IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY

CITY CIVIL COURT APPEAL Nos. 160 of 2006 and 131 of 2009

CITY CIVIL COURT APPEAL NO: 160 OF 2006

Appeal under Order 41 Rule 1 R/w section 96 of C.P.C aggrieved by the Judgment and Decree dated 27-01-2006 made in O.S.No.362 of 2002 on the file of the XI Additional Chief Judge, City Civil Court, Fast Track Court, Hyderabad.

Between:

1. The A.P. Power Generation Corporation Limited, (formerly known as APSEB) a Government Company registered unoer the Companies Act 1956, havingits Regd. Office at Vidhyut Soudha, Somajiguda, Hyderabad, Rep by its MD.
2. The Cheif Engineer (Generation), IV Flloor, Vidyuth Soudha, Somajiguda, Hyderabad.
3. The Cheif Engineer, Kothagudem Thermal Power Station, Palwancha, Khammam Dist.

...Appellants / Defendants

AND

Lohman Castings Private Limited, a Company incorporated under the Companies Act 1956, having its Regd. Office at 205, K.C. Towers, Marripalem, VUDA Layout, Visakhapatnam, Rep by its MD, R. Rajinikanth S/o Siva Rama Krishnaiah, Aged 50 yrs.

...Respondent / Plaintiff

I.A. NO: 1 OF 2006(CCCAMP. NO: 402 OF 2006)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of execution of decree dt. 27-01-06 passed in OS No. 362/02 on the file of the XI Additional Cheif Judge, CCC, (FTC) at Hyderabad pending disposal of the above appeal.

I.A. NO: 2 OF 2006(CCCAMP. NO: 584 OF 2006)

Between:

Lohman Castings Private Limited, a Company incorporated under the Companies Act 1956, having its Regd. Office at 205, K.C. Towers, Marripalem, VUDA Layout, Visakhapatnam 530009, Rep by its MD, R. Rajinikanth S/o Siva Rama Krishnaiah, r/o 205, KC Towers, Marripalem, VUDA Layout, Visakhapatnam-530009.

...Petitioner / Respondent

AND

1. The A.P. Power Generation Corporation Limited, (formerly known as APSEB) a Government Company registered under the Companies Act 1956, havingits Regd. Office at Vidhyut Soudha, Somajiguda, Hyderabad-82.
2. The Cheif Engineer (Generation), IV Flloor, Vidyuth Soudha, Somajiguda, Hyderabad-82.
3. The Cheif Engineer, Kothagudem Thermal Power Station, Palwancha, Khammam Dist.

...Respondents/Petitioners

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order dt. 11-07-06 in CCCA MP No. 402/06 in CCCA No. 160/06.

I.A. NO: 3 OF 2007(CCCAMP. NO: 439 OF 2007)

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased that the above petition may be posted under the caption for being mentioned before the his Lordship Sri Justice D.S.R. Varma and Sri Justice D. Appa Rao for necessary orders.

I.A. NO: 1 OF 2021

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner to withdraw a sum of Rs.34,22,298/- deposited in CCCA.No.160 of 2006 by the respondents/appellants orders passed CCCAMP.No.56 of 2007 in CCCA.No.160 of 2006 dated 2-4-2007.

Counsel for the Appellants: SRI MOHAMMAD ADNAN

Counsel for the Respondent: SRI V HARI HARAN

CCCA No: 131 of 2009

Appeal under section 96 of C.P.C aggrieved by the Judgment and Decree Dated 27-01-2006 made in O.S.No.362 of 2002 on the file of the XI Additional Chief Judge, City Civil Court, Fast Track Court, Hyderabad.

Between:

M/s Lohman Castings Private Limited, Registered Office at 205 R/o.K.C.Towers, Marripalem, VUDA Layout, Visakhapatnam 530009. (Rep. by its Managing Director, Ravarapu Rajanikanth, S/o.Sivaramakrishnaiah, R/o.205, K.C.Towers, Marripalem, VUDA Layout, Visakhapatnam-530009

...Appellant / Plaintiff

AND

1. Telangana State Power Generation Corporation Limited (TS Genco), Vidyut Soudha, Somajiguda, Hyderabad-82.
2. The Cheif Engineer (Generation), IV floor, Vidyut Soudha, Somajiguda, Hyderabad-82.
3. The Cheif Engineer, Kothagudem Thermal Power Station, Palwancha, Khammam District.

...Respondents / Defendants

Counsel for the Appellant: SRI V HARI HARAN

Counsel for the Respondents: SRI MOHAMMAD ADNAN

The Court made the following: COMMON JUDGMENT

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY

CITY CIVIL COURT APPEAL Nos.160 OF 2006 & 131 OF 2009

DATE:07-04-2026

Between in CCC No.160 of 2006:

The A.P. Power Generation Corporation Limited
& 2 Others .. Appellants - Defendants

Vs.

Lohman Castings Private Limited .. Respondent - Plaintiff

This Court made the following:

COMMON JUDGMENT: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. V. Hari Haran, learned Senior Counsel for the appellant in CCCA No.131 of 2009 & respondent in CCCA No.160 of 2006 and Mr. Mohd. Adnan, learned counsel for the respondents in CCCA No.131 of 2009 & appellants in CCCA No.160 of 2006.

