Karamchand Thapar (Coal Sales) Ltd. Vs. Karnataka Power Corporation Ltd.].

2. The facts of the case reveal that the respondent / plaintiff before this Court has filed a recovery suit against the present defendant for a sum of Rs.1,64,74,147/- along with interest at the rate of 18%

per annum from the date of filing of the suit till realization. During the pendency of the suit, the appellant submitted before the Trial Court an affidavit stating that the present appellant / defendant is ready to pay a sum of Rs.53,59,711-31ps. along with interest at the rate of 12% per annum and keeping in view the affidavit filed by the present appellant, the suit was decreed holding that the plaintiff is entitled to recover a sum of Rs.53,59,711-31ps. along with interest at the rate of 12% per annum. There was another claim of the plaintiff which was rejected by the Trial Court. No cross appeal has been filed before this Court. It is only the Karnataka Power Corporation Ltd., who has filed the present appeal being aggrieved in the matter (i) in respect of levy of interest at the rate of 12% per annum from the date of suit till realization of the entire amount; (ii) in declining the relief prayed by the Corporation to adjust the amount which was available in respect of some other contract.

3. Learned counsel for the appellant has argued before this Court that the rate of interest awarded in the present case is on the higher side and keeping in view Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'C.P.C.' for short), the question of awarding interest more than 6% does not arise. Learned counsel has placed reliance upon a judgment delivered in the case of **HYDER CONSULTING (UK) LIMITED V. GOVERNOR, STATE OF ORISSA** reported in **(2015) 2 SCC 189**. It was a case arising out of Arbitration and Conciliation Act, 1996.

4. On the other hand, learned Senior Counsel has placed reliance upon a judgment delivered in the case of **RAMPUR FERTILISER LTD. V. VIGYAN CHEMICALS INDUSTRIES** reported in **(2009) 12 SCC 324**. It is contended that in the light of the aforesaid judgment the rate of interest should have been 15% in place of 12% awarded by the Trial Court. He has also placed reliance upon the judgment delivered in the case of **CLARIANT**

**INTERNATIONAL LTD. AND ANOTHER V. SECURITIES & EXCHANGE BOARD OF INDIA** reported in **(2004)8 SCC 524**. He has placed reliance upon paras 30, 35, 38, 39, 43, 44 and 47 and his contention is that keeping in view the rates fixed by Reserve Bank of India, the plaintiff is certainly entitled for interest at the rate of 15% per annum. He has also filed the Handbook of Monetary Statistics of India issued by Reserve Bank of India in the year 2006 which provides for rate of interest charged by State Bank of India right from 1970 to 2006 and the same reflects that at some point of time it was even 19% as rate of interest was fixed by State Bank of India. It has prayed that 15% would have been appropriate in the peculiar facts and circumstances of the case.

5. This Court has carefully gone through the judgments relied upon by the learned counsel for the parties and perused the record. Section 34 of C.P.C. reads as under:

**"34. INTEREST: -** (1) Where and in so far as a decree is for the payment of money, the Court may, in

the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

**Explanation I:-** In this Sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

**Explanation II:-** For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

6. In the considered opinion of this Court, keeping in view Section 34 of the C.P.C. and the judgment delivered by the Hon'ble Supreme Court in the case of **RAMPUR FERTILISER LIMITED (*supra*)** and the fact that the amount was with held by the defendant and the defendant on his own accepted the claim without there being any adjudication by the Commercial Court, the interest rate has to be fixed by taking into account various circumstances and the same has rightly been done by the trial Court. The money due was wrongly with held and it is a pure case of contractual dispute between the parties, and therefore, keeping in view the totality of the circumstances of the case and the judgment delivered by the Hon'ble Supreme Court in the case of **RAMPUR FERTILISER LIMITED (*supra*)** as well as **CLARIANT**

**INTERNATIONAL LTD. (*supra*)**, the Trial Court was having discretion to award interest at appropriate rate, keeping in view the facts and circumstances of the case. However, in the present case the most important aspect of the case is that the plaintiff himself while filing an affidavit in support of evidence in paragraph No.26 which relates to interest has stated on oath as under :

