

SUPREME COURT OF INDIA

Apex Engg. Pvt. Ltd.

Vs.

Fairgrowth Financial Services Ltd.

C.A.No.600 of 2000

(B. N. Kirpal, N. Santosh Hegde and P. Venkatarama Reddi JJ.)

12.09.2001

ORDER

1. Apex Engineering Pvt. Ltd. and Fairgrowth Financial Services Limited had entered into a hire-purchase agreement whereby a sum of Rs. 36.50 lakhs was advanced by Fairgrowth to Apex Engineering for purchasing two wheel loaders from M/s. Tata Engineering and Locomotive Company Ltd. (TELCO). Agreeing to the terms of the agreement, Apex Engineering had to pay 36 equal quarterly instalments totalling Rs. 56.21 lakhs. The agreement further stipulated that in the event of default of payment by Apex Engineering it would be required to pay interest at 2 per cent per month compounded on daily basis.

2. Some instalments were paid, but on 7th May, 1992, Apex Engineering wrote to Fairgrowth that there were some inherent manufacturing and design defects in the wheel loaders rendering them unusable and requested Fairgrowth to repossess the wheel loaders and take up the matter with TELCO.

3. On 6th June, 1992, the Special Courts Ordinance was issued, which was subsequently replaced by the Act and on 2nd July, 1992, Fairgrowth was declared as a "notified person". As a result thereof, amounts due to the Fairgrowth were to be recovered by the Custodian.

4. It appears that there were some proceedings in the Karnataka High Court against Fairgrowth and pursuant to an interim order passed by that High Court a sum of Rs. 5 lakhs is stated to have been deposited by Apex Engineering with the Karnataka Bank in 1993. Finally in 1995, when the Special Court directed that all the monies deposited in the case instituted by Karnataka Bank should be sent to the Custodian, the amount which had been paid by Apex Engineering came to Rs. 19,35,601.43 p. It is to be seen that by 1994 in terms of the hire-purchase agreement full amount of Rs. 56.21 lakhs was required to be paid. There was thus a shortfall of about Rs. 36,85,999.00.

5. It is not in dispute that between the years 1997-1999 this sum has been paid. Therefore, the full amount payable under the hire-purchase agreement, namely, Rs. 56.21 lakhs has been

paid by Apex Engineering. There has, however, been a delay of four-and-a-half to five years in making the full payment.

6. Fairgrowth raised the demand of interest at the rate of 2 per cent per month compounded on daily basis and filed an application before the Special Court. The Special Court by order dated 25th November, 1999, took note of the fact that full amount as per the hire-purchase agreement had been paid but the penal interest of Rs. 86,54,393.63 was also payable. The decree was passed for the said amount and decree also stated that the wheel loaders should be returned by Apex Engineering to Fairgrowth.

7. During the pendency of the appeal, interim orders were passed by this Court which required Apex Engineering to pay 25 per cent of the decretal amount as on the date of the appeal and for the balance amount the appellant was to give Bank guarantee for 50 per cent and security for 50 per cent. We are informed that 25 per cent which was directed to be paid by this Court on 20th November, 2000, amounting to Rs. 32,64,142.70 p. has since been paid to the Custodian. In this way what has been paid in respect of the wheel loaders by Apex Engineering is Rs. 56.21 lakhs plus Rs. 32,64,142.70. In our opinion, having regard to the special facts of this case and keeping in view the letter of 7th May, 1992, complaining about the quality of the wheel loaders which were stated to be having design defects it will be in the interest of justice that the decree of the Special Court is modified and the amount of Rs. 32,64,142.70 paid under orders of this Court should be regarded as full and final payment due from Apex Engineering to Fairgrowth. In addition thereto, Fairgrowth will transfer title of the wheel loaders to Apex Engineering on Apex Engineering paying the contractual price of Re. 1/-.

8. The appeal is disposed of in the aforesaid terms. The questions of law raised are left open and the Bank guarantees and securities furnished stand discharged.
Order accordingly.