

(2019) 07 SHI CK 0078

In the High Court Of Himachal Pradesh

Case No : Original Side Appeal No. 4001 Of 2013

Om Prakash Sharma

APPELLANT

Vs

Himachal Pradesh Tourism Development Corporation

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Limitation Act, 1963 — Section 19
Indian Contract Act, 1872 — Section 73
Madras Port Trust Act, 1905 — Section 110
Code Of Civil Procedure, 1908 — Section 144
Limitation Act, 1963 — Article 18
Constitution Of India, 1950 — Article 136

Citation : (2019) 07 SHI CK 0078

Hon'ble Judges : Tarlok Singh Chauhan, J;Anoop Chitkara, J

Bench : Division Bench

Advocate : J.S. Bhogal, Tarunjit Singh Bhogal, G.D. Verma, B.C. Verma

Final Decision : Allowed

Judgement

///

Tarlok Singh Chauhan, J",,,,

1. The plaintiff is the appellant, who aggrieved by the judgment and decree passed by learned Single Judge on 10.01.2013 in Civil Suit No. 22 of 2004",,,,

whereby the suit filed by him came to be dismissed, has filed the instant Original Side Appeal.",,,,

2. The plaintiff filed a suit for recovery of a sum of Rs. 22,00,000/Â along with interest at the rate of 18% per annum from the date of filing of the suit",,,,

till its realization on the allegation that he was a Class â??Aâ?? Contractor and was awarded the construction work of Yatri Niwas (PhaseÂII),,,,

Dharamshala. A formal agreement with respect to the same was executed

between the parties. The plaintiff executed the said work well within time,,, and to the satisfaction of the defendant and the final bill of the plaintiff was released only on 21.5.2001. The plaintiff had also raised a claim for,,, escalation under Clause 10 CC of the agreement but the same was not released to him alongwith the final bill. Even though the same was prepared by,,, the Assistant Engineer, HPTDC, Dharamshala in consultation with the plaintiff and thereafter forwarded to the Superintending Engineer vide letter",,,, dated 20.10.1999 for an amount of Rs.21,32,119/=. The same was checked by the office of Superintending Engineer for an amount of",,,, Rs.18,79,871/=. It was averred that in terms of the agreement the final authority to decide the amount of compensation payable under Clause 10 CC",,,, was the Superintending Engineer, but the amount was illegally detained by the defendant even after the same had been approved by the competent",,,, authority for payment to the plaintiff.,,,

3. It was further averred that besides the aforesaid amount, a sum of Rs.1,00,000/= has also been detained by the defendant on account of the security",,,,

and, therefore, the plaintiff is also entitled for release of the same since the work had been satisfactorily completed. It was lastly averred that despite",,,,

oral requests made on several occasions by the plaintiff to the defendant for release of the amount the same was wrongly withheld, the plaintiff is",,,,

entitled to interest at the current commercial rate of 18% per annum from the date when the amounts became due till its realization. The plaintiff,,,

claimed the following amounts:,,,

A Amount of Escalation as passed under clause 10 CC : Rs.18,79,871/-",,,,

B Security : Rs. 1,00,000/-",,,,

C Costs of notice. : Rs. 1,100/-",,,,

D Interest @ 18% from 18.5.2001 : Rs. 10,69,130/-",,,,

Total: Rs.30,50,101/-",,,,

However, the plaintiff categorically gave up a part of his claim for pre-suit interest and restricted his claim to Rs.22,00,000/= as is evident from para",,,,

10 of the plaint.,,,

4. The defendant contested the suit by filing written statement wherein preliminary objections were raised to the effect that the plaintiff had not,,,

submitted any claim or bill for escalation under Clause 10 CC etc. of the agreement for which he has inter alia claimed the payment in the present suit,",,, as such, the suit was not maintainable and deserves to be dismissed. The other objection raised by the defendant was with regard to the maintainability",,, of the suit in view of the arbitration clause contained in the agreement entered into between the parties. Lastly, an objection was raised that since the",,, plaintiff had accepted the full and final payment without any objection or reservation long ago on 7.1.2000, therefore, he cannot agitate or dispute the",,, matter at this belated stage and the suit was barred by limitation and was not maintainable.,,,

