

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF JANUARY, 2021

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

REGULAR FIRST APPEAL No.1169/2013

**BETWEEN:**

1. THE MANAGING DIRECTOR,  
BANGALORE ELECTRICITY SUPPLY COMPANY  
K. R. CIRCLE,  
BANGALORE-560001.
- 2 . THE EXECUTIVE ENGINEER (ELECTRICAL)  
BANGALORE ELECTRICITY SUPPLY  
COMPANY, O & M DIVISION, BESCOM  
KOLAR-563101.
- 3 . THE GENERAL MANAGER (ELE)  
C. O. & M. DIVISION, BESCOM  
KOLAR-563101.

...APPELLANTS

(BY SRI H. V. DEVARAJU, ADVOCATE)

**AND:**

M/s VENNALLA ENTERPRISES,  
REPTD., BY ITS PROPRIETOR,  
D. GANESH PRASAD,  
S/O GANESH NILAYA, 39 YEARS,

R.V. INTERNATIONAL SCHOOL,  
N. H.4 P.C. HALLI,  
KOLAR 563101.

...RESPONDENT

(BY SRI B. V. ANANDA, ADVOCATE)

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THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 16.04.2013 PASSED IN O.S. No.191/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, AND CHIEF JUDICIAL MAGISTRATE, KOLAR AND ALLOW THIS APPEAL BY DISMISSING THE SUIT FILED BY THE PLAINTIFF/RESPONDENT IN ITS ENTIRETY.

THIS REGULAR FIRST APPEAL IS COMING ON FOR HEARING, THIS DAY, **B.VEERAPPA, J**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

This is defendants' Regular First Appeal against the judgment and decree dated 16.04.2013 made in O.S.No.191/2012 on the file of the Prl. Senior Civil Judge and CJM, Kolar, decreeing the suit of the plaintiff for recovery of money.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. It is the case of the plaintiff that, plaintiff is having a registered firm at Kolar approved by the Government of Karnataka

in the name and style of M/s Vennalla Enterprises and also possess Class I electrical license from the Government of Karnataka to carry out electrical works in BESCO and other Departments in the entire State of Karnataka. Through the said firm, the plaintiff is carrying out electrical works in BESCO, Kolar Division, since last 13 years to the satisfaction of the defendants' Corporation and has received the payment from the defendants in respect of the past work carried out by the plaintiff without any obstacle or objections. When things stood thus, the defendants, through the work award dated 23.01.2007 entrusted the plaintiff to carry out the works namely, conversion of single phase two wire to three phase four wire at Kyalanur, as per the estimates. The amount estimated for completion of the said work was Rs.6,48,498/-. Accordingly, the plaintiff carried out the work entrusted as per the specifications and awards passed by the defendants within the stipulated period under the supervision of concerned AE/AEE of O & M unit Urban Sub Division of Kolar and the same was in working condition as specified by the concerned Department.

4. It is further case of the plaintiff that, when the work was in progress, the concerned Engineers personally visited the spot and prepared the estimate by using schedule rates for most economical and safe way of executing work and certified the same. After satisfying the work done by the plaintiff, the concerned Engineers duly mentioned the same in the Measurement Book maintained by the defendants Department. The plaintiff honestly carried out the work entrusted to it with utmost care and caution in the interest of public and to the satisfaction of the defendants. After completion of the work, the Officers of the defendants inspected the work and on being satisfied with the work done by the plaintiff, approved the bill. Even in the past also, the work done by the plaintiff was appreciated and rewarded by the defendants. But, unfortunately, in the present case, the things went wrong. In spite of completing the work honestly, the defendants did not pay the amount to the plaintiff for the reasons best known to them. Though the plaintiff made several requests and demands and ran from pillar to post, all the efforts went in vain. Therefore, the plaintiffs issued the legal notice dated 10.12.2009. Instead of responding properly to the said notice, the defendants unnecessarily blamed the plaintiff

without any basis in order to evade payment for malafide reasons. Ultimately, the defendants issued a reply notice dated 07.04.2010 for the demands made by the plaintiff stating that the BESCO has stopped passing bills for the work done during the period from 01.09.2006 to 31.10.2007. Even though the bill was approved and certified by the authorities concerned, the defendants have not paid the amount. It is further contended that the cause of action to file the suit arose on 10.12.2009 i.e., the date on which the legal notice was issued by the plaintiff to the defendants which was replied on 07.04.2010. Hence, he filed the suit to recover the money as prayed for.

