(2010) 02 CHH CK 0028

In the Chhattisgarh High Court

M.P. Hospital Supply Company — APPELLANT

Vs

Municipal Corporation — RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34, 96

Citation : (2010) 3 MPHT 32

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.K. Agarwal, J.—This first appeal u/s 96 of the CPC arises out of the judgment and decree passed by 5th Additional Judge to the Court of District Judge, Raipur in Civil Suit No. 12-B/90 whereby and whereunder decree has been passed against the respondent directing respondent to pay Rs. 36,060.50 along with interest at the rate of 6% per annum from the date of institution of the suit till its realization.

2. Shri Dhote, learned Counsel for the appellant would submit that learned Court below has erred in awarding interest from the date of filing of the suit till realization of the decretal amount at the rate of 6% only. He would further contend that transaction being commercial transaction, learned Court below ought to have awarded interest at the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions, as provided under proviso to Section 34 of the CPC. Reliance has been placed by Shri Dhote upon the judgment of Supreme Court in case of C.K. Sasankan v. Dhanalakshmi Bank Ltd. reported in 2009 AIR SCW 5090.

3. Per contra, Shri H.B. Agrawal, learned Sr. Advocate, appearing for the respondent would submit that in the absence of any specific evidence, learned Trial Court has rightly granted interest at the rate of 6% pendente lite and for post decree period.

4. I have heard learned Counsel for the parties and perused the impugned judgment and decree.

5. The question arises for determination of the Court in the instant case is whether learned Trial Court has erred in granting interest u/s 34 of CPC at the rate of 6% per annum pendente lite and for post decree period.

6. In order to appreciate the legal position, it would be appropriate to reproduce Section 34 of the CPC which reads thus :

34. Interest.-- (1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the dale of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I:-- In this Sub-section "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II:-- For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

7. Under the aforesaid section, grant of interest from the date of filing of the suit till the date of decree and thereafter till realization is in the discretion of the Court, which is clear from the use of word "may" and grant of interest in exercise of its discretion by the Court cannot be lightly interfered unless it is shown that learned Court below has exercised its jurisdiction arbitrarily and in ignorance of sound legal principles of law. u/s 34 of the CPC normal rule is to grant interest at the rate of 6% and grant of interest exceeding 6% is an exception.

8. Supreme Court in case of C.K. Sasankan (supra), has observed in Paras 8 and 9 as under:--

8. The quantum and the rate of interest which the respondent in the present

case is entitled to would be in accordance with the provisions of Section 34 of the Code. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount. It is needless to point out that although the amount of interest from the date of filing of the suit till the date of the decree and thereafter till realisation is in the discretion of the Court as is confirmed by the use of the word "may" but, such a discretion has to be exercised by the Court properly, reasonably and on sound legal principles and not arbitrarily and while doing so the Court is also to consider the parameters, scope and ambit of Section 34 of the Code.

9. The aforesaid scope and ambit of of Section 34 of the Code has been the subject of discussion in many cases of this Court. We are inclined to refer to the decision in Clariant International Ltd. and Another Vs. Securities and Exchange Board of India, , where it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory. It was further held that in the absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the Courts of law can take judicial notice of both inflation as also a fall in the bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case, reference was made to the decision in Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, and United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., and it was observed that even in cases of victims of motor vehicle accidents, the Courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable. Direction to pay such a rate of interest is also found to be reasonable and fair as the plaintiff was deprived to utilise and roll its money in commercial transaction and kept out of it due to wrongful withholding of the same by the defendant.

9. In the light of the aforesaid law laid down by the Supreme Court, if in its discretion the Trial Court has awarded interest at the rate of 6% per annum which has not been shown to be arbitrary or illegal or in ignorance of the circumstances established by the appellant justifying to exercise equitable jurisdiction in awarding interest at the rate in excess of 6% per annum, then it cannot be said that learned Court below has committed any illegality in awarding interest at the rate of 6% per annum.

10. No other point has been raised by the learned Counsel for the appellant.

11. For the foregoing, I do not find any substance in the appeal preferred by the

appellant. The same deserves to be and is hereby dismissed.

