
(1977) 08 CAL CK 0024
In the Calcutta High Court
Case No : Appeal No. 220 of 1965

Hanuman Bux Chowdhury and Others APPELLANT
Vs
Assam Oil Co. Ltd. and Another RESPONDENT

Date of Decision : 12-08-1977

Acts Referred:

Interest Act, 1839 — Section 1

Citation : AIR 1978 Cal 18

Hon'ble Judges : Ramendra Mohan Datta, J; Hazra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ramendra Mohan Datta, J.—The scope of this appeal is limited to a short point, namely, whether the written demand dated the 18th March, 1961, in this case can be construed as a notice under the Interest Act, 1839 so as to enable the plaintiff appellant to claim interest in the suit.

2. We looked into the demand letter and found that it could not be construed so. By this demand letter the arrears of interest had been claimed and "it was not mentioned therein that the date of the claim for interest was the date of the demand letter. Nor is there any indication therein that the liability of the debtor to pay interest under the said statute was sought to be fixed. It may not be strictly necessary to mention the statute in the notice but the provisions contained therein have got to be complied with.

3. If a claim under the Interest Act would be made for the payment of interest then the conditions as provided in the section and as construed by the Supreme Court would have to be complied with. The section provides as follows:--

"1. It is therefore hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums

certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the :date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law."

4. In the case of Seth Thawardas Pherumal Vs. The Union of India (UOI), the Supreme Court observed at page 478 as follows:--

"..... the following among other conditions must be fulfilled before interest can be awarded under the Act:

(1) there must be a debt or a sum certain;

(2) it must be payable at a certain time or otherwise;

(3) these debts or sums must be payable by virtue of some written contract at a certain time;

(4) there must have been a demand in writing stating that interest will be demanded from the date of the demand."

5. In the case before us, condition (4) had not been complied with because the demand in writing did not state that interest was being demanded and would be payable from the date of the demand. On the contrary, it is stated that interest, would be payable from the date of the respective bills. The result is that one of the conditions mentioned in the Interest Act has not been complied with. It is an enabling provision giving powers to the Court to exercise its discretion in the matter of granting interest provided certain conditions, are complied with. The section contemplates that the debtor should be notified about his liability for the payment of interest under the provision of this statute. Hence, unless the debtor's attention is drawn to this provision in making such demand his liability to pay interest under this enactment does not arise.

6. Another point taken on behalf of the respondent is that the order by the learned Judge being a discretionary order under the Interest Act, the appellate Court should not interfere with the exercise of that discretion of the trial Judge as the same was exercised judicially and in accordance with law. We agree with the submission. In the instant case, the learned trial Judge has exercised his discretion reasonably and in a judicial manner. The learned trial Judge did not exercise his discretion capriciously or unreasonably or in any disregard of law. So, we cannot interfere with the exercise of the discretion by the learned trial Judge.

7. The result, therefore, is that the appeal is bound to be and is hereby dismissed with costs.

Hazra, J.

8. I agree.