2. CCCA No.160 of 2006 is filed by the defendants in O.S. No.362 of 2002, challenging the judgment and decree dated 27.01.2006 passed by learned XI Additional Chief Judge (fast Track Court), City Civil Court, Hyderabad, whereas CCCA No.131 of 2009 is filed by the plaintiff challenging the very same judgment and decree

to the extent of awarding interest @ 6% per annum only on the principal sum.

3. The plaintiff in O.S. No.362 of 2002 is M/s. Lohman Castings Private Limited, Visakhapatnam, while the defendants are the Andhra Pradesh Power Generation Corporation Limited, its Chief Engineer (Generation), Hyderabad and the Chief Engineer, Kothagudem Thermal Power Station, Palwancha, Khammam District.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in O.S. No.362 of 2002.

5. The plaintiff filed the aforesaid suit (O.S. No.362 of 2002) for recovery of total sum of Rs.68,23,298/- (i.e.,Rs.15,20,905/- towards principal & Rs.53,02,393/- towards interest) with costs and interest at the applicable rates as per the Provisions of the Interest on Delayed Payments to Small and Ancillary Industrial Undertakings Act, 1993, against the defendants contending as under:

i) The plaintiff is a registered Small Scale Industrial Undertaking. It carries on business of manufacturing of various types of castings required for Thermal Power Stations.

ii) Defendant No.1 was in need of the said products and accordingly used to place orders from 1983 onwards and the plaintiff used to supply the same.

iii) In the said process, the defendants placed purchase orders *vide* Exs.A1 to A13, which are dated 15.04.1993, 05.08.1993, 21.04.1993, 04.01.1994, 19.02.1994, 10.08.1992, 27.11.1993, 27.11.1993, 11.08.1994, 04.10.1993, 28.05.1994,31.10.1991, 06.06.1994, 07.09.1993 and 01.08.1994 and the plaintiff supplied all the material except the material covered by Ex.A10 and purchase order No.CKK/P2/DMA/DN/20/94.

iv) Even then, the defendants did not pay the entire value and they are due and liable to pay an amount of Rs.15,20,905/- along with interest of Rs.53,02,393/- thereon, which is claimed under Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.

v) One of the Directors of the plaintiff, Mr. Gutta Kattaiah Chowdary was found to have embezzled the money worth Rs.45.00 lakhs belonging to the defendants in collusion with their officials by producing fake letter of authorization, for which the defendants instituted criminal proceedings against the said Director and other Officials. On the said pretext, the defendants are not paying the aforesaid amount.

vi) After exchange of legal notice and reply between the plaintiff and the defendants, the plaintiff filed the aforesaid suit seeking the aforesaid amount against the defendants.

6. Defendant No.2 filed a detailed written statement denying the claim of the plaintiff contending as under:

i) The plaintiff quoted discrepant purchase orders, which would bring out that the plaintiff itself is not certain about the supplies made and the amounts due.

ii) The plaintiff was never regular and prompts in supplying the material.

iii) All the purchase orders are subject to terms and conditions peculiar to each of them and, therefore, the plaintiff could not have combined all the claims and filed a single suit. Thus, the suit is bad for mis-joinder of proper parties and lack of cause of action.

iv) The defendants denied the supply of material against the purchase orders except two.

v) They are not liable to pay an amount of Rs.15,20,905/- and so also the interest as claimed by the plaintiff.

vi) The suit is barred by limitation.

vii) There is no cause of action.

vii) Trial Court has no territorial jurisdiction to entertain the suit.

7. Basing on the aforesaid pleadings, learned trial Court framed the following issues:

1. Whether the plaintiff supplied materials to the defendants under (15) purchase orders placed by the defendants (under document No.3 to 17 of the plaint)?
2. Whether the defendants accepted such supplies valued at Rs.15,20,905/- except the two under purchase order Nos.CKK/P2/DMA/DN20/94 and CK/P23/DMA/130/93-94, dt.4-10-1994?
3. Whether it were the terms of the supply orders that 90% of the value of the goods supplied by the plaintiff would be paid within 30 days of receipt of such goods

and bill, in duplicate and balance 10% would be paid after expiry of guarantee period of (18) months?

4. Whether the defendants unreasonably withheld such payments on the ground that Mr. Gutta Kattaiah Chowdary who was also Director of other companies such as M/s. Ramakrishna Engineering Company, Pattancheruvu, M/s. Bright Engineering Company and M/s. Vishwashanti Engineering Company, had fraudulently withdrawn money from the defendants and cheated them?
5. Whether the plaintiff is a Small Scale Industry entitled to charge the recoverable amounts with interest as contemplated under the partition "interest on delayed payment to Small Scale and Ancillary Industrial Undertakings Act 1993"?
6. Whether the plaintiff is entitled to recover the suit amount with costs and interests as prayed for?
7. Whether the suit is barred by time?
8. Whether the suit is bad for misjoinder of cause of action?
9. Whether there is cause of action?
10. To what relief?

8. During trial, plaintiff examined its Managing Director as PW.1 and exhibited Exs.A1 to A65. On behalf of the defendants, their

Divisional Engineer was examined as DW.1. During cross-examination of PW.1, Exs.B1 and B2 were marked.

9. On consideration of the entire evidence, both oral and documentary and upon hearing both sides, *vide* judgment and decree dated 27.01.20006, learned trial Court decreed the suit with costs for Rs.15,20,905/- towards principal and Rs.53,02,393/- towards interest, making a total of Rs.68,22,298/- with interest @ 6% per annum on the principal amount from the date of suit till realization.

