

HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

A.S. NO. 182 OF 1998

Between:

M/s Danny and Company

.....**Appellant**

AND

A.P. State Meat and Poultry Development
Corporation Limited, Shantinagar, Hyderabad and
one another

.....**Respondents**

JUDGMENT:

The defendant in O.S.No. 80 of 1993 on the file of Additional District Judge, Ranga Reddy District, is the appellant herein.

2. The suit was filed for recovery of an amount of Rs. 75,815.42 including costs and interest at the rate of 15% per annum from the date of suit till realisation, alleging that plaintiff supplied eggs to the defendant from 4.9.1982 to 20th April 1983. As the amount is found due, the defendant has issued a cheque on 23.4.1983 for a sum of Rs. 48,034.35 ps but the same was dishonoured. Subsequently, the defendant also did not pay the amount of one consignment under delivery challan No. 153 dated 20.04.1983 for a sum of Rs. 29,800.57ps . Inspite of legal notice and demand, the amounts were not paid. Hence the suit. The defendant filed written statement denying the liability of the suit claim and the amounts were also not correct. The defendant claimed that more payments were made than the amounts actually due to the plaintiff. There

is no specific denial with regard to the dishonour of the cheque and also the consignment amount, which was unpaid and therefore, the suit is liable to be dismissed.

3. The Court below, after framing necessary issues and after considering the evidence of PWs 1 and 2 and Exs A1 to A5 and as there was no evidence adduced on behalf of the defendant, the suit was decreed as prayed for. Aggrieved by the said judgment, the present appeal is filed questioning the liability to pay the interest awarded by the Court below.

4. The point for consideration is whether the plaintiff is entitled for the interest at 15% from the date of suit till the date of realisation?

POINT:

5. Though the defendant has denied the liability, the evidence of PWs 1 and 2 supported by the documents, clearly goes to show that the suit amount is due. In fact, the grounds of appeal does not challenge the principal amount decreed by the court below. Therefore, it is not necessary to the Court to decide on that aspect.

6. The counsel for the appellant contends

that there is no agreement to pay interest and even if any interest is granted, 15% from the date of suit till the date of realisation is not proper in view of Section 34 of the Civil Procedure Code.

7. Evidently, there is no material to show as to what was the market rate of interest on the date of suit. The fact remains that inspite of legal notice, the amount was not paid and therefore, though there is no stipulation with regard to payment of interest at the time of inception of the supply, still when the amount is not paid after the legal demand, the plaintiff will be entitled to the interest. The question is as to 15% interest as claimed and granted by the Court below is legal.

8. Evidently, this is a commercial transaction and Section 34 of Code of Civil Procedure gives an exception to the said transaction. In view of the fact that the debt relates to the years 1982-83, there being no evidence about the rate of interest charged by the Nationalized Banks, I feel ends of justice would be met if interest at

12% is granted from the date of suit till the date of decree and if 9% is granted from the date of decree till the date of realisation.

9. With the above modification, this Appeal Suit is allowed in part and the judgment of the Court below is confirmed. There shall be no order as to costs. Miscellaneous Petitions, if any, filed in this Appeal Suit shall stand closed.

N.R.L.NAGESWARA RAO, J

DATE: 01.04.2013
KA

... REGISTRAR

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1. 2 CD copies.

