

(1982) 02 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : Civil First Appeal No. 18 of 1979

Gupta Pvt. Loan Committee and Others	APPELLANT
Vs	
Smt. Sumitra Devi	RESPONDENT

Date of Decision : 27-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Jammu and Kashmir Civil Courts Act, 1977 — Section 34
Jammu and Kashmir High Court Rules, 1999 — Rule 14(2)
Suits Valuation Act, 1887 — Section 8

Citation : AIR 1983 J&K 4

Hon'ble Judges : I.K. Kotwal, J; A.S. Anand, J

Bench : Division Bench

Advocate : Amar Chand, for the Appellant; R.P. Bakhshi, for the Respondent

Final Decision : Allowed

Judgement

Anand, J.—This is defendant's first appeal. It arises out of a final decree passed by the learned District Judge, Jammu, on 28-5-1979 in a

suit for recovery of Rs. 11400/- as principal amount and Rs. 3933/- as interest up to the date of suit, and future interest at the rate of 12%. In this

appeal the defendant has challenged the correctness of the decree only to the extent of the award of interest of Rs. 3,933/- and future interest at

the rate of 12% per annum and the judgment and decree has been not been assailed on any other account. Therefore, it is not necessary for us to

deal with the facts of the case except in so far as the same are relevant for the purpose of deciding the limited issue.

2. Since the challenge is confined only to a part of decree for Rs. 3933/-, the defendant has paid court-fee of Rs. 423.50 on the said amount. At

the very outset, therefore, a question has arisen as to whether this appeal

should be heard by a single Judge or by a Division Bench of the High Court because Rule 14 (2) of the High Court Rules provides:--

14 (2) (a) A civil first appeal from a decree or an order of a Subordinate Court when the value for the purpose of jurisdiction does not exceed

fifteen thousand rupees.

(b) A second appeal u/s 100 of the Code;

(c) A revenue appeal;

(d) Any other civil appeal under any law for the time being in force where the value of the subject matter does not exceed fifteen thousand rupees;

(e) An appeal under the Hindu Marriage Act, 1955 (Central Act 25 of 1955) as adopted by the Jammu and Kashmir Hindu Marriage Act, 1955

(VIII of 1955);

Indeed, it is not in doubt that under the Civil Courts Act, an appeal from the decree and judgment of the District Judge lies to the High Court. The

precise question which requires consideration in this regard is whether the value for the purpose of jurisdiction of the appeal has to be according to

the extent of amount challenged Or whether the valuation for the purpose of jurisdiction has to be as per value of the suit irrespective of the extent

of challenge in appeal. To decide this controversy, recourse has to be made to the Court Fees Act and the Suits Valuation Act, u/s 8 of the Suits

Valuation Act, in suits, other than those specified in the section, the court-fee payable under the Court-fees Act is ad valorem and the value for the

purpose of court fee and jurisdiction has to be the same. The value of relief sought by the plaintiff settles the jurisdictional value and once the

plaintiff has exercised his option, u/s 7(iv) of the Court-fees Act, to assess his claim for a particular value, for the purpose of court-fees, that also

becomes the value for jurisdictional purposes. In our view, therefore, in a suit for recovery of money, any reduction of the amount claimed by a

decision of the court or even as a result of compromise between the parties to the suit, does not and cannot change the original jurisdictional value

for the purposes of the appeal. However, where a decree is granted for an amount greater than that asked for in the plaint, the decretal amount

would be the value for the purpose of appeal and the same would also determine the appellate forum. There is of course a fundamental difference

between valuation of an appeal for purposes of court-fees and that for the purposes of jurisdiction. For the purpose of court-fees, it is the subject

matter of the appeal that has to be considered but for the purpose of jurisdiction it is the value of the suit that has to be taken into account. In the

view that we have taken we find support from a judgment of the Punjab and Haryana High Court in Mohinder Singh Harnam Singh and Others Vs.