10. Challenging the aforesaid judgment and decree, the defendants filed CCCA No.160 of 2006, on the following grounds:

i) Trial Court erred in decreeing the suit without any proof of supply of material to the defendants as there is a specific pleading in the written statement that the plaintiff has not supplied the entire material covered by all the purchase orders except two.

ii) The trial Court also erred in observing that the burden lies on the defendants that Mr. Gutta Kattaiah Chowdary withdrew their amounts in excess of supplies as Director of Plaintiff Company.

iii) Interest on Delayed Payments to Small Scale and Ancillary Industries Undertakings Act, 1993, has no application to the case of the plaintiff.

iv) The plaintiff has not produced any documentary proof with regard to rate of interest i.e., Prime Lending rates by the State Bank of India from time to time.

v) The interest of Rs.53,02,393/- granted by trial Court is without any basis.

vi) The suit is hopelessly barred by limitation, for the reason that the purchase orders are between 15.04.1993 and 01.08.1994, whereas the suit was filed on 24.09.2002. Thus, Section - 14 of Limitation Act, 1963, has no application to the case on hand.

vii) Therefore, the trial Court erred in decreeing the suit, as such, the same is liable to be set aside.

11. The plaintiff also filed an appeal *vide* CCCA No.131 of 2009, challenging the impugned judgment and decree to the extent of awarding interest @ 6% per annum on the principal amount of Rs.15,20,905/- from the date of suit till realization instead of awarding interest, as per the provisions of the Interest on Delayed Payments to

Small and Ancillary Industrial Undertakings Act, 1993, on the following grounds:

i) The transaction between the plaintiff and the defendants is a commercial transaction regulated by the Statute, namely the Interest on Delayed Payments to Small and Ancillary Industrial Undertakings Act, 1993 (for short 'Act, 1993'), as amended by Act No.23 of 1998, as such, the plaintiff is entitled to the interest at the rate prescribed under the said Act, 1993 till the date of realization, but not @ 6% per annum.

ii) The said Act, 1993 is specifically enacted for the protection of Small Scale and Ancillary Industries. The plaintiff is a Small Scale Industry. The Micro, Small and Medium Enterprises Development Act, 2007, Act No.27 of 2006 was replaced with the said Act, 1993. Therefore, it is entitled for the said interest at 1½ time of prime lending rate charged by the State Bank of India.

12. In view of the aforesaid rival submissions, the following points arise for consideration by this Court:

i) Whether the plaintiff supplied the material to the defendants, and the defendants received the same?

ii) Whether the plaintiff is entitled for the suit claim?

iii) Whether the plaintiff is a Small Scale Industry, and if so, it is entitled for the said interest at 1½ time of prime lending rate charged by the State Bank of India?

iv) Whether the suit is barred by limitation

v) Whether the trial Court was right in decreeing the suit?

Point Nos.(i) & (ii):

13. As discussed supra, the main contention of the plaintiff is that it is a Private Limited Company registered in the year 1982. It deals with supply of various items of spare materials required for Thermal Power Stations. Since the date of its inception, it had been submitting tenders for supply of aforesaid material to the defendants at Kothagudem and Ramagundam, and accordingly supplying the same under various purchase orders issued by the defendants from time to time satisfactorily. Defendant No.1 issued fifteen (15) purchase orders during the period between 1991 and 1994 and the material covered by the said purchase orders were supplied by the plaintiff. The said purchase orders were marked as Exs.A1 to A14 except two purchase orders dated 07.09.1993 and 01.08.1994. Despite receipt of

the said material covered by the aforesaid 15 purchase orders, the defendants failed to pay the amount. Therefore, the plaintiff filed the aforesaid suit. Though learned trial Court decreed the suit, awarded less interest @ 6% per annum from the date of suit till the date of realization, which is contrary to the provisions of the Act, 1993, learned trial Court failed to consider that the plaintiff company is a Small Scale Industrial Unit registered with the Department of Industries *vide* registration No.01/20/03164, dated 13.01.1984, i.e., prior to the supply of the said material.

i) Whereas, it is contended by the defendants that the alleged purchase orders relate to the period between 19.08.1992 and 11.08.1994, whereas the suit was filed on 24.09.2002. Therefore, the suit is hopelessly barred by limitation. It is also contended by the defendants that Mr. Gutta Kattayya Chowdary, Executive Director of the plaintiff company, in collusion with others, played fraud on the defendants and drawn the amounts without supplying material. Therefore, the defendants decided not to entertain any purchase/contracts from the plaintiff till the outcome of the criminal case. Therefore, the defendants are not liable to pay any amount, much less the suit amount. Without considering the same, learned trial Court decreed the suit and, therefore, the same has to be set aside.

