

(2002) 02 MAD CK 0161

In the Madras High Court

Case No : Second Appeal No. 1736 of 1998 and C.M.P. No's. 17735 of 1998 and 12951 of 2001

Madurai Kamaraj University

APPELLANT

Vs

Mr. K. Rajayyan

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34, 34(1)

Citation : (2002) 02 MAD CK 0161

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : S. Jayaraman, for the Appellant; M. Ravindran, for V. Viswanathan, for the Respondent

Final Decision : Partly Allowed

Judgement

1. The above Second Appeal is directed Second Appeal against the judgment and decree dated 8.12.1997 rendered in A.S.No.239 of 1996 by the Court of Principal District Judge, Madurai thereby reversing the judgment and decree dated 23.4.1996 rendered in O.S.No.642 of 1992 by the Court of I Additional Subordinate Judge, Madurai.

2. Tracing the facts of the case, it comes to be known that the respondent herein had filed the suit in O.S.No.642 of 1992 on the file of the Court of Subordinate Judge, Madurai for recovery of a sum of Rs.58,581/= with future interest at 12% p.a. from the date of plaint till the date of payment on averments such as that he was working as the Professor and Head of the Department of Modern History in the defendant University; that he put up service as Professor from 9.7.1970 to 6.4.1989; that since on attaining the age of 55 years, the University terminated his services holding that it was the retirement age, the plaintiff filed a writ petition against the defendant and the matter WENT up to the Supreme Court of India and his termination order was quashed by the Honourable Supreme Court and accordingly he was reinstated into service on 6.4.1989 and his service was

extended till the end of the academic year and ultimately he retired from the service of the defendant University on 30.6.1989.

3. The plaintiff would further submit that the defendant has not settled the retiral benefits of the plaintiff; that even though the plaintiff is entitled to receive a sum of Rs.56,195.05 towards the Provident Fund, the defendant University released only a sum of Rs.50,576/= on 20.5.1990 and in spite of repeated demands, the defendant University has not released the balance amount of Rs.5,690.05 and therefore the plaintiff is entitled for the payment of the said amount of Rs.5,690.05 with interest at 18% p.a. for the belated payment; that the plaintiff received the gratuity of Rs.46,000/= belatedly on 30.6.1989 and hence for the belated payment of gratuity, the plaintiff is entitled to the interest at 18% p.a. from 1.7.1989 to 16.3.1991; that similarly, the commuted pension amount of Rs.58,272/= and the pension from May, 1989 to December, 1990 were also released belatedly by the defendant and hence he is entitled to get interest on the said amounts at 18% p.a.

4. The plaintiff would further submit that during the pendency of the earlier litigation, the defendant University took possession of his room in the Department and kept it under lock and seal upto 6.4.1989 and though the room was opened to the plaintiff on 6.4.1989, his research collections consisting of about 2000 pages of research materials in two bundles collected from National Archives, USA and State Archives, Tamil Nadu, which are inestimable in value, were not restored to him and in spite of his letter dated 30.6.1989 to the Registrar of the defendant University, there is no response as a result of which the plaintiff is unable to proceed further in his research work and would claim a sum of Rs.10,000/= towards damages and after issuing the legal notice dated 9.3.1992, the plaintiff has filed the suit giving details of his claim in the 'particulars of claim'.

5. The defendant would file a written statement, wherein besides admitting the services of the petitioner and the earlier litigation regarding the termination of the petitioner and thereafter his reinstatement into service and retirement on attaining the age of superannuation, the defendant would also submit that the plaintiff's suit is a vexatious one and no suit could be filed for recovery of interest alone in law; that the plaintiff who has been in the service is fully aware of the rules and regulations of the sanction and payment of termination benefits; that he had to submit 'No Due Certificate' which fact was intimated to the plaintiff on 29.6.1989 itself and received by him on 30.6.1989 for sanction of pension; that since the plaintiff had not submitted the 'No Dues Certificate' a reminder was issued to him on 28.5.1990 and only on 12.7.1990, the plaintiff submitted his 'No Dues Certificate' and immediately on 17.7.1990, the Pension Proposals were despatched to the Assistant Examiner, Local Fund Accounts, who sent back the same to the defendant on 8.8.1990 for clarifications regarding the non-affixture of joint photograph and also the pension contribution credit particulars during the period when the plaintiff was working in the Kerala

