

(2006) 11 PAT CK 0027
In the Patna High Court

Computeronix Bihar Pvt. Ltd. and Another	APPELLANT
Vs	
Bihar State Madarsa Education Board and Others	RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 — Section 2, 4

Citation : AIR 2007 Patna 75 : (2007) 1 PLJR 183

Hon'ble Judges : Syed Md. Mahfooz Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Syed Md. Mahfooz Alam, J.—Being aggrieved by the judgment and decree dated 27-2-96 passed in Money Suit No. 63 of 1994 by Sri Hem Shankar Kumar Singh. Subordinate Judge 1st. Patna whereby the learned Subordinate Judge has decreed the suit of the plaintiff for a "total sum of Rs. 2.05.197.46p. but granted interest pendente lite and fu-lure @ 10% per annum instead of 24% P.A. monthly compoundable interest, the plaintiffs-appellants have preferred this appeal.

2. The brief facts of the case are as follows:

Plaintiff No. 1 M/s. Computeronix Bihar Private Limited, is a Small Scale Industrial Unit registered with Directorate of Industries, Government of Bihar and plaintiff No. 2, is its Managing Director. The plaintiff was entrusted with the work of computerisation of the tabulation registers of defendant No. 1 Bihar State Madarsa Education Board, Patna for the period between 1964 to 1984. The order was placed by the Secretary of defendant No. 1 through letter No. Comp 89-01 dated 11-4-1989. The plaintiff was required to do the above job in three schedules. The plaintiff completed the first two schedules of work and got payment thereof and after completing third schedule of work, he informed the defendants through letter No. 42/CB/91, dated 15-3-91 about the completion of work and thereafter the plaintiff submitted bill bearing No. 139 for the work done

for third schedule along with forwarding letter dated 20-3-1991 and requested the defendants to pay the amount of the bill (final bill). Thereafter, the defendants paid a sum of Rs. 90,890/- out of total principal amount of Rs. 1,81,786.80/- of the final bill and a sum of Rs. 90,896.80 paise remained due with the plaintiff payable to the defendant but when on demand the defendants failed to make payment of the said amount, the plaintiff filed money suit for recovery of the said amount along with interest at the rate of 19% plus 5% penal interest. The said suit of the plaintiff was decreed and the defendants were directed to pay to the plaintiff the decretal amount amounting to Rs. 2,05,197.46 paise with interest pendente lite and future at the rate 10% per annum. The plaintiff was aggrieved with the quantum of interest awarded to him towards pendente lite and future interest at the rate of 10% per annum and hence, preferred this appeal.

3. The case of the defendants-respondents is that the plaintiffs were entrusted to complete the work of computerisation of tabulation registers for the period between the year 1964 to 1984 for which the defendant Bihar State Madrasa Education Board had duly placed order to the plaintiffs according to which the work was to be completed in three schedules but the plaintiffs completed the first two schedules of work for which they were duly paid and as the plaintiffs failed to complete the work of third schedule, as such they were not paid for the work of third schedule which remained in: complete. On that ground the defendants claimed that the plaintiffs were not entitled to get any relief.

4. I have already stated above that the trial Court decreed the suit of the plaintiffs and awarded pendente lite and future interest at the rate of 10% per annum. The grievance of the plaintiffs-appellants is that this rate of interest awarded by the trial Court is not in accordance with law and so, they have preferred this appeal claiming interest at the rate of 19% per annum plus 5% penal interest over the decretal amount so the only question to be decided in this appeal is as to whether the plaintiff-appellant is entitled to get interest at the rate of 19% plus 5% penal interest per annum over the decretal amount.

5. In support of the submission, the, learned. Advocate of the appellants has referred the provisions of law as laid down under the Interest on Delayed Payments to Small Scale and Ancillary Industries Under: takings Act, 1993. It has been argued by the learned Advocate of the plaintiff-appellant that the plaintiff is a small scale industries unit and is registered under the Directorate of Industries Government of Bihar wide Registration Certificate dated 13-9-89 (Ext./5). His further argument is that the defendant No. 1 is a buyer within the meaning of Section 2(e) of the Interest of Delayed Payments, to Small Scale and Ancillary Industrial Undertakings Act, 1993 whereas the plaintiff is supplier within the meaning of Clause (f) of the Act. His further submission is that Section 4 of the abovementioned Act lays down that if the buyer fails to make payment to the supplier on the appointed date buyer will be liable to pay interest on the outstanding amount which will be five percentage point above the floor rate fixed

by the R.B.I. and the same will be compounded on monthly basis. In support of his contention that during relevant period R.B.I. had fixed interest rate of 19% P:A. the learned Advocate has placed a circular of Punjab National Bank dated 12-3-92 and on that basis he submitted that the plaintiff-appellant is entitled to receive interest @ 19% plus 5% penal interest total 24% per annum on the decretal amount.

6. Nobody has appeared on behalf of the respondents to rebut the argument of the learned Advocate of the plaintiff-appellant but the question remains - whether it would be just and proper for this Court to grant interest to the appellant at the rate of 19% plus penal interest @ 5% per annum on the decretal amount. In order to decide this question it would be proper to go through the admitted case of the parties.

