
(2012) 06 MP CK 0038
In the Madhya Pradesh High Court
Case No : First Appeal No. 499 of 2005

M.P. State Electricity Board	Vs	APPELLANT
M/s. Krishna Electrical Industries Ltd.		RESPONDENT

Date of Decision : 22-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34, 34(1)
Negotiable Instruments Act, 1881 (NI) — Section 79, 80

Citation : (2012) 06 MP CK 0038

Hon'ble Judges : Anil Kumar Sharma, J

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; Prashant Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sharma

1. This first appeal has been preferred by the appellant/defendant u/s 96 of CPC against the judgment and decree dated 13/07/2005 passed in Civil Suit No. 1-B/2004 by learned Third Additional District Judge, Gwalior. The brief and admitted facts of the case are that respondent/plaintiff has supplied some electrical goods (Conductors) to the appellant/defendant company and appellant/defendant instead of making the instant payment, executed a promissory note for every bill to be paid on a future date after a period four years including the amount of interest as mentioned in the promissory note.
2. As the appellant/defendant has failed to make the payment of amount mentioned in the promissory note on due date and same has been paid after a delay of 6 months, the respondent/plaintiff has filed a suit for interest for the delayed period at the rate as mentioned in the promissory note on the total amount mentioned in the promissory note.
3. Learned trial Court has decreed the suit and ordered for payment of interest as claimed by the respondent/plaintiff.

4. The only objection or question raised by the appellant/defendant is that since the amount mentioned in the promissory note include the cost of goods supplied and interest thereon, therefore, on the amount of interest, plaintiff is not entitled to get any further interest. At the most, plaintiff is entitled to interest on the original amount of goods.

5. Learned counsel for the plaintiff has drawn attention of this Court towards the provision of Section 79 of the Negotiable Instrument Act, 1881 (for short "the Act") which reads as under:-

79. Interest when rate specified.- When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the court directs.

6. Section 79 of the Act relates to interest payable on principal money due on the promissory note. This provision cannot be applied where interest is to be calculated for delayed payment on the amount of promissory note. Since the appellant has executed a promissory note, in lieu of nonpayment of the amount of goods purchased from the respondent/plaintiff, the amount of promissory note itself become the principal amount though it already include the interest on price of goods, therefore, the interest is to be calculated on the whole amount of promissory note, which has become principal amount, at the rate of interest which was agreed between the parties while executing the promissory note because the interest is awarded on the amount of promissory note by way of compensation for non-payment of amount on due date. Thus, learned trial Court is justified in awarding the interest on whole amount of the promissory note.

7. Learned counsel for the appellant has also challenged the rate of interest awarded after filing of the suit till its realization which is 18% per annum. He has drawn attention of this Court towards the Section 34 of CPC which makes a provision for payment of interest in a money decree at the rate of 6% per annum. But proviso to Section 34(1) makes it clear 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.

8. Learned counsel for the respondent has drawn attention of this Court towards the provisions of Section 80 of the Act which reads as under:-

80. Interest when no rate specified.- When no rate of interest is specified in the instrument, interest on the amount due thereon shall, (notwithstanding any agreement relating to interest between any parties to the instrument), be calculated at the rate of (eighteen per centum) per annum, from the date at

which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

9. Considering both these provisions of Sections 79 & 80 of the Act, it is clear that Section 34 of CPC makes a provision for calculation of interest at the rate as agreed between the parties. Section 80 of the Act also makes a provision for payment of interest at the rate of 18 per cent per annum notwithstanding any agreement relating to interest between any parties to the instrument.

10. Learned counsel for the appellant/defendant has cited the judgment of Hon. Apex Court in the matter of State of Haryana and Others Vs. S.L. Arora and Company, in which it has been held that in a arbitration matter, the arbitration tribunal can exercise discretion to grant interest for pre-award period only in absence of agreement between parties. However, arbitrator has absolute discretion to grant post-award interest. It is further held that the purpose of awarding high rate of interest is to act as deterrent to award-debtors from avoiding payment or using delaying tactics.

11. Considering this analogy of Hon. Apex Court, the amount of interest at the rate of 18% per annum as awarded by learned trial Court cannot be said to be arbitrary as it is according to provisions of Section 34 of CPC and Section 80 of the Act. Resultantly, the appeal fails and is hereby dismissed. The appellant to bear his costs as well as of respondent. Counsel fee as per schedule, if pre-certified.