5. The defendant No.2 alone filed the written statement and admitted the registration of the plaintiff firm and also class I electric licence possessed by the plaintiff from the Government of Karnataka and carrying of electric work in the BESCO and other departments. The defendants also admitted that the plaintiff has been carrying the work entrusted by the BESCO for more than 13 years to the satisfaction of the defendants-Corporation. In paragraph 4 of the written statement, the defendants specifically

admitted the entrustment of works to the plaintiff through work award dated 23.01.2007 to carry out the works namely Intermediate Poles in O & M III Section, Urban Sub Division, Kolar, and also admitted the amount claimed by the plaintiff, payable by the defendants. It is admitted that the work carried out by the plaintiff is as per the specifications and awards passed by the defendants and the work was carried out within the stipulated period and it was in working condition as specified by the concerned Department. But, the Technical Audit and Quality Control inspected 117 works awarded in 2006-2007 and found financial loss of Rs.6,48,498/-. It is regular process followed by BESCOM as per codal rules for preparation estimate, inspection of works and recording M.B.Books. The period from 01.09.2006 to 31.10.2007 was treated as scam period for the reasons of various irregularities found in execution of work by the contractors. It is contended that the plaintiff is also involved in such irregularities and hence after receiving directions from the Corporate Office, bills will be processed. It was further contended that the plaintiff fraudulently preferred the claims for works which are not carried out with connivance of departmental employees for which departmental

enquiry proceedings are going on against the Officers and Employees and a criminal case was also booked against the contractor. It was further contended that, it is true and correct that, after completion of the said work, the plaintiff submitted the report to the Officers of the defendants and the same was inspected and being satisfied with the work done by the plaintiff, the bills were approved and even the concerned officials and engineers visited the work spot personally during the period when the work was in progress and prepared the estimate by using schedule rates for most economical and safe way of executing the work and certified the same and after satisfying the work done by the plaintiff, the concerned engineers duly mentioned the same in M.B.Book maintained by the defendants. But, allegation that the BESCOM stopped passing the bills for the works done during the period between 2006 to 2007 for flimsy reasons is not true and correct. The defendant No.2 admitted the fact that the plaintiff filed a complaint in C.C.No.41/2010 against the defendants before the Consumer Forum, Kolar, for deficiency in service and ultimately, the complaint came to be dismissed on 27.03.2012 with a direction to

the plaintiff to approach the Civil Court, etc. Accordingly sought for dismissal of the suit.

6. Based on the aforesaid pleadings, the Trial Court framed the following issues:

- (i) Whether the plaintiff proves that defendants have entrusted the works to his enterprises through award dated 23.01.2007 to carry out works namely conversion of single phase two wire to three phase four wire at Kyalanur, and amount estimated for completion of aforesaid works is at Rs.6,48,498/- as alleged in the plaint?
- (ii) Whether the plaintiff further proves that defendants evaded payment of amount agreed on flimsy grounds as alleged in the plaint?
- (iii) Whether plaintiff further proves that as on the date of filing of this suit plaintiff is entitle to recover Rs.6,48,498/- along with interest at the rate of 12% per annum?"

7. In order to prove the case of the plaintiff, D.Ganesh Prasad, Proprietor of the plaintiff firm was examined as P.W.1 and marked



the documents Exs.P.1 to P.11. In order to disprove the case of the plaintiff, 09 witnesses were examined on behalf of the defendants as D.W.1 to D.W.9 and marked the documents Exs.D.1 to D.5.

8. Considering the oral and documentary evidence on record, the learned Trial Judge recorded a finding that, "the plaintiff proved that the defendants entrusted the works to the plaintiff enterprises through work award dated 23.01.2007 to carry out works namely conversion of single phase two wire to three phase four wire at Kyalanur, and amount estimated for completion of aforesaid works was at Rs.6,48,498/-; and the plaintiff proved that the defendants evaded payment of amount agreed, on flimsy grounds and further the plaintiff proved that as on the date of filing of the suit, the plaintiff is entitled to recover Rs.6,48,498/- along with interest at the rate of 10% per annum from the date of due till the date of realization." Accordingly, decreed the suit as prayed for. Hence, the present Regular First Appeal is filed by the defendants.