On merits, the preliminary objections so raised were elaborated, yet it was further averred that the plaintiff was required to complete the work within",,, one year i.e. before 2.12.1997. However, the same was delayed considerably by the plaintiff and was completed only on 15.4.1999. After acceptance",,, of measurements by the plaintiff and completion of required formalities, the full and final payment was made to the plaintiff on 7.1.2000 which was",,, accepted by him without any reservation or objection.,,,

5. As regards the escalation bill, it was averred that the Assistant Engineer, Dharamshala vide his letter dated 20.10.1999 had only assessed the",,, tentative and provisional liability which was further verified by the Superintending Engineer of the Corporation and, therefore, the plaintiff cannot claim",,,

any payment on the basis of the said assessment of liability. As regards the security amount of Rs.1,00,000/Â, it was averred that this amount of",,,

refundable security to the plaintiff had been detained by the defendant as the plaintiff despite repeated requests had not furnished the proof of",,,

clearance of his liabilities towards the deposit of CPF with the competent authority in respect of the employees engaged by him for the work executed,",,

by him for the defendant. The plaintiff having failed to furnish the CPF clearance certificate from the competent authority was not entitled to the,",,

security amount till such payment was cleared. The defendant accordingly prayed for dismissal of the suit.,,,

6. The replication to the written statement was filed by the plaintiff wherein the averments made in the plaint were reiterated and reaffirmed, while",,,

those in the written statement were denied. As regards the preliminary objection No.1, it was averred that the bill for the price escalation was duly",,,

prepared by the staff of the defendant as per the practice in the office of the defendant and the counter-signatures of the contractors are obtained,,,

thereupon at the time of making the payment.,,,

7. As regards the preliminary objection No.2, it was averred that since the work was completed and the final payment for the same was made to the",,,

plaintiff on 21.5.2001 when the price escalation was also admissible but was not paid, therefore, the arbitration clause would not come into operation",,,

and the same would otherwise come into operation only when there is no dispute relating to the price escalation as the bill for the same had been,,,

checked in the office of the Superintending Engineer of the defendant.,,,

8. Insofar as the preliminary objections No.3 and 4 relating to the suit being time barred, it was averred that the final payment was accepted by the",,,

plaintiff on 7.1.2000 and, therefore, the suit was well within the period of limitation. As observed, the other allegations in the written statement on",,,

merits were denied and corresponding averments made in the plaint were reiterated.,,,

9. On the pleadings of the parties, the following issues came to be framed on 4.3.2005:",,,

1. Whether the plaintiff is entitled to the suit amount as alleged? OPP,,,

2. Whether the plaintiff is entitled for future interest at the rate of 18% per annum? OPP,,,

3. Whether the suit is not maintainable in view of the arbitration agreement between the parties? OPD,,,

18., "For the price of work done by the plaintiff for the defendant at his request, where no time

has been fixed for payment.", "Period of Limitation is

three years.", "When the work

is done.

to be ascertained.â??,,,

23. It was further held by the Honâ??ble Supreme Court in para 32 as under:,,,

â??32. To summarize: A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in praesenti or in futuro;",,,

debitum in praesenti, solvendum in futuro. But a sum payable upon a contingency does not become a debt until the said contingency has",,,

happened?|..â??,,,

24. Blackâ??s Law Dictionary defines â??debtâ?? as under:,,,

1. Liability on a claim; a specific sum of money due by agreement or otherwise.,,,
2. The aggregate of all existing claims against a person, entity, or state." ,,,
3. A nonÂ?monetary thing that one person owes another, such as goods or services." ,,,

25. From the aforesaid exposition of law, we are of the considered view that the money which is sought to be recovered by the plaintiff for the work" ,,,

done must be held to be a liability to pay an amount as per the contract and, therefore, a debt." ,,,

Section 19 is comprehensive to include every situation where the financial liability is ascertained.,,,

26. Adverting to the impugned judgment, it would be noticed that the learned Single Judge took note of the limitation as prescribed under Article 18" ,,,

without considering Section 19 of the Limitation Act and held the suit to be time barred. While reaching at such a conclusion, it relied upon the" ,,,

judgment of Punjab and Haryana High Court in Jullundur Improvement Trust vs. Kuldip Singh 1984 AIR (Punjab) 185 where the Court held that the" ,,,

starting point of limitation for an agreement for construction of work would be three years from the time when the work was completed. It further" ,,,

held that receipt of payment therefor was irrelevant.,,,

27. However, it would be noticed that there was no specific consideration of the effect of Section 19 in the said judgment and, therefore, the same" ,,,

could not have been applied.,,,

28. This fact has been duly noted by another learned Single Judge of the Punjab and Haryana High Court in SAO No. 81 of 2011 (O&M), decided on" ,,,

