(1991) 12 KAR CK 0018

In the Karnataka High Court

Case No : Regular First Appeal No. 467 of 1986

Indo-American Hybrid Seeds and others — APPELLANT

Vs

India Tourism Development Corpn. Ltd. and others — RESPONDENT

Date of Decision : 11-12-1991

Acts Referred:

Interest Act, 1978 — Section 2 (b), 3

Citation : AIR 1992 Kar 414 : (1992) ILR (Kar) 1103 : (1991) 4 KarLJ 237

Hon'ble Judges : Srinivasa Reddy, J;K.A. Swami, J

Bench : Division Bench

Advocate : Sri Kashinath Rao, for the Appellant; Sri Naik, for M/s. King and Partridge, for the Respondent

Judgement

Swami, J.—This appeal by the plaintiff is preferred against the judgment and decree dated 21-3-1986 passed by the learned VII Addl. City Civil Judge, Bangalore in O.S. No. 1222/1985.

2. The appeal is confined to disallowance of interest by the trial Court as claimed by the plaintiff. The plaintiff claimed interest on a sum of Rs. 1,35,644.50 at the rate of 18% per annum. On a sum of Rs. 566.50, it claimed interest at that rate from 23rd October, 1982 and on the remaining sum of Rs. 1,35,078/- it claimed interest at 16% from 2nd November, 1982. The trial Court has disallowed the interest on the ground that there was no agreement for payment of interest on the suit transactions.

3. In this appeal, the plaintiff-appellant has claimed a sum of Rs. 19,684.60 as interest on the aforesaid sum of Rs. 1,35,644.50 at the rate of 1896 per annum.

4. Therefore, the only point that arises for consideration is whether the trial Court is justified in law in disallowing interest as claimed by the plaintiff in its entirety?

5. No doubt, interest for the period prior to filing of the suit can be claimed and awarded if there is an agreement between the panics or the plaintiff proves the

merchantile usage or custom or under the law. In the instant case, there was no agreement for payment of interest. The suit claim was for recovery of the value of the plants supplied by the plaintiff to the defendants. The invoices under which the plants were supplied did not contain any stipulation to the effect that in the event the payment was delayed the amount would carry interest at a particular rate. It was neither pleaded nor any evidence was adduced by the plaintiff to prove the trade usage or custom regarding interest payable on the suit claim. Therefore, the plaintiff only relied upon the provisions contained in S. 3 of the Interest Act, 1978, (hereinafter referred to as ''the Act'').

6. According to the case of the defendants no interest was claimed by the plaintiff until it issued the notice dated 12-3-1984 marked as Ex. P. 17. The suit was filed on 15-4-1985. Therefore, it was contended that at the most the plaintiff would be entitled to interest from 12-3-1984 to 15-4-1985 and not from the date of supply of the plants, nor from 26-7-1983 the date on which Ex. P. 8 was sent by the plaintiff to the defendants. On the contrary, it is contended by the plaintiff that at least it is entitled to interest from the date it demanded. According to the plaintiff, the interest was demanded from the defendants in the letter dated 25/26-7-1983 Ex.P. 8 which was received by the defendants. Therefore, we will now consider whether the plaintiff is entitled to interest from 26-7-1983 or from 12-3-1984.

7. Under S. 3 of the Act, interest can be awarded on any debt or damage at a rate not exceeding the current rate of interest for the whole or part of the period from the date when the debt is payable to the date of institution of the proceedings. The expression "current rate of interest "has also been defined under S. 2(b) of the Act as the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949. The claim in the suit relates to debt because the debt as defined under clause 2(c) of the Act means "any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt." In the instant case, as already pointed out, the claim of the plaintiff was for recovery of the value of the plants supplied to the defendants. No doubt, as per S. 3(l) of the Act, interest can be awarded from the date the debt became payable. As per the invoices under which the plants were sent, the value was payable on receipt of the plants. As the interest was demanded by the plaintiff for the first time under Ex. P. 8 on 26-7-1983, even though the plants were supplied on 2-11-1982 and 23-11- 1982. Therefore, we are of the view that in the instant case interest is payable from 26-7- 1983. The contention of the defendants that interest was not claimed at a particular rate in Ex. P. 8 and it was claimed at a particular rate in the legal notice dated I2-3-1984 Ex.P. 17, therefore, the defendants are liable to pay interest only from 12-3-1984, cannot be accepted. Of course, even prior to 12-3-1984 in the letter

dated 28-2-1984 Ex. P. 16, the plaintiff has demanded interest at 18% from the date of supply of plants. However, the interest has been claimed for the first time in the letter dated 26-7-1983 Ex. P. 8. Prior to that date, no interest was claimed. Therefore, we are of the view that the plaintiff would be entitled to interest only from 26-7-1983, the date on which Ex. P. 8 was sent demanding the interest.

8. As per Section 3 of the Act, the interest is awarded from the date the debt became payable up to the date of institution of the suit. As we have held that in the instant case the interest is payable only from 26-7-1983, the plaintiff would be entitled to interest under the Act from 26-7-1983 up to 15-4-1985 the date on which the suit was filed at a rate not exceeding the current rate of interest. The contention of the defendants that the rate of interest is not staled in Ex. P. 8, therefore it cannot be awarded from the date of Ex. P. 8 is also not tenable. Under S. 3 of the Act, the interest has to be awarded at a rate not exceeding the current rate of interest. Unless the interest demanded is less than the current rate of interest, the non-mentioning of the rate of interest in Ex. P. 8 demanding interest is not of any material consequence as the interest shall have to be awarded at the current rate. It is already pointed out that the Act defines current rate of interest. Sri Naik, learned counsel appearing for the respondents submitted that the current rate of interest at the relevant point of time was 10% per annum. We accept this submission and hold that the plaintiff would be entitled to interest on a sum of Rs. 1,35,644.50 from 26-7-1983 till the date of the suit at 10% per annum.

9. The next question for consideration is as to what should be the rate of interest from the date of the suit till the date of the decree and from the date of the decree till realisation.

10. The trial Court has awarded interest from the date of the suit till realisation at 69%. As the transaction in question is a commercial transaction and there are no extenuating circumstances pleaded by the defendants, we are of the view that it would be just and appropriate to award interest from the date of the suit till the date of the decree at 10%, As far as the interest awarded by the trial Court from the date of the decree till realisation at 6% is concerned, we are of the view that it need not be interfered with. Accordingly, the point raised for determination is answered in the negative and it is held that the plaintiff is entitled to interest at 10% per annum from 26-7-1983 on a sum of Rs. 1,35,644.50/- as decreed by the trial Court till the date of filing of the suit and also at the same rate from the date of the suit till the date of the decree and 6% per annum from the date of the decree till realisation.

11. For the reasons stated above, the appeal is allowed in part. The judgment and decree of the trial Court are modified regarding interest and it is ordered that the sum of Rs. 1,35,644.50 as decreed by the trial Court shall carry interest at 10% from 26-7-1983 till 15-4-1985 -- the date of the institution of the suit and at the same rate from 15-4-1985 till the date of the decree and from the

date of the decree till realisation at 6% per annum. The plaintiff is also entitled to costs proportionate to its success in this appeal.

12. Order accordingly.