"26. INTEREST

As per the contract, the Final Bill had to be settled within a period of twelve months from the date of handing over the work. The work was completed and handed over to Defendant as long back as April 1983. Hence the final amounts due ought to have been settled before the end of April 1984. Plaintiff had undertaken this work as a commercial venture. They had tendered for the work on the assumption that amounts will be paid punctually as and when the amounts became due in terms of the contract. Plaintiff had invested huge amounts for the execution of the work and had borrowed heavily from Banks and Associated Companies for executing the work. If the Defendant has prepared and settled the Final Bill by the end of April 1984, in terms of the contract. Plaintiff could have discharged their liabilities, to that extent, to their Bankers and Associated Companies, thereby



saving payment of interest from April 1984. Having regard to the illegal and unauthorised retention of the amount's due without any justifiable cause and the loss that is being caused to the Plaintiff on account of the non-payment of the amounts due, it is submitted that Plaintiff is entitled to interest on the amounts due from 1-5-1984 upto the date of payment at 80% per annum, which is the normal rate of interest charged by the Nationalised Banks on commercial transactions.

However the Plaintiff has restricted its claim for interest at 9% p.a. on the amount due. The amount due by way of interest on Rs.1,36,49,824-01 Ps. from 1-5-1984 to date of suit is Rs.56,48,645.99. Thus the total amount due to Plaintiff as on date for which this suit is filed is Rs.1,92,93,470/- is as follows:

|    |   |                   |
|----|---|-------------------|
| a) | Amount due in regard to the work as per para 5.1 above  | Rs.1,36,49,824-01 |
| b) | Interest thereon at 18% per annum from 1-5-1984 to date | Rs. 28,24,322-50  |
|    | Total:  | Rs.1,64,73,146-50 |

26. The Plaintiff had furnished a Bank Guarantee for Rs.7,00,000/- (No.31/72 dated 29-4-1972) issued by Oriental Bank of Commerce, Brabourne Road Branch, Calcutta, towards Security Deposit amount. Though the work was completed and handed over more than three years back before filing suit and though Defendant is due to Plaintiff in a heavy sum as aforesaid, the Defendant is still insisting and requiring

the Plaintiff to keep the said Bank Guarantee No.31/72 dated 29-4-1972 extended, on the threat that unless it is extended, they would enforce the said guarantee. The work was completed as long back as April 1983 and the question of Defendant having any security deposit or Bank Guarantee therefor, now, does not arise. To avoid enforcement, the Plaintiff was constrained to renew the said Bank Guarantee upto 31<sup>st</sup> December 1986 and accordingly the Bank has issued letter of extension extending the said Guarantee upto 31<sup>st</sup> December 1986. Plaintiff apprehends that Defendant may enforce the said Bank Guarantee, if Plaintiff refuses to extend it any further. This Hon'ble Court has granted injunction against the Defendant and the same is in force and requires to be made absolute as prayed for."

7. In the light of the aforesaid paragraph, it is crystal clear that plaintiff has restricted his claim for interest at the rate of 9% on the due amount. The Trial Court has awarded interest at the rate of 12% per annum, and therefore, to that extent the rate of interest deserves to be reduced from 12% to 9% per annum.

8. Resultantly, the present appeal is allowed. The rate of interest awarded by the Trial Court is reduced from 12% to 9% per annum. A decree be drawn accordingly.

9. So far as the other relief of the plaintiff is concerned, for appropriating the amount which is outstanding in respect of the other contract keeping in view the judgment of the Hon'ble Supreme Court in the case of **M/s. LAKSHMICHAND AND BALCHAND V. STATE OF ANDHRA PRADESH** reported in **(1987) 1 SCC 19** cannot be granted. The Hon'ble Supreme Court in almost identical situation keeping in view the doctrine of equitable set off has held that amount cannot be recovered from the contractor in respect of other contractor, and therefore, no relief can be granted and therefore, the prayer made by the appellant to that extent is rejected.

Sd/-  
JUDGE

Sd/-  
JUDGE

hnm