Jagjit Singh S. Sher Singh and Another, wherein it was opined as follows.-

The jurisdictional value of a suit does not change with the form of the decree and the forum of appeal is to be determined by the value of the suit

and not by the value of the decree.

3. Similar view has also been expressed by a Division Bench of our own High Court in (1936) 38 PLR 88, wherein it was observed:--

The value of the subject matter of a suit must be its valuation or at the time of its institution and the amount or the value of the subject matter as

fixed in the plaint should determine the court to which the appeal lies.

4. This aforesaid judgment was noticed with approval in Ahad Mir v. Mahda Bhat AIR 1960 J&K 89, by a Division Bench of this court. It was

held that whereas for the purpose of court-fees, it is the subject matter of the appeal that has to be considered yet for the purpose of jurisdiction, it

is the value of the suit that is relevant. Their Lordships opined (at p. 91):--

It is, therefore, wrong to say that the value for the purposes of jurisdiction in respect of an appeal will depend upon the value of the appeal for

purposes of court-fees. The true effect and purport of Section 8 of the Suits Valuation Act, is to fix the same value for purpose of jurisdiction in

respect of the suit as well as the appeal."

5. Thus, it is now well settled that irrespective of the extent of challenge to the money decree in appeal, the forum of appeal, has to be determined

on the basis of jurisdictional value as stated in the plaint and in accordance with the provisions of the Civil Courts Act, Considered in this light, it is

therefore obvious that the jurisdictional value of the present suit is Rs. 15333/- and the same valuation would determine the forum of appeal.

Keeping in view the provisions of Rule 14 (2) (a) of the High Court Rules, an appeal where the valuation for the purpose of jurisdiction exceeds

Rs. 15.000/- lies to a Division Bench. A Division Bench of this Court therefore is the proper forum to hear the appeal, irrespective of the fact that

the challenge in the appeal is confined only to sum of Rs. 3,933/- and costs.

6. Mr. Amar Chand, learned counsel for the appellant has in support of the appeal vehemently argued that the trial court was in error in awarding

interest to the plaintiff up to the date of the suit, since neither there was an agreement to pay interest nor was there any mercantile practice to pay

interest for wrongful retention of money. It is urged that the interest could not be paid by way of damages for wrongful retention of money and,

therefore, the decree to the extent it awarded interest upto the date of the suit was illegal and beyond the jurisdiction of the court. Reliance in this

respect is placed on AIR 1938 67 (Privy Council) , wherein it was held that interest could not be allowed at common law by way of damages for

wrongful retention of any debt.

7. Mr. R.P. Bakhshi, learned counsel for the plaintiff respondent has on the other hand argued that since the appellant has not questioned the

decree in so far as the principal amount of Rs. 11,400/- is concerned it stood established that the defendant-appellant had wrongfully withheld the

payment of that amount and, therefore, the plaintiff-responent was entitled to recover interest on that amount at the rate of 1% per month

together with interest at the same rate from the date of the decree till realization of this decretal amount, because she had been deprived of the use

of her own money without any justification. It is argued that in appropriate cases the court can compensate the plaintiff by awarding interest for the

period during which the payment is wrongfully withheld.

8. We have gone through the pleadings of the parties and find that whereas the plaintiff-responent had claimed interest at the rate of 1% P. M. On

the amount of Rs. 11400/-, from the date it fell due, namely, 11-2-1973, till the date of the institution of the suit by way of damages for wrongful

retention of money, it was not pleaded by her that the interest was being claimed either on the basis of some agreement or mercantile practice, It

is, therefore, obvious that the amount of interest which was claimed by the plaintiff-responent in the suit was by way of damages on equitable

grounds.

9. Since, in the suit neither agreement nor mercantile practice was pleaded, we do not consider it necessary to advert to the evidence whereby the

plaintiff-responent had attempted to show that there was mercantile practice for

payment of interest at the rate of 1% to 1 1/2% P. M. because it is a settled position that what it not alleged cannot be allowed to be proved and that no amount of evidence can fill up a lacuna in the pleadings.