7. The admitted case of the plaintiffs is that defendant No. 1, Bihar State Madrasa Education Board, placed order for work of computerisation of tabulation registers between the period ranging from the year 1964 to 1984 to be completed in three schedules. Admittedly, the plaintiff completed the work of first two schedules. It is further case of the plaintiff that he also did the work of third schedule and submitted final bill amounting to Rs. 1,81,786 out of which only Rs. 90,890/- was paid and the rest amount remained unpaid for which the claim was preferred through the suit. On the contrary, the admitted case of the defendants is that the plaintiff completed the work of two" schedules for which he was paid Rs. 90,890/- but the work of third schedule was not completed and as such no payment was made to the plaintiff;

8. Ext. 2 is the work order dated 11-4-1989 issued by the Secretary Bihar State Madrasa Education Board, Patna. The contents of the letter are quoted below:

Sub:--Computerisation of Tabulation Register since 1969 to 1984

Sir,

With reference to the subject noted above, I am pleased to place order with your firm on the usual terms and conditions as of last and on old approved rate.

This tabulation register be prepared in three schedules.

You are therefore, requested to take up the work at the earliest.

Yours faithfully Sd/- Secretary Bihar State Madrasa Education Board, Patna
11-4-89

Ext. 2/A is the letter sent by the plaintiff-Computeronix Bihar Pvt. Ltd. dated 15-3-1991, Contents of the letter are being reproduced below:

Subject :- Receiving of Old Tabulation Register & Computerised Register

Dear Sir.

With reference to your letter No. 215. dated 13-3-91 we are sending the

following original and Computerised "Registers of Alim & Fazil."

Alim Reg. No. Year

26 - 1969 15 - 1970 14 - 1971 16 - 1972 17 - 1973 24 - 1974 20 - 1975 23 - 1976 29 - 1977 28 - 1978 12 - 1979

Fazil

19 - 1966 to 1975 22 - 1965 to 1975 18 - 1965 to 1973 21 - 1976 27 - 1977 13 - 1979 11 ? 1981 You are requested to receive the above documents and acknowledge.

With thanks.

Truely Yours Sd/- (I. Ahmad) Director for Computeronix Bihar Pvt. Ltd.

Ext. 2/B is another letter of the plaintiff addressed to the Secretary, Bihar Stale Madarsa Education Board, Patna. The contents of the letter are incorporated below:

Sub : Forwarding letter

Dear Sir,

We are pleased to submit our bill No. 139, dated 20-3-91 after completing the computerisation of old Tabulation Register from year 1969 to 1979 of Alim and year 1965 to 1979 & 1981 of Fazil. The amount of Bill is Rs. One lakh Eighty One Thousand Seven hundred Eighty six and eighty paise only.

We request you to pay the said bill as early as possible and oblige.

Thanking you, Truely Yours, Sd/- (I. Ahmed) Director for Computeronix Bihar Pvt. Ltd.

9. Ext. 4 is bill No. 139, dated 20-3-1993 submitted by the plaintiff claiming Rs. 1,81,786.80 paise towards the work done under the order placed by defendant No. 1. This is said to be the final Bill. The perusal of the bill (Ext. 4) as well as the perusal of several letters of the plaintiff i.e. Exts. 2/B, 2/C and 2/D show that plaintiff completed the work of Tabulation of Register from 1969 to 1979 and upto 1981 and for that work, a total sum of Rs. 1,81,786.80 paise was claimed by the plaintiff whereas Ext. 2 establishes that the order for computertisation of tabulation work for the period 1969 to 1984 was placed to the plaintiff which was to be completed in three phases and this is also the admitted case of the plaintiffs but the documents referred above establish beyond doubt that for the year 1982, 1983 and 1984 no work was done by the plaintiff which establishes the case of the defendants that the plaintiff did not complete the work of third schedule and that is why no payment was made to the plaintiff, for the work done in third schedule. The plaintiffs have not pleaded in the plaint that due to lapses or due to the fault of the defendants, the work of third schedule could not be completed rather the plaintiffs have specifically pleaded that after completing

the entire work entrusted to them including the work of third schedule they submitted final bill. Under such circumstance, I have no alternative but to observe the plaintiffs have falsely claimed that they had submitted final bill after completing the entire work of computerisation of Tabulation Register from 1969 to 1984. The fact is that the computerisation of tabulation register from the year 1982, 1983 and 1984 remained incomplete and therefore I hold that the defendant No. 1 Bihar State Madrasa Board was legally entitled to withhold the payment of Bill for the work of third schedule which remained incomplete. Under such situation it will not be just and proper to award any penal interest on the decretal amount other than the simple interest awarded to the plaintiff on decretal amount. Accordingly, I hold that the plaintiff is not entitled to claim interest at the rate 19% plus 5% as provided u/s 4 of the Act.

10. In the result, I do not find any merit in this appeal and as such, the same is hereby dismissed and the judgment and decree passed by the trial Court are confirmed. However, in the circumstances of the case there will be no order for cost.