ii) As far as the plaintiff's entitlement in respect of decretal amount is concerned, perusal of record would reveal the defendants placed fifteen (15) purchase orders as mentioned in paragraph No.2 of the judgment of which serial Nos.1 to 3 and 5 to 14 were marked as Exs.A1 to A14. The purchase orders mentioned at serial Nos.4 and 15 were not marked. All the said purchase orders relate to the period between 31.10.1991 (Ex.A12) and 11.08.1994 (Ex.A9), whereas in paragraph No.3 of the plaint, it is mentioned that the said fifteen purchase orders relating to the period between 19.08.1992 and 11.08.1994. According to the plaintiff, as per terms of purchase order, the defendants have to pay 90% of the amount due under each bill within thirty (30) days after receipt of goods, and balance 10% after expiry of guaranteed period of eighteen (18) months. The total value of the material supplied under the aforesaid 15 purchase orders is Rs.15,20,905/-, and the defendants are due and liable to pay the said amount. But, the defendants withheld the said amount on the ground that the said Gutta Kattaiah Chowdary, one of the Directors of the plaintiff company withdrew monies from defendant No.1 in collusion with its employees and five others by using fake letters of authority (LOA) in the name of three fictitious companies i.e., (i) M/s. Ramakrishna Engineering Company; (ii) M/s. Bright Engineering Company; and (iii) M/s. Vishwashanti Engineering Company, without supplying material and thereby cheated the defendants.

iii) Whereas, it is the case of the defendants that though they are due and liable to pay the amount to the plaintiff, on account of withdrawal of amount by the aforesaid Director in collusion with its employees and five others by using fake AOA and with regard to the same, there are criminal proceedings are pending and unless and until the same are concluded, they cannot pay the amount.

iv) In this regard, it is apt to note that the plaintiff company got issued a notice dated 26.08.1996 *vide* Ex.A14 to the defendants, enclosing statement of account showing the amount due against each bill. Pursuant thereof, reply was sent by defendant No.2 *vide* Ex.A15 letter No.CGG/311/F.L.C./571/96, dated 05.11.1996, which makes significant and is extracted as under:

> "With reference to your letter dt.26.8.96, this is to inform that **<u>release of any payments can't be considered at this stage</u>**, since legal proceedings instituted against this firm are pending in the court of law...."

v) Ex.A52, letter addressed by the office of defendant Nos.1 and 2, dated 03.08.1996 to the plaintiff company also plays a vital role to support the contention of the plaintiff. Therefore, the same is relevant and extracted as follows:

> "The LOA No.52/94-95 of the Superintending Engineer, Ramagundam Thermal Power Station for Rs.3,28,110-30 pending in this office will be released soon on finalisation of K.T.P.S. Fake LOAs case by C.B.C.I.D, Andhra Pradesh, Hyderabad."

In view of the aforesaid letters, it is clear that the defendants did not deny the due amount by them to the plaintiff, and what all they stated is with regard to the pendency of criminal proceedings against the aforesaid Director of plaintiff's company, they cannot consider at that stage. But, strangely, ignoring the aforesaid letters, in the written statement filed by the defendants in the suit, took a contradictory statement by denying their liability. Thus, the defendants cannot be permitted to both approbate and reprobate as held by the Hon'ble Supreme Court in **R.N. Gosain v. Yashpal Dhir**[1].

vi) As already stated above, as per the plaint, the decretal amount pertains to the period from 19.08.1992 and 11.08.1994 arising out of said 15 purchase orders. The defendants examined DW.1 on their behalf before the trial Court. During cross-examination, he categorically admitted that the suit claim pertains to 15 purchase orders placed by them with the plaintiff company. Ex.A37, letter No.CKK/P23/B.M:A/ D.No. 1372/94, dated 05.11.1994 addressed by defendant No.2 to the plaintiff company reveals with regard to Ex.A10 - purchase order dated 04.10.1993. In the said letter, defendant No.3 did not express anything negatively and on the other hand he mentioned that the purchase order (Ex.A10) was found to be generally in order and was approved. It is apt to note that this letter is dated 05.11.1994, whereas as per Ex.A64-charge sheet, the alleged embezzlement of amount by one of the Directors of the plaintiff company pertains to the period from 21.06.1994 to 22.09.1994. That is to say, by the date of the said letter of defendant No.3, dated 05.11.1994, the defendants must have known about such

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[1]. (1992) 4 SCC 683

embezzlement of amount. In such circumstances, defendant No.3 did not mention anything in his letter dated 05.11.1994 and on the other hand approved the material supplied *vide* Ex.P10 - purchase order.

vii) Even otherwise, as per Ex.A54 letter dated 18.01.1995 addressed by defendant No.3 to the plaintiff, its Engineers inspected the Cage bar and found suitable for their works and accordingly requested the plaintiff to despatch the material. As per charge sheet (Ex.A64), the crime was registered on 13.11.1994 by Punjagutta Police Station against the aforesaid Director of the plaintiff company. Thus, as on the date of Ex.A54 letter, the aforesaid crime had already been registered by the police upon receipt of report given by the defendants. Having knowledge about such alleged embezzlement of amount, the defendants still continued the transactions with the plaintiff company. But when comes to the payment of due amount, the defendants take the shelter of embezzlement of amount by the aforesaid Director of the plaintiff company and withheld the said amount.

viii) Ex.A18, legal notice dated 10.06.2002 got issued by the plaintiff company to the defendants requiring them to pay the aforesaid due amount shown in the statement enclosed thereto. The defendants also gave reply to the said notice *vide* Ex.A24, dated 01.07.2002. In the said reply, it has been categorically admitted about the supply of material by the plaintiff to them. However, they stated that the Directors of the plaintiff company drawn an amount of Rs.45.00 lakhs in excess of the material supplied under different names and, therefore, they are not liable to pay any amount to the plaintiff. They further stated that the claim was barred by limitation and that the plaintiff is not entitled any interest under the Act, 1993. Perusal of Ex.A24 reply does not disclose about the embezzlement of amount by the aforesaid Director of the plaintiff company.