9. We have heard the learned counsel for the parties to the lis.

10. Sri H.V.Devaraju, learned counsel for the appellants/defendants contended with vehemence that the impugned judgment and decree passed by the Trial Court decreeing the suit of the plaintiff for recovery of money is erroneous and contrary to the material on record and is liable to be set-aside. The learned counsel further contended that the very suit filed by the plaintiff is barred by limitation and therefore, question of decreeing the suit would not arise at all. He would contend that the Trial court has not framed proper issues based on the averments made in the plaint and the written statement. On that ground alone, the impugned judgment and decree is liable to be set aside.

11. Learned Counsel further contended that the interest awarded from the date of completion of work is erroneous. Admittedly when the suit was filed on 18.09.2012, the awarding of interest from the date of completion of work cannot be sustained. The Trial Court ought to have framed preliminary issue with regard to limitation, as the work was done during the year 2006-2007 and the suit is filed in the year 2012. Therefore, the Trial Court ought to have dismissed the suit on the preliminary issue of limitation. He further

contended that the Trial Court has not considered the oral and documentary evidence in proper perspective and thereby, erroneously decreed the suit. The Trial Court failed to notice that the defendants have already initiated proceedings against the officials of BESCOM which is pending consideration and the final report is yet to be released. Therefore, the Trial Court ought not to have decreed the suit and sought to allow the Regular First Appeal by setting aside the impugned judgment and decree passed the Trial Court and dismissing the suit.

12. In support of his contentions, learned counsel for the Appellants/defendants sought to rely on the dictum of the Hon'ble Supreme Court in the case of ***Shanti Conductors Private Limited vs. Assam State Electricity Board and Others*** reported in ***(2020)2 SCC 677***, paragraph 19, with regard to limitation to file the suit for recovery of money.

13. Per contra, Sri B.V.Ananda, learned counsel for the respondent/plaintiff, while justifying the impugned judgment and decree passed by the Trial Court, contended that the defendants have not disputed the entrustment of work to the plaintiff and

completion of the work by the plaintiff to the satisfaction of the defendants. Infact, during the course of work, the responsible Officers of the defendants visited the work place and being satisfied with the work carried out by the plaintiff, approved the bills, but not made the payment. Therefore, the Trial Court is perfectly justified in decreeing the suit. Though the learned counsel for the Appellants/defendants contended that the suit is barred by limitation, admittedly the legal notice was issued by the plaintiff on 10.12.2009 demanding the amount. While admitting the entrustment of work and completion of the work, the Appellants/defendants denied the payment stating that there was internal departmental enquiry in the department and till the enquiry is completed, the amount will not be paid on the ground that there was a direction not to clear the bills. Therefore, the suit was filed on 18.09.2012, within three years from the date of issuance of legal notice by the plaintiff. Therefore, the contention of the learned counsel for the appellants that there is delay in filing the suit cannot be accepted.

14. He further contended that with regard to departmental enquiry, it is internal proceedings of the defendants and the Trial Court, considering the pleadings of both the parties, in proper perspective, framed the issues and therefore, the said contention of the learned counsel for the appellants cannot be accepted. He further contended that the interest awarded by the Trial Court is just and proper and therefore, sought to dismiss the Regular First Appeal.

15. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that arise for our consideration are:

- (i) Whether the Appellants/defendants have made out a case to interfere with the impugned judgment and decree passed by the Trial Court, decreeing the suit for recovery of Rs.6,48,498/-, in the facts and circumstances of the case?
- (ii) Whether the Appellants/defendants have made out a case that the respondent/plaintiff is not entitled to the interest from the date of completion of work in view of the provisions of Section 34 of the Code of Civil Procedure?

16. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record, carefully.