13.12.2013 in case titled Unitech Ltd. vs. M/s Prem Builders India and others, wherein the point of law for consideration like in the instant case was" ,,,

whether a suit for money for remuneration for work done amounts to a suit for enforcement of debt and consequently payment in writing will extend" ,,,

the period of limitation under Section 19 of the Limitation Act.,,,

29. While answering the question in affirmative, the earlier judgment of that Court in Ram Lal Jainâ??s case (supra) was distinguished in the" ,,,

following manner:,,,

6. The counsel for the petitioner brings to me a judgment of this Court in Jullundur Improvement Trust vs. Kuldip Singh 1984 AIR (Punjab) 185,,,

where the court was holding that the starting point of limitation for an agreement for construction of work would be three years from the time when,,,

the work was completed. The Court was holding that receipt of payment thereof was irrelevant. There was no specific consideration of the effect of,,,

Section 19 in the said judgment and I will not therefore find any reason to apply the said judgment.â??,,,

And it was thereafter held:,,,

7. The money which is sought to be recovered by the plaintiff for the work done must be taken as a liability to pay an amount as per the contract,,,

and therefore a debt. Section 19 is comprehensive to include every situation where the financial liability is ascertained. To persist with the second,,,

appeal against the order is frivolous. I find it to be an excuse not to pay the amount due under the contract. The second appeal against the order of the,,,

court below is dismissed with exemplary costs of Rs.3,500/Â? Counselâ??s fee Rs.5,000/Â?â??" ,,,

30. We see no reason to take a different view from the one taken by the learned Single Judge of Punjab and Haryana High Court in Unitech Ltd.,,,

(supra). Consequently, the findings on issue No.5 as recorded by learned Single Judge, are liable to be setÂ?aside. Ordered accordingly." ,,,

ISSUE NO. 3:,,,

31. Issue No.3 has already been decided by the learned Single Judge against the defendant and admittedly the said findings have attained finality as,,,

the defendant has not chosen to file separate appeal or crossÂ?objections questioning the same.,,,

ISSUES NO. 4 & 6:,,,

32. Now, advertng to the findings rendered on issue No.6; the onus to prove this issue was upon the defendant, who in order to prove its case" ,,,

examined Pyara Singh Thakur as DWÂ1, who stated that even though the work was required to be executed within one year, however, the plaintiff" ,,,

took three years for its completion. He further stated that the plaintiff did not make any representation for enhanced payment on account of costs,,,

escalation. However, in his crossÂ?examination, he admitted that on reporting of execution of a work, the Junior Engineer concerned used to measure" ,,,

the work done on the spot and enter the same in the measurement book and thereafter, prepare the final bill. He also admitted that the signature of the",,, contractor used to be obtained in token of his acknowledgement with respect to correct measurement of the work. He further admitted that the",,, defendant did not submit any bill either on his pad or letter head or in any bill form and rather it was the Junior Engineer, who prepared one bill for the",,, work and another for escalation in the costs of material and wages of labours. The witness also admitted that the bill was sent to the head office. It",,, has come on record that it was the Managing Director of the defendant, who failed to take a decision on the bill by neither rejecting it nor accepting",,, the same. In such circumstances, it could not be said that the plaintiff had not made any claim under Section 10 CC of the agreement and the contrary",,, findings recorded by learned Single Judge on this issue is therefore, liable to be setÂ?aside. Ordered accordingly.",,,

33. Adverting to issue No.4, it would be noticed that there is nothing on record to even remotely suggest that the plaintiff had accepted the full and",,, final amount without any objection or protest, so as to disÂ?entitle him to claim a sum of Rs. 18,79,871/Â? on account of escalation.",,,

34. In the present case the defendant is H.P. Tourism Development Corporation, which is a public authority. It does not lie to the public authority like",,, the defendant raising such plea to deprive a just claim of the plaintiff, though the suit is within time depriving just claim of the plaintiff.",,,