ix) With regard to the contention of defendants that they are not liable to pay the amount on account of embezzlement of amount by one of the Directors of the plaintiff company, namely Mr. Gatta Kattaiah Chowdary in collusion with its employees and five others by submitting fake and forged LOAs (Bills) purported to have been prepared and sent from KTPS, Paloncha in defendant Nos.1 and 2 office, for the purpose of wrongful gain, perusal of record would reveal that Ex.A64-charge sheet discloses that Mr. Gatta Kattaiah

Chowdary, one of the Directors of the plaintiff company, is shown as accused No.2. In the array of accused, the Investigating Officer did not show him as the Director of M/s. Lohman Castings Private Limited, Anakapalli and only shown him as "Gutta Kattaiah Chowdary S/o Jaganmohan Rao, aged 35 yrs, Occ: Business, R/o MIG-76, Autonagar, Visakhapatnam'. However in an un-numbered paragraph No.3 of page No.2 of the charge sheet, he is described as the Director of the plaintiff company. The allegation levelled against him is that he along with other accused conspired together in Srilatha Lodge at Paloncha and decided to defraud huge amounts from APSE Board by submitting fake bills (LOAs) at Vidyut Soudha, Hyderabad. In pursuance of their conspiracy, they floated fictitious firms, M/s. Ramakrishna Engineering Co., IDA, Jeedimetla, Hyderabad, showing S.M. Reddy, a fake name of accused No.3 therein as the proprietor of the said firm. Subsequently, accused Nos.1 to 3 prepared and got prepared fake bills (LOAs) No.79, 84 and 254 purported to have been prepared and sent by KTPS, Paloncha in favour of M/s. Ramakrishna Engineering Co., and submitted at Vidyut Soudha on 21.06.1994, 21.06.1994 and 30.08.1994, respectively stating that the said firm (Company) had supplied certain materials Aluminium Bronz Wheels against LOA Nos.79 and 84 and Main Shafts against LOA No.254 to KTPS, Paloncha, though actually had not supplied anything by the said firm and defrauded an amount of Rs.28,62,793.80ps.

x) Perusal of the entire charge sheet would disclose that the Investigating Officer did not examine either the other Directors of the plaintiff company or its employees as to whether the fraud played by accused No.2 - Gatta Kattaiah Chowdary, one of the Directors of the plaintiff company, representing the plaintiff company or in his individual capacity, and not even cited them as witnesses. Thus, it is clear that the said Gatta Kattaiah Chowdary committed the offences punishable under Sections - 468, 471 and 420 read with 120-B of IPC in his individual capacity and not on behalf of the plaintiff company. Had the said Director been committed the aforesaid offences representing the plaintiff company, the Investigating Officer certainly would have made the plaintiff company also as an accused in the said crime. In fact, after coming to know about the fraud played by Mr. G. Kattayya Chowdary, the plaintiff company removed him from the post of Executive Director and Director of its Company in the Extraordinary General Body Meeting held on 30.11.1994 and the same was intimated to the defendants *vide* Ex.A31 letter dated 01.12.1994. The fraud was allegedly committed by the Director of the plaintiff company not on its behalf and on behalf of another company. The plaintiff company itself did not commit the fraud. The Director was removed from the Directorship and share holder of plaintiff Company after coming to know such fraud. This Court set aside the circular blacklisting the plaintiff company, implying that the defendants' action against the company was unjustified. Therefore, the defendants' refusal to pay was unlawful, and the plaintiff company was justified in pursuing legal remedies before filing the civil suit. Thus, the defendants cannot evade the payment under the aforesaid 15 purchase orders by taking shelter of embezzlement of amount by the aforesaid Director of the plaintiff company. Point Nos.(i) & (ii) are answered accordingly.

Point No.(iv):

14. With regard to the contention of the defendants that the suit claim is barred by limitation, they placed reliance on the decision in **Consolidated Engineering Enterprises v. Principal Secretary,**

Irrigation Department[2]. Whereas, it is case of the plaintiff that when the defendants issued a Circular *vide* Ex.B1 dated 17.05.1995 not to entertain any purchases/contracts from the plaintiff company till the outstanding of case lodged by them with police with regard to embezzlement of funds is settled and finalized, they have filed writ petition *vide* Ex.A59, W.P. No.16000 of 1998 before this Court challenging the said Circular. The said writ petition was dismissed *vide* 15.06.1998. Challenging the said order, the plaintiff filed W.A. No.1063 of 1998 and the same was allowed 25.01.2002. Therefore, in a good faith the plaintiff initiated all the aforesaid proceedings and as such, limitation must be excluded for the said period. The said principle was laid down by the Apex Court in **Union of India v. West Coast Paper Mills Ltd.**[3].

i) Perusal of record would reveal that in the said writ appeal, the defendants filed counter (Ex.A60), wherein paragraph No.3, the defendants specifically mentioned as under:

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[2]. (2008) 7 SCC 169
[3]. AIR 2004 SC 3070

> "....Since legal proceedings instituted against the firms are pending in the court of Law, the release of any payments cannot be considered at this stage."