University; that the Rules stipulate that there should be a pension proposal by the superannuated person with photos of himself and his wife which will have to be affixed in the pension proposal; that the plaintiff actually submitted the joint photographs only on 21.9.1990 and the pension contribution credit particulars were received by the pension section on 15.10.1990; that after clarifying various points pointed out by the Assistant Examiner, Local Fund Accounts, the Pension Section sent the pension proposals to the Assistant examiner, Local Fund Accounts on 12.12.1990 and the audit certificate authorising payment of pension was received by the Pension section on 11.1.1991 and on the very next day itself, the Pension section had put up necessary note for sanctioning the pension and other benefits of the plaintiff and after approval of the same by the Registrar on 17.2.1991 and 18.2.1991, the plaintiff was informed on 28.2.1991 that his D.C.R.G. and commutated pension had been sanctioned and the University paid the plaintiff the amount on 6.3.1991, therefore, the contention of the plaintiff that he is entitled for the interest at 18% from 1.7.1989 to 6.3.1991 is not sustainable; that as per the service condition, the employee is bound to verify the entries made in his service register periodically and if the plaintiff had verified his service register, he could have got it countersigned by the then Registrar in office and the plaintiff is only responsible for the delay caused.

6. The defendant would further submit that there is no agreement for payment of interest and as such the plaintiff is not entitled for the interest as claimed in the suit; that the interest claimed is also an excessive one; that whenever the Provident Fund is being paid, 10% of the same will be retained for adjustment of any dues payable by the person who is to be paid the Provident Fund and it will be paid to the pensioner only after complete verification of his accounts by the Government Auditors and such being the case, the plaintiff is not entitled to claim for the sum of Rs.5,690.95 immediately nor is he entitled to the payment of interest; that in fact, the said sum of Rs.5,690.05 had been paid on 29.6.1992 to the plaintiff on the completion of the audit with interest of 12% and the plaintiff had not intimated the said fact to the Court by filing a memo. to that effect.

7. Regarding the claim of the defendant for damages of Rs.10,000/= stating that his research materials were found missing, the defendant would submit that those articles were restored to the plaintiff and the plaintiff had also written a letter to the Registrar on 18.8.1990 that he had settled the problem of the missing items with Dr. S. Manickam, Professor and then Head of the Department of School of Historical Studies and that his earlier letter dated 30.6.1990 had to be treated as cancelled; that the calculation memo. filed along with the plaint is erroneous. On such grounds, the defendant would pray to dismiss the suit with costs.

8. The plaintiff would also file a reply statement thereby denying all the allegations of the written statement and further submitting that the allegation of the defendant that no suit could be filed for recovery of interest alone in law is

not maintainable in view of Section 34(1) of the C.P.C.; that much after the plaint was filed, the defendant released the balance amount of Provident Fund to the petitioner on 2.7.1992 with 12% interest; that it is true that the plaintiff has addressed a letter to the Registrar on 18.8.1990, but the defendant by omitting a sentence in the said letter has conveyed a misleading impression and the omitted part of the letter by the defendant reads: "Hence, the said letter (dated 30.6.1989) with reference to Dr. S. Manickam may be treated as cancelled" since Dr. S. Manickam is not responsible for the missing of the items. Further repudiating the allegations of the defendants and justifying his averments in the plaint, the plaintiff would pray for the reliefs sought for in the plaint.

9. Based on the above pleadings, the trial Court would frame three issues and would conduct a trial wherein on behalf of the plaintiff, he would examine himself as P.W.1 for oral evidence and would mark seven documents for documentary evidence as Exs.A.1 to A.7. On behalf of the defendants, they would examine one witness for oral evidence as D.W.1 and would mark 12 documents for documentary evidence as Exs.B.1 to B.12.

10. In consideration of all the materials placed on record, the trial Court would dismiss the suit holding that the plaintiff produced the photographs to the concerned authority only on 21.9.1990 and he has not produced the 'No Dues Certificate' and other relevant particulars in time to the defendant and thus the plaintiff is only responsible for the delay caused.

11. Aggrieved, the plaintiff had preferred an appeal in A.S.No.239 of 1996 before the Court of Principal District Judge, Madurai and the said Court also after framing two points for determination, would arrive at the conclusion that the defendant University is only responsible for causing delay of furnishing 'No Dues Certificate' on time for sanctioning the pensionary benefits, but however regarding the claim of the plaintiff for loss of research papers, the Court below holding that if it is so, the plaintiff would have taken necessary steps for moving his personal things before his retirement period, would allow the appeal in part further dismissing the claim of the plaintiff regarding the compensation claimed by him for missing of the research papers. Aggrieved, the defendant in the suit would come forward to prefer the above Second Appeal on certain grounds as brought forth in the grounds of appeal and this Court has admitted the same for determination of the following substantial questions of law:

1. Whether such a claim for interest is sustainable in the absence of rules or agreement or usage or custom providing for the claim of such interest on the alleged delayed payment of provident fund, gratuity, commutation pension etc.?