17. It is not in dispute that the plaintiff filed suit for recovery of a sum of Rs.6,48,498/- from the defendants towards work carried out in terms of the work award dated 23.01.2007. It is the specific case of the plaintiff that plaintiff executed the work in compliance with the terms and conditions of the work award and when the work was under progress, the responsible Officers of the defendants visited the spot, supervised the work and approved the bill. Though the authorities approved the bill, the amount was not paid. Therefore, the plaintiff approached the Consumer Forum in C.C.No.41/2010, in which, the defendants also appeared and admitted the transaction and the amount payable to the plaintiff and ultimately, the dispute came to be dismissed on the ground that the same is not maintainable, with liberty to file the suit. Accordingly, the suit came to be filed. In the written statement, the defendants admitted the entrustment of work between the parties, completion of work by the plaintiff to the satisfaction of the

defendants and denied the payment by the defendants on the ground that there was departmental enquiry pending against the officials of the BESCOM.

18. In order to re-appreciate the entire material on record, it is relevant to consider the oral and documentary evidence adduced and produced by the parties.

(i) Sri D.Ganesh Prasad-P.W.1, Proprietor of the plaintiff firm in his examination-in-chief has reiterated the averments made in the plaint and deposed that since 13 years the plaintiff firm has been carrying out the work to the satisfaction of the defendants. The work was completed by the plaintiff as per the terms and conditions of the work award under the supervision of concerned AE/AEE of O & M III Section, Urban Sub Division of Kolar. The Officers of the defendants personally visited the spot and inspected the work and on being satisfied with the work, approved the bill. When the work was under progress, the concerned engineers personally visited the spot and prepared the estimate using schedule rates for most economical and safe way of executing work and certified the same. The same was mentioned in the M.B.Book maintained by the defendants. P.W.1 further deposed that inspite of several requests and demands

made, he was made to run from pillar to post, and all his efforts went in vain. The defendants did not pay the amount due. Therefore, he was compelled to issue legal notice dated 10.12.2009. Nothing has been elicited in the cross-examination of P.W.1 with regard to entrustment and completion of work.

19. The defendants, in order to prove their case, examined D.Ws.1 to 9.

(ii) D.W.1-Shivaram, Executive Engineer, Kolar, deposed that he knows to read and write English. While reiterating the averments made in the written statement he has not denied the entrustment and completion of work by the plaintiff as admitted in paragraphs 4 and 5 of the written statement. In the cross-examination he has deposed that he knows the rules and regulations of BESCOM. For the past 28 years, he is working in BESCOM. He has filed written statement on the basis of the records available in the office. After completion of work, the contractor has to do the repair work, if any. It is true that if there is any difference in the work carried out, notice to repair the same has to be given to the contractor within a period of one year. He has deposed that he has no knowledge of the notice given to the



contractor within a period of one year. He has further deposed that the work entrusted will be carried out by the contractor under the supervision of Assistant Executive Engineer and the Section Officer. It is true that, after completion of the work, the Executive Engineer and the Superintendent Engineer will visit the spot, inspect the same and thereafter will send the bill to the accounts section. It is true to suggest that the work carried out by the plaintiff has been inspected by the Assistant Engineer, Assistant Executive Engineer, Executive Engineer and the Superintendent Engineer. If the aforesaid Officers point out any lapses in the work carried out by the contractor, notice could have been issued to the contractor. But, in the present case, he has no information regarding issuance of notice to the contractor. He has submitted the Affidavit as per the instructions of Technical Audit and Quality Control. He has further deposed that whatever he has stated in paragraphs 4 and 5 of his examination-in-chief is true and correct and the final bill is prepared by the Superintendent Engineer. He has further admitted that K.S.Nagendra and his team inspected the work in Kolar and Srinivasapura and submitted their report and also admitted that one private complaint has been lodged against K.S.Nagendra. He has further deposed that the Superintendent has issued a notice stating that the bills

of contractors will be settled if the criminal cases registered against the Technical Audit and Quality Control team is withdrawn.

(iii) D.W.2-Chandran, Executive Engineer (Electr.), deposed that he knows to read and write English. In the examination-in-chief, he deposed on par with D.W.1. In the cross-examination, he has deposed that the final report has been submitted in respect of Phase 1, Phase 2 and Phase 3, but he has not conducted the investigation. He deposed that an unsigned letter was sent to the contractor, Energy Minister and Managing Director, KPTCL, Cauvery Bhavan, Kolar. Based on the said unsigned letter they issued preliminary report in which there is no allegation against the plaintiff. In the letter sent to Executive Engineer, Kolar, there is no direction with regard to investigation to be carried out against the plaintiff and others. He further deposed that whenever a contractor causes loss to their Corporation, they would blacklist that Company and he does not know whether they have blacklisted the plaintiff Company. He has clearly admitted that 14 teams have inspected 2293 works.