ii) The aforesaid counter was filed on 24.07.1998. A Division Bench of this Court, *vide* order dated 25.01.2002 allowed the said writ appeal quashing the said circular dated 17.05.1995. In the said order, there is no observation with regard to exemption of limitation. However, the Division Bench observed as under:

> "All other contentions raised by the parties are left open to be agitated at an appropriate stage."

iii) In the writ petition as well as writ appeal, one of the contentions of the plaintiff is that the defendants are due and liable to pay the suit amount under the aforesaid 15 purchase orders, moreover, the relief sought in the writ petition is not only challenging the said Circular dated 17.05.1995, but also a direction for payment of Rs.15,20,905/- with interest @ 24% per annum after declaring the said circular as illegal. Though the defendants denied the same in their counter filed in the writ appeal on 24.07.1998, however, admitted that the same cannot be considered at that stage as extracted above. After allowing the writ appeal on 25.01.2002, the plaintiff filed the suit on 24.09.2002.

iv) In view of the aforesaid discussion, it is clear that the plaintiff company supplied goods between 19.08.1992 and 11.08.1994 and payment became due thereafter. However, the defendants did not deny the supply of goods, but withheld payment because of the alleged fraud committed by the aforesaid Director of the plaintiff company representing another floated company. The cause of action continued until the legality of the defendants' circular was decided in the writ proceedings. Therefore, limitation cannot be computed merely from 1994. Time spent in writ and writ appeal proceedings must be excluded. The plaintiff company filed the writ petition in 1998 challenging the defendants Circular dated 17.05.1995 that blacklisted the plaintiff company and withheld payment. Under Section - 14 of the Limitation Act, 1963, the time spent prosecuting another civil proceeding in good faith and with due diligence in a Court lacking jurisdiction or incapable of granting the relief must be excluded when calculating limitation. The plaintiff company with a *bona fide* belief approached this Court seeking relief of withholding payment due to blacklisting. The matter continued until the writ appeal allowed setting aside the said Circular. Therefore, the entire period from filing the writ petition in 1998 until disposal of the writ appeal must be excluded. Since the suit was filed on 24-07-2002, it falls within three years from the date when the writ appeal was allowed on 25.01.2002. In view of the same, the suit is not barred by limitation as contended by the defendants. Point No.(iv) is answered accordingly.

v) In **Consolidated Engineering Enterprises**[1] relied upon by the defendants, the case pertains to the Arbitration and Conciliation Act, 1996. In the said case, whether the provision of Section 14 of the Limitation Act would be applicable to an application submitted under Section - 34 of the Arbitration and Conciliation Act, 1996 for setting aside the Award passed by the Arbitrator. As per Section 34 (3) read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in sub-section (2) will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. Thus, as far as application, for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the Court. Section – 29 (2) of the Limitation Act *inter alia* provides that where any special or local law prescribes for any suit, appeal or application, a period of limitation is different from the period of limitation prescribed by the Schedule. The Arbitration and Conciliation Act, 1996 is a specific legislation excludes applicability of general provisions. In the present case, the suit was filed under the provisions of CPC. Therefore, Limitation Act, 1963 applies. Thus, the said decision is inapplicable to the facts of the present case.

vi) In **State of Uttar Pradesh v. Nawab Hussain**[4] relied upon by the defendants, the suit hit was dismissed on the ground that it was hit by *res judicata*. In the case on hand, though the plaintiff sought two reliefs in the writ petition with regard to quashing of the Circular dated 17.05.1995 and consequential direction for payment of the aforesaid amount, the said writ petition was dismissed. In the appeal filed by the plaintiff, though the said circular was quashed, suit claim was not granted. However, it was observed that all other contentions

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[4]. (1977) SCC 2 806

raised by the parties are left open to be agitated at an appropriate stage. Thus, suit claim was not granted and there was no observation or finality with regard to the amount due and the suit was filed for the said amount, the same would not hit by *res judicata*. Thus, this decision is also not applicable to the facts of the present case.

Point Nos.(iii) & (v):

15. Learned trial Court having considered the entire evidence, both oral and documentary, decreed the suit and there is no error in it. However, learned trial Court granted future rate of interest @ 6% per annum on the principal amount from the date of suit till realisation. Challenging the said rate of interest, the plaintiff filed CCCA No.131 of 2009.

i) It is the specific contention of the plaintiff that the transaction between the plaintiff and the defendants is a commercial transaction regulated by the Statute, namely the Interest on Delayed Payments to Small and Ancillary Industrial Undertakings Act, 1993 as amended by Act No.23 of 1998, as such, it is entitled to the interest at the rate of 1½ time of prime lending rate charged by the State Bank of

India for the reason that the plaintiff is a Small Scale Industry. To show that the plaintiff is a Small Scale Industry, it has filed Ex.A25, certificate of registration as a Small Scale Industrial Unit in the year 1984. The defendants did not adduce any rebuttal evidence on the said aspect. Therefore, it can be said that the plaintiff is a Small Scale Industrial Unit.

ii) Now, coming to the rate of interest to which the plaintiff is entitled to. The plaintiff filed statement dated 22.06.2007 issued by the State Bank of India, Anakapalle Branch, wherein the Bank furnished the SBI Prime Lending Rates (SBAR) for the period from 01.04.2002 till 22.06.2007. The same is relevant and extracted as under:

S.No.	Date w.e.f.	Rate of interest
01.	01/04/2002	11.50
02.	01/11/2002	11.25
03.	05/05/2003	11.50
04.	01/01/2004	10.25
05.	01/05/2006	10.75
06.	02/08/2006	11.00
07.	27/12/2006	11.50
08.	20/02/2007	12.25
09.	09/04/2007	12.75

iii) Section - 3 deals with 'liability of buyer to make payment'. The same is relevant and is extracted as under:

"**3. Liability of buyer to make payment.**-Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance."

iv) Section - 4 of the Act, 1993 deals with 'date from which and rate at which interest is payable' and the same is relevant and is extracted as under:

"**4. Date from which and rate at which interest is payable.**-Where any buyer fails to make payment of the amount to the supplier, as required under section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one and a half time of Prime Lending Rate charged by the State Bank of India.