2. Whether the claim of interest on the dues from the next day after the retirement without allowing even a reasonable time for settlement of dues is maintainable?

3. Whether the claim of interest at the arbitrary, exorbitant and excessive rate of 18% p.a. is sustainable in law especially in the absence of rules or agreement or

usage or custom providing for that rate of interest?

12. During arguments, the learned counsel appearing on behalf of the appellant, having elaborately gone into the facts and circumstances of the case, would ultimately submit that the delay had occurred only on account of the respondent having not complied with the requirements every now and then required such as 'No Due Certificate', supplying the photographs of himself and his wife etc. and the delay being contributory, the appellant University could not be solely held responsible for the delay so as to allow interest for such delayed payment. The learned counsel would also lay emphasis on the point that it is the University meant not only for promoting the education of the students, but also protecting the interest of the Lecturers and it is not a profit earning commercial concern and therefore the question of paying interest while settling the dues of its retired employees would not arise at all. On such arguments, the learned counsel for the appellant would seek to allow the above Second Appeal setting aside the judgment and decree passed by the lower appellate Court and restoring the judgment and decree of the trial Court.

13. In reply, the learned senior counsel appearing on behalf of the respondent, while justifying the judgment and decree passed by the lower appellate Court, would also cite a number of judgments for the proposition of interest on delayed payment, such as:

1. Dr. Uma Agrawal Vs. State of U.P. and Another,
2. State of Kerala and Others Vs. M. Padmanabhan Nair,
3. O.P. Gupta Vs. Union of India (UOI) and Others, .
4. R.R. Bhanot Vs. Union of India and others,
5. Baij Nath Gupta Vs. State of Bihar and Others,

14. So far as the first judgment cited above is concerned, the Apex Court, in consideration of all the other judgments cited above, has ultimately held:

"If rules/instructions which prescribe time-schedule for settling of retirement dues, are followed strictly, much of litigation can be avoided and retired government servants would not feel harassed. Pension is not a bounty but right of a government servant. Government is obliged to follow rules. Delay in settling retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too, there is a prescribed procedure. This indeed is unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind time-schedule prescribed in the rules/instructions, apart from other relevant factors applicable to a case."

15. In consideration of the facts pleaded by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the suit has been filed by the respondent herein for

recovery of a sum of Rs.58,581/= with interest at 12% p.a. for delayed payment of retirement benefits such as provident fund, gratuity, pension etc. It is relevant to point out that the plaintiff in the suit is the retired Professor of the defendant University and on termination of his service by the University on his attaining the age of 55 years, the plaintiff filed a writ petition before this Court and fought to the stage of Supreme Court and on an order passed by the Apex Court, he was reinstated into service on 6.4.1989 and his services were extended till the end of the academic year on 30.6.1989.

16. This suit filed before the Court of I Additional Subordinate Judge, Madurai having been dismissed by the judgment and decree of the said Court dated 23.4.1996, an appeal had been preferred by the plaintiff in A.S.No.239 of 1996 on the file of the Court of Principal District Judge, Madurai and the said Court having partly allowed the appeal, aggrieved, the University has come forward to prefer the above Second Appeal on certain grounds and the same has been admitted by this Court for determination of the substantial questions of law, extracted supra.

17. On facts, the lower appellate Court would arrive at the conclusion that not only from the oral evidence adduced but also on documents marked before the trial Court, an unreasonable delay had been caused in issuing the 'No Due Certificate' by the Registrar of the defendant/appellant University as a result of which the plaintiff was not able to get his retirement benefits and therefore calculating the arrears and the interest on the entire amount due from out of which excepting for a sum of Rs.10,000/= claimed as compensation for the missing of the research papers which are said to have been kept in his room, which is said to be kept under lock by the University, the other amounts from out of the total claim of Rs.58,581/= have been claimed as interest.