We shall, therefore, only have to consider whether the plaintiff-respondent is entitled to claim interest by way of damages and if so at what rate.

10. The judgment relied upon by AIR 1938 67 (Privy Council) does not deal with the payment of interest by way of damages on equitable

grounds. It only lays down that in ""common law"" interest by way of damages cannot be claimed or paid, Of course, a court of law, unless it is a

court of equity also, cannot award interest on equitable considerations but in this country where the courts are both of law and equity, there is no

bar to the award of interest by way of damages on equitable considerations. That judgment, therefore, does not advance the case of the

defendant-appellant because in this case the claim for interest is founded not on ""common law"" but on 'equitable grounds', That the courts of law

and equity can grant interest, for a period, prior to the commencement of the suit even in cases where interest has not been claimed under an

agreement or usages of trade or under the statutory provision has been settled by the Supreme Court in Mahabir Prashad Rungta Vs. Durga Datt,

and there is no manner of doubt that interest can be granted for wrongful retention of money only on equitable grounds. A Division Bench of this

court in the Union of India v. S. Kesar Singh AIR 1978 J&K. 102 to which one of us (Kotwal, J.) was a party, considered this question in depth

and repelled the argument, similar to the one raised by Mr. Amar Chand, by an elaborate judgment. The following passage from that judgment

which makes the position clear may, therefore be noticed with advantage (at P. 110):

Finally, Mr. Malhotra has argued that there being no evidence of an agreement or usage to pay interest, the learned single Judge was not justified

in awarding the same which otherwise too was excessive, Interest may be awarded under any of the following circumstances :

- (i)' Where there is an agreement to pay interest;
- (ii) Where there is an usage to pay interest;
- (iii) Where there is any law making specific provision for interest, and
- (iv) Where the course of dealing between the parties justifies payment of interest

by way of damages on equitable grounds.

True, there was neither an agreement to pay interest, nor was there any usage under which it could be claimed, nor was there any law which made

a specific provision for awarding interest in such cases; nevertheless interest in the circumstances of this case could be granted in favour of the

respondent by way of damages on equitable ground.....The appellants without any justification deprived the respondent of the use of his

own money and thereby wrongfully withheld the same to his detriment, this naturally resulted in a loss to the respondent for which he had every

right in equity to be compensated at the cost of the appellants.

11. Thus, we are of the opinion that the grievance of Mr. Amar Chand is not well founded and interest could be awarded by the learned trial Judge

by way of damages on equitable grounds". The only point that now requires determination is the rate at which interest could have been awarded.

12. In this case, the amount of Rs 11400/- became payable to the plaintiff-respondent on 11-7-1973, The defendant appellant without any just

cause withheld the payment of the same to the plaintiff-respondent in spite of repeated demands. The defendant-appellant thereby caused a loss to

her for she was wrongfully deprived of the use of her own money. She, therefore, had every right in equity, to be awarded interest at the cost of

the defendant-appellant. However, in our opinion, the interest at the rate of 12% per annum appears not only to be penal but also excessive. The

interest at the rate of 6% per annum would in our opinion be reasonable interest and the same would meet the ends of justice. We. therefore,

reduce the rate of interest from 12 % per annum to 6% per annum from the date the amount fell due till the commencement of the suit. We are also

of the opinion that future interest at the rate of 12% per annum till the realization of the decretal amount is also highly excessive and we reduce the

same to 4% per annum from the date of the decree till the realization of the decretal amount. We find no reason to interfere with the amount of

costs awarded to the plaintiff except to the extent the costs shall be proportionate to the decree as awarded by this court.

13. To this extent we allow the appeal and modify the decree of the trial court accordingly, parties are left to bear their own costs in so far as this

appeal is concerned.