Explanation .-For the purposes of this section, "Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank."

v) Section - 5 deals with 'liability of buyer to pay compound interest'. The same is relevant and extracted as under:

> "**5. Liability of buyer to pay compound interest.-** Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly interests) at the rate mentioned in section 4 on the amount due to the supplier."

vi) Section - 6 deals with 'recovery of amount due'. The same is relevant and extracted as under:

> "**6. Recovery of amount due.-** (1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.
>
> (2) Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996 shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act."

vii) In view of the above, Section - 4 of the Act, 1993 provides that where a buyer fails to make payment to a supplier (a small-scale industrial undertaking) within the prescribed period, the buyer is liable to pay interest on the delayed amount. The rate of interest is specifically fixed as 1½ times of the Prime Lending Rate (PLR) charged by the State Bank of India. If the buyer fails to make payment within this period, the buyer becomes statutorily liable to pay interest on the delayed amount. The interest is not discretionary but mandatory. Normally, under Section - 34 of the Civil Procedure Code, Courts may grant reasonable interest (often around 6%) after the filing of the suit. However, the Act, 1993 is a Special Statute. It overrides general provisions relating to interest.

viii) Where a special Law prescribes a specific rate, the Court must follow that statutory mandate instead of applying the general discretion under CPC. The Legislative objective behind the Act, 1993 is to protect Small Scale Industrial Units from financial hardship, to ensure timely payments and to penalize buyers, who make delay payment. Granting only 6% interest defeats this purpose. In the present case, the transaction is governed by the Interest on Delayed Payments to Small and Ancillary Industrial Undertakings Act, 1993.

ix) As per the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, as amended by Act No.23 of 1998, the defendants being the buyers must pay the price within the prescribed period. If payment is delayed, statutory interest accrues automatically. The liability is continuing in nature. Thus, the plaintiff, being a Small Scale Industrial Unit, is entitled to interest at 1½ times the Prime Lending Rate of the State Bank of India with monthly rests. The trial Court erred in granting only 6% interest, which is contrary to the statutory mandate. Hence, the decree should be modified to award interest in accordance with the provisions of the Act, 1993 until realization of the amount.

x) In **Shanti Conductors Private Limited v. Assam State Electricity Board**[5], the facts of the case are that on 31.3.1992, the Electricity Board placed an order for supply of material for Rs.1.22 Cores. The supplies were to be made between June and December, 1992. On 13.5.1992, another order was placed by the said Board for a

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[5]. (2019) 19 SCC 529

total of Rs.32.49 lakhs and goods were to be made between January and February, 1993. On 23.09.1992, the President of India promulgated an Ordinance i.e., the Interest on Delayed Payments to Small Scale Ancillary Industrial Undertakings Ordinance, 1992. Subsequently, on 02.04.1993, the interest on the said Act, 1993 was enacted and it was deemed to have come into force w.e.f. 23.09.1992. Meanwhile, the said Company supplied the material on 04.10.1993. On 05.03.1994, the entire payment of Rs.2.15 Crores was received by the said Company. On 10.01.1997, the said Shanti Conductors filed a suit for recovery of Rs.53.68 lakhs claiming interest on delayed payments. The said suit was decreed. The Board filed appeal before the High Court of Gauhati. The Division Bench referred the matter to full Bench. The Full Bench after framing certain questions answered the reference holding that a suit for interest could be filed. Act, 1993 is also applicable to contracts entered into prior to 23.09.1992. Interest would be calculated from 23.09.1992 till the payment is made to the supplier. Then, the Board filed an appeal before the Hon'ble Supreme Court, wherein the Apex Court held that Act, 1993 has no retrospective application and that supplier has an accrued right to claim a higher rate of interest in terms of Act only with regard to sale agreements entered after the date of commencement of Act i.e., 23.09.1992. Whereas, in the present case, the transactions covered by 15 purchase orders were between 19.08.1992 and 11.08.1994 and the supplies must have made even after 19.08.1992 only. That is to say, by the date of supplies made by the plaintiff, the Act, 1993 came to force. Further, in the present case, the plaintiffs claimed not only the principal amount, but also interest. In the aforesaid decision, the suit was filed exclusively for the interest accrued on delayed payments. Therefore, this decision would not render any assistance to the defendants.

16. For the foregoing discussion, this Court is of the considered view that the defendants failed to make out any case to set aside the impugned judgment and decree, and on the other hand, the plaintiff has established its case for entitlement of interest as prayed by them. Point Nos.(iii) & (v) are answered accordingly.