18. The first appellate Court finding that the delay caused on the part of the University in furnishing the 'no due certificate' was unreasonable, as a result of which the sanctioning of the pensionary benefits in favour of the respondent became unduly delayed and further relying on the Apex Court judgment reported in State of Kerala and Others Vs. M. Padmanabhan Nair, , has arrived at the conclusion to hold granting the decree in favour of the respondent herein as prayed for. However, the first appellate Court did not agree with the respondent claiming Rs.10,000/= from out of the total claim amount of Rs.58,581/= as damages for the missing of his research papers kept in his room, which was kept under lock by the University, since, on facts, according to the lower appellate Court, that part of claim was not substantially proved on the part of the respondent herein and therefore would not agree to grant the said amount of Rs.10,000/=, but allowing the other amounts as prayed for in the suit.

19. For such a conclusion to be arrived at, the lower appellate Court has not only traced the whole history of the case as pleaded by parties, but also had its own discussions on points framed in the light of the evidence placed on record from out of which the lower Court was able to arrive at the conclusion that the 'no

due certificate" after a prolonged struggle and battle only the respondent was able to obtain from the Registrar of the University only on 17.7.1990 and such evidence having come to be abundantly proved according to the lower appellate Court, even through D.W.1 who would admit that the University was responsible for causing the delay in furnishing the `no due certificate" and other connected papers, the first appellate Court has reason to arrive at the conclusion to hold that it was only on account of the inordinate and unexplained delay caused on the part of the appellant University and that the payments of pensionary benefits had been delayed to the extent alleged in the suit and would decree the suit so far as that portion of the claim is concerned as prayed for with 12% interest.

20. Coming to the substantial questions of law as framed by this Court, all the three substantial questions of law would be focussed on the interest factor and since as it has already been held that the first appellate Court has, on facts, arrived at the right conclusion to hold that the delay was caused only on the part of the University Registrar, it is only the interest part of the case on which the above second appeal has been admitted needs to be answered.

21. The law of interest is covered by Section 34 of the CPC categorising interest under three heads (i) interest accrued prior to the suit on the principal sum adjudged, (ii) interest on the principal sum adjudged from the date of the suit till the date of the decree and (iii) further interest on the principal sum adjudged from the decree till the date of payment. It is relevant to note that interest up to the filing of the suit is a matter of substantial law, which is not covered u/s 34 of the C.P.C. at all and such interest pendente lite is within the Court's discretion.

22. It is further embodied in the Section that interest on the principal amount adjudged from the date of the decree to the date of payment cannot be allowed at a rate higher than 6% p.a.; that future interest exceeding 6% p.a. can be granted if the liability adjudged has arisen out of commercial transaction but in no event can it exceed the contractual rate of interest and if contractual rate of interest is not established, the Court may grant interest at a rate allowed by the Nationalised Banks in commercial transactions.

23. From the above principles enunciated with the subject of interest, it is clear that interest up to the date of the suit is a matter of substantial law and the same is not covered u/s 34 of the CPC and the interest pendente lite is within the Court's discretion and interest after the decree to the date of payment cannot be allowed at any rate higher than 6% p.a.

24. Therefore, the paramount consideration of this Court in the decree ordered by the first appellate Court allowing the suit as prayed for excepting for the claim of Rs.10,000/= as damages is concerned, though the lower appellate Court has perfectly right in its perception on interest being allowed to be claimed on the delayed payment of the retirement benefits of the respondent on account of the undue or unexplained delay caused on the part of the defendant University authorities to grant the `no due certificate", the limited question that is to be

answered by this Court on interest is `whether the lower Court is justified in granting the same quantum of interest as claimed on the part of the respondent/plaintiff regarding the remaining sum claimed in the suit?"

25. From the `particulars of claim" submitted by the respondent/plaintiff along with the plaint, it comes to be known that he has calculated the interest at 18% p.a. for the arrears of his retiral benefits, which is excess than what it could be in the normal circumstances and hence this Court is of the firm view that 18% interest calculated on the retirement benefits by the plaintiff is unreasonable and in the circumstances of the case, it would be reasonable only to grant the interest at the rate of 9% p.a. instead of 18% as calculated and claimed on the part of the plaintiff.

26. The lower appellate Court has granted 12% further interest from the date of suit till the date of realisation which should also be only at 9% p.a. till the date of decree and thereafter at 6% p.a. till the date of payment, which is only permitted in the normal course by law. Therefore, the decree passed by the first appellate Court is modified to the extent indicated above.

In result, the above second appeal is allowed in part. The decree and judgment of the lower appellate Court is modified to the extent indicated in the preceding paragraphs. In all other respects, the above second appeal stands dismissed.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, C.M.P.Nos.17735 of 1998 and 12951 of 2001 are closed.