35. We make it clear that even though a public authority is not prohibited from raising such a plea and the Court is otherwise duty bound to decide",,, such plea when raised, but such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim of the",,, plaintiff is not well founded and by reason of delay in filing a suit, the evidence for the purpose of resisting such a claim has become unÂ?available.",,,

36. In Urban Improvement Trust, Bikaner vs. Mohan Lal (2010) 1 SCC 51,2 it was observed that it is a matter of concern that such frivolous and",,, unjust litigations by Governments and statutory authorities are on the increase. It was further observed that statutory authorities which existed for to",,, discharge statutory functions in public interest should be responsible litigants and cannot raise frivolous and unjust objections nor act in a callous and",,, highÂ?handed manner. It would be apposite to refer to the relevant observations, which reads thus:",,,

5. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

6. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

7. In *Dilbagh Rai Jarry vs. Union of India* [1974 (3) SCC 554] where the Honâble Supreme Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court (*P.P. Abubacker vs. Union of India*, AIR 1972 Ker 103, AIR pp. 107-108, para 5]): (SCC p.562, para 25),

25. "The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because

of the large amount of litigation in which it is involved that a positive,,,
and wholesome policy of cutting back on the volume of law suits by the twin
methods of not being tempted into forensic showÂ downs where a,,,
reasonable adjustment is feasible and ever offering to extinguish a pending
proceeding on just terms, giving the legal mentors of government some",,,,
initiative and authority in this behalf. I am not indulging in any judicial homily
but only echoing the dynamic national policy on State litigation evolved at,,,
a Conference of Law Ministers of India way back in 1957.â?? â?,,,

8. In Madras Port Trust v. Hymanshu International, (1979) 4 SCC 176 the Honâ??
ble Supreme Court held: (SCC p. 177, para 2):",,,,

2. It is high time that governments and public authorities adopt the practice
of not relying upon technical pleas for the purpose of defeating",,,,

legitimate claims of citizens and do what is fair and just to the citizens. Of
course, if a government or a public authority takes up a technical plea, the",,,,

Court has to decide it and if the plea is well founded, it has to be upheld by the
court, but what we feel is that such a plea should not ordinarily be",,,,

taken up by a government or a public authority, unless of course the claim is not
wellÂfounded and by reason of delay in filing it, the evidence for the",,,,

purpose of resisting such a claim has become unavailable....""",,,,

9. In a three Judge Bench judgment of Bhag Singh & Ors. v. Union Territory of
Chandigarh through LAC, Chandigarh [(1985) 3 SCC 737:]the",,,,

Honâ??ble Supreme Court held: (SCC p. 741, para 3)",,,,

3... The State Government must do what is fair and just to the citizen and should
not, as far as possible, except in cases where tax or revenue is",,,,

received or recovered without protest or where the State Government would
otherwise be irretrievably be prejudiced, take up a technical plea to",,,,

defeat the legitimate and just claim of the citizen.""",,,,

10. Unwarranted litigation by governments and statutory authorities basically
stem from the two general baseless assumptions by their officers. They,,,

are:,,,

(i) All claims against the government/statutory authorities should be viewed as
illegal and should be resisted and fought up to the highest court of the",,,,

land.,,,,

(ii) If taking a decision on an issue could be avoided, then it is prudent not to

decide the issue and let the aggrieved party approach the Court and",,,
secures a decision.,,,

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is",,,
attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive,,
tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making.",,,

Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals.â??",,,

37. Similar reiteration of law can be found in a fairly recent judgment of the Honâ??ble Supreme Court in Rajendra Shankar Shukla and others vs.,,,

State of Chhattisgarh and others (2015) 10 SCC 400, wherein again while referring to the earlier decision in Hymanshuâ??s case (supra), the",,,

Honâ??ble Supreme Court held in para 32 as under:,,

â??32. Further, this Court has frowned upon the practice of the Government to raise technical pleas to defeat the rights of the citizens in Madras Port",,,

Trust vs. Hymanshu International (1979) 4 SCC 176, wherein it was opined that it is about time that governments and public authorities adopt the",,,

practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Para 2,,

from the said case reads thus :Â? (SCC p.177),,,

â??2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of,,

the Madras Port Trust Act (2 of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is,,

unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is",,,

high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims,,

of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to",,,

decide it and if the plea is wellÂ? founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a",,,

government or a public authority, unless of course the claim is not wellÂ?founded

and by reason of delay in filing it, the evidence for the purpose of",,,
resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the",,,
recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see",,,
any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust",,,
Act (2 of 1905).â??,,,