(iv) D.W.3-Nagendra, D.G.M., BESCO, in his examination-in-chief, deposed on par with D.Ws.1 and 2. In his cross-examination, he has deposed that, one

private complaint was lodged against himself and others in Srinivasapura Court and the contents of the report are false and he denied several suggestions put by the learned counsel for the plaintiff.

(v) D.W.4-Narayanaswamy, deposed that he has worked as Assistant Executive Engineer, BESCO, at Sub Division-4, Mahadevapura, Bengaluru. By the Order of the Corporate Office, he was directed to undertake special audit/investigation of works along with 12 teams comprising of Assistant Executive Engineer (Elec) and Accounts Officer in each team, coordinating Officers T.S.Chandran and K.S.Nagendra. They were assigned to inspect and investigate the works carried out in O & M I, II and IV Section, Urban Sub-Division, Kolar during the period from September 2006 to October 2007. They inspected estimate copies, work orders, work award, bill passing copies provided by the Coordinating Officers. These works were inspected by them along with the Section officer. In the cross-examination, D.W.4 has deposed that he knows the rules and regulations of KPTCL. Himself and others made inspection of works on the direction of Coordinators-Chandran and K.S.Nagendra. At that time, they had not issued notice to the contractors and he does not know whether notice was issued prior to spot inspection. He clearly admitted

that whenever guarantee period elapsed, there is no liability of the contractor. He deposed that he inspected various firms and submitted his report and since the AEE and JE did not cooperate properly, he could not conduct the inspection effectively. He clearly admitted that he did not inspect the works of the contractors in this case and denied several suggestions put to him.

(vi) D.W.5-Parashuram, Accounts Officer, BESCOM, in his examination-in-chief deposed on par with D.W.4. In the cross-examination, he deposed that he made inspection along with B.Narayanaswamy and submitted his report. He knows the rules and regulations of KPTCL and he did not conduct the inspection as per the directions of Chandran and Nagendra, but he did inspection as per the rules and regulations of BESCOM. He made inspection. At that time, the contractors were not present. He did not issue notice to them. He clearly admitted that even after elapse of guarantee period, liability of contractor will prevail over their work done and denied several suggestions put to him.

(vii) D.W.6-Jagadishappa, Assistant Executive Engineer, BESCOM, deposed that himself and Shadaksharaiah inspected the spot. He is one of the member of 12 teams formed by BESCOM, Kolar. He deposed on par with D.W.5. He clearly admitted that inspection was made in

respect of the works which were completed and bills were paid and he does not know the information with regard to inspection made in respect of the work where the bills are pending.

(viii) D.W.7-Shadaksharaiah, Accounts Officer, BESCOM, in his examination-in-chief, deposed on par with D.W.6. He deposed that he made inspection of the work done by the plaintiff along with Jagadishappa, Section Officer, and Maridevanna. He deposed that he does not know whether liability of contractors exists even after elapse of guarantee period.

(ix) D.W.8-Chandrashekar, Assistant Executive Engineer, BESCOM, deposed on par with D.W.7. In the cross-examination he deposed that he knows the rules and regulations and he had been to inspection on the guidance of Chandran and Nagendra and submitted the report. He deposed that at the time of inspection, the plaintiff was not present and he failed to recount the notice to them. He deposed that since the contractors had not made the work awarded to them properly, they conducted the inspection.

(x) D.W.9-Jagannath, Deputy Controller of Accounts, KPTCL, in his examination-in-chief, deposed on part with D.W.8. In the cross-examination he deposed that on the

guidance of Chandran and Nagendra, they undertook inspection work along with other team mates and submitted the report. He deposed that he knows the rules and regulations of KPTCL. At the time of inspection, the owner of the plaintiff was not present and he failed to recount the notice to them. Since contractors have not made the work awarded to them properly, they conducted inspection.

