
(1998) 02 KAR CK 0030

In the Karnataka High Court

Case No : Regular First Appeal No. 283 of 1988

M/s. Meenakshi Pharma Distributors, Bangalore

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34, 80, 96
Constitution of India, 1950 — Article 14, 21, 39, 41, 43

Citation : AIR 1999 Kar 192 : (1999) 2 KarLJ 164

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Krishna Kumar for Sri S.V. Raghavachar, for the Appellant; Sri M.H. Ibrahim, Govt. Pleader, for the Respondent

Judgement

1. Heard the learned Counsel for the appellant Sri Krishna Kumar and the learned Government Pleader Sri M.H. Ibrahim.

2. The question in the appeal is very short one and it is to the effect whether the Trial Court acted according to law in awarding interest at the rate of 6% per annum from the date of suit till the date of its realisation particularly when according to the case of the appellant, it is admitted position that the rate of interest was agreed and has been found to have been agreed at 15% p.a. This appeal arises from the judgment and decree dated 18-8-1987 passed by Sri K.R. Prasada Rao, XIV Additional City Civil Judge, Bangalore, in Original Suit Nos. 766 of 1977 and 1883 of 1980. The Trial Court decreed the suit for the sum as claimed in the plaint of to the tune of Rs. 1,27,119-05 ps. with costs and with interest at the rate of 6% on the principal balance amount of Rs. 56,969-05 ps. from the date of suit till the date of realisation. On the basis of the pleadings of the parties, the Trial Court framed the following issues.-

1. Whether the plaintiff supplied drugs and specialities worth of Rs. 1,27,119-05 ps. to the various authorities under the control of the 3rd defendant?

2. If so, whether the defendants are still due a sum of Rs. 56,969-05 ps.?
3. Whether the plaintiff is entitled for interest at 15% p.a. on the amount outstanding as pleaded at para 6 of the plaint?
4. Whether the tetracycline drug supplied by the plaintiff was seized under the orders of the 5th defendant, without properly analysing the same? If so, whether the plaintiff is entitled to recover the value of the same?
5. Whether the suit is not maintainable?
6. Whether the suit is barred by time?
7. Whether the suit is bad for non-compliance of Section 80 of the CPC?
8. To what reliefs are the parties entitled?

3. The Trial Court answered issues No. 1 to 3 in affirmative. It held that the suit to be maintainable and it further found that the suit was not barred by time. The Trial Court further found that suit was not bad as alleged for non-compliance of provisions of Section 80 of the CPC. Dealing with issue No. 4, the Trial Court found that as the defendants have not claimed deduction of specific amount by way of value of the said drug i.e., tetracycline drug and defendants have not disputed the quality of said drug supplied by the plaintiff to the various hospitals of the defendant and so decision on that issue does not arise. As regards rate of interest, the Trial Court found that there was an agreement between the parties as per Ex. P. 58 and Ex. P. 3 that, if the payment is delayed beyond the period of 30 days, interest shall be payable at the rate of 15% and so it held plaintiff to be entitled to the interest claimed in the suit at the rate of 15% per annum till the date of suit. After having recorded its findings, the Trial Court decreed the suit as mentioned earlier. The plaintiff has come up in appeal u/s 96 of the Code of Civil Procedure. No cross-appeal or cross-objections has been filed on behalf of the defendants.

4. The only question that has been raised before me by the learned Counsel for the appellant for consideration is, as to whether the plaintiff was entitled to the interest at the rate of 15% per annum for the period from the date of suit till the date of realisation in view of the finding of the Trial Court that agreement for payment of interest at the rate of 15% has been established. Learned Counsel for the appellant contended that once an agreement has been arrived at that the interest shall be payable at the rate of 15% per annum in case of default of payment beyond 30 days. So whether the money is paid before the decree or after the decree, the plaintiff is entitled to interest at the rate of 15% per annum. Learned Counsel for the appellant contended that decree is in itself the money decree. Even after the decree it is not paid it means that there is delay in payment on his part. As such, the learned Counsel contended that there was no good ground for the Trial Court, while decreeing the suit to have reduced the rate of interest from the agreed 15% to 6%. Learned Counsel contended that in view of the finding on issue No. 3 that the defendant had agreed to pay interest at

15% per annum on delayed payments beyond 30 days. Plaintiff-appellant has been entitled to grant of interest at the rate of 15% per annum.