17. The appeal filed by the defendants in C.C.C.A. No.160 of 2006 is dismissed, confirming the judgment and decree dated 27.01.2006 passed by learned XI Additional Chief Judge (fast Track Court), City Civil Court, Hyderabad, in O.S. No.362 of 2002, to the

extent of suit claim of Rs.68,22,298/- and the costs thereon, whereas the appeal filed by the plaintiff in C.C.C.A. No.131 of 2009 is allowed setting aside the judgment and decree dated 27.01.2006 to the extent of awarding rate of interest @ 6% per annum on the principal amount of Rs.15,20,905/-. However, this Court grants the interest at the rate of one and half times the Prime Lending Rate charged by the State Bank of India from the date of suit till realization on the principal amount of Rs.15,20,905/-. In the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeals shall stand closed.

SD/- K.SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,
1. The XI Additional Chief Judge, City Civil Court, Fast Track Court, Hyderabad
2. One CC to Sri V Hari Haran, Advocate [OPUC]
3. One CC to Sri Mohammad Adnan, Advocate [OPUC]
4. Two CD Copies

ABK /KA
pmg,

HIGH COURT

DATED: 07/04/2026

COMMON JUDGMENT

CCCA. Nos. 160 of 2006 and 131 of 2009

HIGH COURT FOR THE STATE OF TELANGANA
11 JUN 2026

DISMISSING THE CCCA No.160 of 2006 and

ALLOWING THE CCCA No.131 of 2009

6 PMA.
15/5/26

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY

CITY CIVIL COURT APPEAL Nos. 160 of 2006 and 131 of 2009

CITY CIVIL COURT APPEAL NO: 160 OF 2006

Between:

1. The A.P. Power Generation Corporation Limited, (formerly known as APSEB) a Government Company registered under the Companies Act 1956, havingits Regd. Office at Vidhyut Soudha, Somajiguda, Hyderabad, Rep by its MD.
2. The Cheif Engineer (Generation), IV Flloor, Vidyuth Soudha, Somajiguda, Hyderabad.
3. The Cheif Engineer, Kothagudem Thermal Power Station, Palwancha, Khammam Dist.

...Appellants / Defendants

AND

Lohman Castings Private Limited, a Company incorporated under the Companies Act 1956, having its Regd. Office at 205, K.C. Towers, Marripalem, VUDA Layout, Visakhapatnam, Rep by its MD, R. Rajinikanth S/o Siva Rama Krishnaiah, Aged 50 yrs.

...Respondent / Plaintiff

Appeal under Order 41 Rule 1 R/w section 96 of C.P.C aggrieved by the Judgment and Decree dated 27-01-2006 made in O.S.No.362 of 2002 on the file of the XI Additional Chief Judge, City Civil Court, Fast Track Court, Hyderabad.

ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Case and the material papers in the case and upon hearing the arguments of Sri Mohammad Adnan, Advocate for the Appellants and of Sri V Hari Haran, Advocate for the Respondent.

CCCA No: 131 of 2009

Between:

M/s Lohman Castings Private Limited, Registered Office at 205 R/o.K.C.Towers, Marripalem, VUDA Layout, Visakhapatnam 530009. (Rep. by its Managing Director, Ravarapu Rajanikanth, S/o.Sivaramakrishnaiah, R/o.205, K.C.Towers, Marripalem, VUDA Layout, Visakhapatnam-530009

AND **...Appellant / Plaintiff**

1. Telangana State Power Generation Corporation Limited (TS Genco), Vidyut Soudha, Somajiguda, Hyderabad-82.
2. The Cheif Engineer (Generation), IV floor, Vidyut Soudha, Somajiguda, Hyderabad-82.
3. The Cheif Engineer, Kothagudem Thermal Power Station, Palwancha, Khammam District.

...Respondents / Defendants

Appeal under section 96 of C.P.C aggrieved by the Judgment and Decree Dated 27-01-2006 made in O.S.No.362 of 2002 on the file of the XI Additional Chief Judge, City Civil Court, Fast Track Court, Hyderabad.

ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Case and the material papers in the case and upon hearing the arguments of Sri V Hari Haran, Advocate for the Appellant and of Sri Mohammad Adnan, Advocate for the Respondents.

This Court doth Common Order and Common Decree as follows:

1. That the appeal filed by the defendants in C.C.C.A. No.160 of 2006 is dismissed, confirming the judgment and decree dated 27.01.2006 passed by the XI Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, in O.S.No.362 of 2002, to the extent of suit claim of Rs.68,22,298/- and the costs thereon;
2. That the appeal filed by the plaintiff in C.C.C.A.No.131 of 2009 is allowed setting aside the judgment and decree dated 27.01.2006 to the extent of awarding rate of interest @ 6% per annum on the principal amount of Rs.15,20,905/-;

3. That this Court grants the interest at the rate of one and half times the Prime Lending Rate charged by the State Bank of India from the date of suit till realization on the principal amount of Rs.15,20,905/-;
4. There shall be no order as to costs.

SD/- K.SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The XI Additional Chief Judge, City Civil Court, Fast Track Court, Hyderabad
2. Two CD Copies

ABK /KA

pmg.

HIGH COURT

DATED: 07/04/2026

HIGH COURT FOR THE STATE OF TELANGANA ★ DESPATCHED ★
11 JUN 2026

COMMON DECREE

CCCA. Nos. 160 of 2006 and 131 of 2009

DISMISSING THE CCCA No.160 of 2006 and

ALLOWING THE CCCA No.131 of 2009

4 PMG