Thus, a careful perusal of the evidence of the witnesses makes it clear that, nothing has been elicited in the evidence of D.Ws.1 to 9 to disprove the claim of the plaintiff.

20. Though the learned counsel for the appellants/defendants specifically contended that the suit filed by the plaintiff is barred by limitation on the ground that the claim for recovery of money is sought for the work done between 01.09.2006 to 31.10.2007 and the suit is filed on 18.09.2012 i.e., after more than five years, and therefore, the suit is not maintainable, the said contention cannot be accepted for the simple reason that the work done and the claim of the plaintiff for the work done as per the work award is not disputed by the defendants. It is the specific case of the plaintiff

that the BESCO stopped payment of bills for the work done during the period from 01.09.2006 to 31.10.2007 on the ground that there was internal departmental enquiry. After completion of the enquiry, action will be taken to pay the amount. In spite of repeated requests and demands made by the plaintiff, the amount was not paid and he was made to run from pillar to post. Therefore, he was forced to issue legal notice on 10.12.2009. The defendants issued the reply on 07.04.2010 admitting the issuance of work award and completion of work by the plaintiff and stated that there was internal departmental enquiry and therefore, the bill amount cannot be paid. Admittedly, the suit came to be filed on 18.09.2012, within three years from the date of issuance of legal notice and the date on which the cause of action arose to file the suit, as pleaded in the plaint. Therefore, the contention of the defendants that the suit is barred by limitation cannot be accepted. Even otherwise, such defence was not taken before the Trial Court in the written statement and admittedly, the claim of the plaintiff is not disputed by the defendants in the written statement. Therefore, the contention of the learned counsel for the appellants/ defendants that the suit is barred by limitation cannot be accepted.

21. Though the learned counsel for the appellants/defendants relied upon the dictum of the Hon'ble Supreme Court in the case of ***Shanti Conductors Private Limited vs. Assam State Electricity Board and Others*** reported in ***(2020)2 SCC 677***, paragraph 19, with regard to limitation to file the suit for recovery of money, that was a case where the cause of action for filing of the suit arose on 31.03.1992 and the suit came to be filed on 10.01.1997. Under those circumstances, the Hon'ble Supreme Court held that the suit was barred by limitation. Admittedly, in the present case, cause of action arose on 10.12.2009 when the plaintiff issued the legal notice which was replied to by the defendants on 07.04.2010 admitting the claim of the plaintiff and refusing to pay the amount due to internal departmental enquiry and admittedly the suit came to be filed on 18.09.2012. The suit was filed within three years from the date of issuance of legal notice, that is the date on which the cause of action arose. Therefore, the judgment relied upon by the learned counsel for the appellants/ defendants has no application to the facts and circumstances of the present case.



22. The learned counsel for the appellants/defendants further contended that the Trial Court has not framed proper issues with regard to departmental enquiry and therefore the decree cannot be sustained. As already stated supra, the fact that the work entrusted in favour of the plaintiff in the year 2007 is not in dispute and completion of the work is also not in dispute. On the basis of the pleadings of both the parties in the plaint as well as written statement, the Trial Court has framed proper issues in terms of the provisions of Order XIV Rules 1 and 2 of the Code of Civil Procedure. Therefore, the said contention cannot be accepted.

23. It is relevant to note at this stage that as per the objections filed to main petition before the Consumer Forum, Kolar, the defendants in categorical terms have admitted the work done by the plaintiff and the amount payable by the defendants.

24. The Trial Court, considering the evidence adduced on behalf of the plaintiff and defendants and the material documents produced on both the sides, recorded a finding that, "the contractor relationship between the plaintiff and defendants is not disputed by

the defendants which is very clear from para Nos.4 and 5 of examination-in-chief of D.W.1. Further, the defendant witnesses have clearly admitted that they did not issue any notice to the plaintiff at the time of spot inspection, though they knew the rules and regulations of KPTCL. The principle of natural justice i.e., *audi alteram partem* that means, no person shall be condemned unheard. The defendant Nos.1 and 2 based on the unsigned letter or unsigned direction directed by Technical Audit and Quality Control to conduct spot inspection of work done by contractors and report based on direction issued by defendant Nos.1 and 2. The report contained 3 versions and three kinds of loss done by contractors to BESCO. But non conducting of spot inspection without the presence of aggrieved party is fatal to that report. A private complaint was filed against BESCO authorities in Srinivasapura Court. By that time, there was negotiation between BESCO authorities and contractors that if they withdraw the private complaint, they would pay amount due to the contractors. Accordingly, the private complaint was withdrawn, but payment has not been made. Notice has been issued by the Superintendent Engineer. Hence, it is nothing but admitting liability of BESCO