38. The learned Single Judge held that the plaintiff was not entitled to the suit amount as he had accepted the full and final payment from the,,
defendant without any protest. However, such findings are not supported by the material placed on record.",,,

39. Even otherwise mere acceptance of the amount would not debar the plaintiff to make further claims as was held by the Honâ??ble Supreme,,
Court in R.L. Kalathia and Company vs. State of Gujarat (2011) 2 SCC 400, wherein it was observed as under:",,,

â??9. On going through the entire materials including the oral and documentary evidence led in by both the parties and the judgment and decree of the,,

trial Judge, we are unable to accept the only reasoning of the High Court in nonâ??suing the plaintiff. It is true that when the final bill was submitted",,,

the plaintiff had accepted the amount as mentioned in the final bill but â??under protestâ?. It is also the specific claim of the plaintiff that on the,,

direction of the Department, it had performed additional work and hence entitled for additional amount/damages as per the terms of agreement.",,,

Merely because the plaintiff had accepted the final bill, it cannot be deprived of its right to claim damages if it had incurred additional amount and is",,,

able to prove the same by acceptable materials.â??,,,

40. It was further observed that merely because the plaintiff had accepted the final bill, he cannot be deprived of his right to claim damages if he had",,,

incurred additional amount and is able to prove the same by acceptable materials.,,,

41. Earlier to that the Honâ??ble Supreme Court in Chairman and MD, NTPC Ltd. vs. Reshmi Constructions, Builders & Contractors (2004) 2 SCC",,,

663 and Asian Techs Limited vs. Union of India and others (2009) 10 SCC 354 considered that the Public Sector undertaking and Financial Institutions,,

always have an upper hand and they would not ordinarily release the money unless a "No Demand Certificate" is signed and further held that,,,

each case, therefore, is required to be considered on its own merits. The Hon'ble Supreme Court applied legal maxim *necessitas non habet legem*,,,

which means necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the bargain who is in a stronger,,,

position.,,,

42 In R.L. Kalathias case (supra) the legal position was summed up as under:,,,

(I) Merely because the contractor has issued a "No dues certificate", if there is an acceptable claim, the court cannot reject the same on the,,,

ground of issuance of a "No dues certificate".,,,

(ii) Inasmuch as it is common that unless a discharge certificate is given in advance by the contractor, payment of bills are generally delayed, hence",,,

such a clause in the contract would not be an absolute bar to a contractor raising claims which are genuine at a later date even after submission of,,,

such a "No claim certificate".,,,

(iii) Even after execution of full and final discharge voucher/receipt by one of the parties, if the said party is able to establish that he is entitled to",,,

further amount for which he is having adequate materials, he is not barred from claiming such amount merely because of acceptance of the final bill",,,

by mentioning "without prejudice" or by issuing a "No dues certificate".,,,

Accordingly, these issues are decided against the respondent/defendant.",,,

ISSUES NO. 1 & 2:,,,

43. It would be noticed that the basis for deciding these issues against the plaintiff were that the findings recorded qua issues No.4 and 6 and,,,

admittedly no further reasons were given for deciding these issues against the plaintiff. Now issues No.4 and 6 stand decided against the defendant",,,

obviously then, both these issues have to be answered in favour of the plaintiff. Apart from that, save and except, the claim of refund of",,,

Rs.1,00,000/ as security, which in fact, has been withheld only for CPF clearance certificate, which in our considered view cannot be termed to be",,,

unjustified, the suit of the plaintiff must be decreed. Issues No.1 and 2 are accordingly decided in favour of the plaintiff.",,,

44. Now, advertent to the question regarding the entitlement of the plaintiff towards the interest, it would be noticed that save and except the legal",,,
 notice, no other document has been placed on record by the plaintiff. Even the agreement for award of the work of contract in favour of the plaintiff",,,
 has not been placed on record so as to enable this Court to come to the conclusion as to whether there was a clause in the said agreement regarding,,
 the payment of interest. In the notice issued by the plaintiff, he has claimed 18% interest, whereas while appearing as PWA1 the interest @ 24% has",,,
 been claimed.,,,