5. These contentions of the learned Counsel for the appellant have been hotly contested by the learned Government Pleader Sri M.H. Ibra-him. Sri Ibrahim contended that interest upto the date of suit awarded is at 15% per annum and there cannot be any dispute to it's being claimed at the rate of 15%. But the plaintiff cannot be said to be entitled to claim interest at the rate of 15% per annum when there is a dispute about the payment or about the amount due and that Court has to decide that case whether the amount as claimed as in arrears is correct or incorrect. The rate of interest as agreed may not apply, but the provision of Section 34 of the CPC may be applicable. It is the discretion of the Court to award in future or not. It is also open to the Court while awarding the interest to fix the rate which it thinks fit. No doubt, learned Counsel contended that discretion has to be exercised judiciously and not arbitrarily. The discretion has to be exercised in a rational manner. Learned Government Pleader submitted that the claim of interest at 15% per annum for the period during the suit is really exorbitant and Court could not give it.

6. In reply to the contentions of the learned Government Pleader, my attention has been invited to proviso to Section 34 by the learned Counsel for the appellant Sri Krishna Kumar. Sri Krishna Kumar contended that the Court may award interest at the rate more than 6%, but not exceeding the contractual rate. Appellant's Counsel contended that section gives discretion to the Court to award interest to the extent of agreed or contractual interest. Learned Counsel contended that this proviso has been introduced in 1976 and in such circumstances, this Court may be pleased to award interest at the rate higher than 6% per annum, but shall not exceed the contractual rate of interest. .

7. I have applied my mind to the contentions of the learned Counsel for the parties.

Section 34 of CPC reads as under:

"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 date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(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:

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".

8. A reading of Section 34 per se reveals that at the time of passing of decree, the Court has been given jurisdiction and discretion to award reasonable interest payable on the principal sum with reference to the period i.e., from the date of suit till the date of decree as well as it provides interest not exceeding 6% from the date of decree till the date of payment. Thus Section 34 confers power on the Court that so far as awarding of interest during the pendency of the case is concerned, it may award reasonable interest for the period from the date of suit till the date of decree and from the date of decree till the date of payment not exceeding 6% per annum. This is general principle of law. But so far as interest accrued prior to the filing of the suit is concerned, the Court is not entitled to deduct or reduce the interest for period from the date of transaction till the date of suit and the interest at the agreed rate should be given or awarded. Proviso to Section 34 provides an exception to provision i.e., main principle may not apply. The function of the proviso is that the proviso to a particular provision of statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. In the case of *R.N. Sons Limited v Assistant Sales Tax Commissioner*, Hon"ble Bhagwati, J., observed as under:--

"It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other",

It is one of the principles of interpretation of the proviso that proviso may be considered in relation to the matter to which it stands to be a proviso. It has been held in the case of *R.N. Sons Limited*, supra, that,

"there is no doubt that sometimes proviso may itself amount to substantive provision".

In the present case whether the proviso is taken to be an exception to the main clause of Section 34 or it is taken as substantive provision has to be decided. It provides that where the liability in question has arisen out of the commercial transaction, the rate of interest may exceed six per cent, but shall not exceed the contractual rate of interest and if there is no contractual rate, it will not exceed the rate at which the moneys are lent or advanced by nationalised banks in relation to commercial transactions. This provision may be read as an exception to principal clause u/s 34. The rate of interest as may be awarded is not to exceed beyond six per cent in case of ordinary transaction; while Trial Court decrees the suit; for the period from the date of decree till the date of

payment. But exception is carved out with reference to the commercial transaction, that in respect of commercial liabilities i.e., liabilities arising out of commercial transactions the rate of interest may be more than six per cent limit. It permits the awarding of interest at a rate higher than six per cent. But the outer limit has been put i.e., the rate agreed. The second explanation to Section 34 defines what is commercial transaction and it provides.