towards contractors amount. Further, as per Technical Audit and Quality Control report one amount has been mentioned as per notice, another amount has been mentioned as per report of the Executive Engineer, another amount has been mentioned as to causing loss to BESCO by the contractors. Hence, there is inconsistency in the evidence of defendants side. Therefore, the defendants case cannot be accepted.

25. The Trial Court further recorded a finding that, "the D.W.6 and other defendants clearly admitted that they have conducted inspection only with regard to completed and bill paid works and they do not know about inspection conducted for pending bills and defendants witnesses particularly, defendant No.1 in his cross-examination, clearly admitted that as per the preliminary report the enterprises/firms have not been shown accused of committed any wrong in their contractual obligation. D.W.1 clearly admitted that there is no direction for them to conduct investigation with regard to work done by the contractors. D.W.9 also clearly admitted that they have inspected the spot in which BESCO has paid their

amount but not for unpaid pending bills that is not case of the defendants.

26. The Trial Court further recorded a finding that, "the plaintiff has proved that the defendants have entrusted the works to his enterprise through their award and work was also done as per the specification by following the rules and regulations of KPTCL, but the defendants evaded the payment of amount agreed, on flimsy grounds. Without there being any option, plaintiff has filed the present suit. Accordingly, the suit came to be decreed.

27. Insofar as the arguments of the learned counsel for the appellants/defendants with regard to the interest awarded from the date of due completion of work by the Trial Court is not justified. There is some force in the contention of the learned counsel for the appellants/ defendants with regard to awarding of interest from the date of completion of the work by the plaintiff. It is the specific case of the plaintiff that work entrusted as per the work award was carried out and completed and submitted the bill. The defendants being satisfied with the work, approved the bill but not paid the amount, inspite of repeated requests and demands. Therefore, the

plaintiff issued the legal notice dated 10.12.2009 which was replied by the defendants on 07.04.2010. The plaintiff contended that the cause of action to file the suit arose on 10.12.2009 when legal notice was issued. Therefore, the plaintiff is entitled to interest from the date of issuance of the legal notice and not from the date when the work was completed in the year 2007, in view of the provisions of Section 34 of the Code of Civil Procedure and Section 3(1)(b) of the Interest Act, 1978. To that extent the impugned judgment and decree passed by the Trial Court requires modification.

28. On careful perusal of the pleadings in the plaint, written statement, issues framed and the evidence adduced by both the parties clearly depicts that entrustment of the work by the defendants in favour of the plaintiff as per the work award in the year 2007 is not in dispute and defendants have admitted that the plaintiff has completed the work and same was approved by the authorities and approved the bill. The said fact is not disputed in the written statement as well as in the reply and in the evidence.

Therefore, the plaintiff has proved the issues framed in the suit and the plaintiff is entitled for recovery of money.

29. For the reasons stated above, the first point raised for consideration in the present Regular First Appeal is answered in the negative holding that the Appellants/defendants have not made out a case to interfere with the impugned judgment and decree passed by the Trial Court, decreeing the suit for recovery of Rs.6,48,498/-. Accordingly, the second point is answered partly in the affirmative holding that the Appellants/defendants have made out a case to interfere with the interest awarded by the Trial Court.

30. In view of the above, we pass the following:

### **JUDGMENT**

- (i) The Regular First Appeal filed by the defendants is ***allowed in part.***
- (ii) The impugned judgment and decree passed by the Trial Court decreeing the suit of the plaintiff for Rs.6,48,498/- is hereby confirmed.
- (iii) The interest awarded by the Trial Court at the rate of 10% per annum from the date of due till the

date of realization is modified and the plaintiff is entitled to interest at the rate of 6% per annum from the date of issuance of legal notice i.e., 10.12.2009, till the date of realization.

Ordered accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

kcm