"For the purpose 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".

This definition of the commercial transaction has to be taken in conjunction with the person against whom the liability has arisen. The person who has incurred the liability is not the person who is the claimant of the money or interest. It means when we have to judge the commercial transaction, it has to be looked into whether the person incurring the liability under the transaction has incurred the liability in context of trade or business or industry. The respondent in this case purchased medicines from the plaintiff-appellant and incurred the liability for sums claimed. In ordinary course, Government purchases medicines for being distributed among the Government Hospitals. In Government Hospitals, the medicines are provided to the ordinary people, common people as well as to those who are downtrodden and for the betterment of the people. By examining the nature of transaction it cannot be said to be connected with any industry, trade or business of the party who has incurred the liability and cannot be said to be commercial transaction as the Government's Health Department purchased the same to supply the medicines to various Government Hospitals for the benefit of citizens and to be provided to common persons subjected to various ailments.

9. Therefore, in my opinion, this transaction cannot be termed as a commercial transaction. In this view of the matter, the proviso of Section 34 will not be applicable to the present transaction because when the medicines have been purchased by the Government, it is nobody's case that they were purchased to sell. It is no doubt that Government purchases medicines to provide them to the Government Hospitals for the welfare of the people as it is the duty and responsibility of the Government to ensure public health i.e., the duty of the State under the Constitution of India. It is one of the duties of the State as per the directive principles under the Constitution as per Article 39 to secure the health and strength of workers, men and women, and of the tender age of children. Article 47 also casts a duty on the State that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. It is one of the fundamental duties of the State to provide medical aid to the poor, weaker sections of the society, men, women and children when they so require the assistance of the Government Hospitals. In order to discharge that obligation, the State purchases the medicines from concerned firms. So the transaction of purchase of medicines by the Government for providing those medicines to the

hospitals so that needy persons may get medicines to get rid of their ill health, in my opinion, such transactions cannot be termed to be commercial transaction. Their Lordships of the Supreme Court in the case of Consumer Education and Research Centre v Union of India, has laid the law in the context of Articles 21, 39, 41, 43 and 47 on the question of right of health and protection thereof as integral facet of right to life and the obligation imposed and duty cast on the State, be it Union of India or the Government of a State. It will be appropriate and much in tune refer and quote their Lordships' observations in the context of the question arisen before the Court for consideration. Their Lordships observe as under:-

"The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependents should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution. Facilities for medical care and health against sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a fundamental right

under Article 21 read with Articles 39(e), 41, 43, 48A and all related to Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person".

10. Thus considered in my opinion, the transaction in question cannot be said to be a commercial transaction. So the case cannot be said to be covered by proviso. Section 34 mandates that reasonable and proper interest may be awarded on the principal sum from the date of suit till the date of decree and a further interest can also be awarded not exceeding 6% per annum from the date of decree till the date of payment. The intention of the legislation appears to be that 6% is to be taken to be a proper rate of interest and it is the discretion of the Court to award interest for the period from the date of suit till the date of payment. The maximum limit of interest is prescribed at 6% per annum statutorily by the legislature. Therefore, it cannot be said that the interest which has been awarded from the date of suit till the date of payment is illegal. Learned Counsel contended that nowadays Banks are giving higher rate of interest than 6% per annum. So 6% is too low. There may be substance in the contention of the learned Counsel. But if it is too low, it is for them or their representative to raise that issue in the legislature and get that enhanced from 6% per annum. Till this section is unamended, the higher limit of interest is 6% and the Trial Court, as such, could not award any interest for the period from the date of suit till the date of decree or till the date of payment at a rate higher than 6% per annum. Its limit of jurisdiction has been limited to 6%. Therefore, in my opinion, the Trial Court's decree awarding interest at the rate of 6% per annum from the date of suit till realisation cannot be said to be illegal nor it is said to suffer from error of law or jurisdiction.

The appeal, as such, appears to be devoid of merits. It is hereby dismissed. The costs are made" easy i.e., parties to bear their own costs.