45. Be that as it may, once this Court has come to the conclusion that the plaintiff has been deprived of use of money, because of lapse or fault of the",,,
 defendant, to which he is entitled to, then he would have a right to be compensated for such deprivation which may be called interest, compensation or",,,
 damages etc.,,,

46. A Constitution Bench of the Honâ??ble Supreme Court in Secretary, Irrigation Department, Government of Orissa and others versus G.C.Roy",,,
 (1992) 1 SCC 508, held that:Â?"",,,

â??43â?|(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any",,,
 name. It may be called interest, compensation or damagesâ?|â?|. .â??"",,,

47. Blackâ??s Law Dictionary (7th Edition) defines â??interestâ?? inter alia as:,,
 â??3. The compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to",,,
 its use; especially, the amount owed to a lender in return for the use of [the] borrowed money.â??"",,,

48. According to Stroudâ??s Judicial Dictionary of Words And Phrases (5th Edition) interest means, inter alia, compensation paid by the borrower to",,,
 the lender for deprivation of the use of his money.,,,

49. The essence of interest in the opinion of Lord Wright, in Riches versus Westminster Bank Ltd., 1947 AC 390 : (1947) 1 All ER 469 (HL) (AC at",,,
 p.400: All ER at p.472Â?EÂ?F) is that:Â?"",,,

â??â?|..it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the,,

profit he might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use. The general idea is that",,,

he is entitled to compensation for the deprivation"; the money due to the creditor was not paid, or, in other words, "was withheld from him by the",,,

debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation",,,

was liquidated under an agreement or statute".,,,

50. At this stage, it may be relevant to note that the following observations made by a Division Bench of the High Court of Punjab in CIT versus",,,

Dr. Sham Lal Narula AIR 1963 Punj 411 on the concept of "interest" were duly approved by the Hon'ble Supreme Court in D r. Sham Lal",,,

Narula versus CIT, AIR 1964 SC 1878 and it was held as under: " ",,,

"8. The words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation.,,,

"Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to",,,

another. In its narrow sense, "interest" is understood to mean the amount which one has contracted to pay for use of borrowed money",,,

In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in",,,

demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or",,,

fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become",,,

payable.",,,

51. In South Eastern Coalfields Ltd. Vs. State of M.P. and others (2003) 8 SCC 64,8 it was held that interest is also payable in equity in certain",,,

circumstances. It was further observed that rule in equity is that interest is payable even in the absence of any agreement or custom to that effect",,,

though subject, of course, to a contrary agreement. Applicability of the rule to avoid interest in equity is attracted when the existence of a state of",,,

circumstances is established which justify the exercise of such equitable jurisdiction and such circumstances can be many. It is apt to reproduce",,,

paragraphs 21, 24, 26 and 28 of the judgment, which reads thus: " ",,,

"21. Interest is also payable in equity in certain circumstances, the rule in

equity is that interest is payable even in the absence of any agreement or",,,
custom to that effect though subject, of course, to a contrary agreement (See:
Chitty on Contracts, Addition 1999, Vol. II, Part 38Â248, at page 712).",,,
Interest in equity has been held to be payable on a market rate even though the
deed contains no mention of interest. Applicability of the rule to award,,,
interest in equity is attracted on the existence of a state of circumstances being
established which justify the exercise of such equitable jurisdiction and,,,
such circumstances can be many.,,,

24. We are, therefore, of the opinion that in the absence of there being a
prohibition either in law or in the contract entered into between the two",,,
parties, there is no reason why the Coalfields should not be compensated by
payment of interest for the period for which the consumers/purchasers",,,
did not pay the amount of enhanced royalty which is a constituent part of the
price of the mineral for the period for which it remained unpaid. The,,,
justification for award of interest stands fortified by the weighty factor that the
Coalfields themselves are obliged to pay interest to the State on such,,,
amount. It will be a travesty of justice to hold that though the Coalfields must
pay the amount of interest to the State but the consumers/purchasers in,,,
whose hands the money was actually withheld be exonerated from liability to pay
the interest.,,,

Liability of the consumers/purchasers to pay interest to the Coalfields:,,,

(b) for the period for which the restraint order passed by the Court remained in
operation.,,,

26. In our opinion, the principle of restitution takes care of this submission. The
word 'restitution' in its etymological sense means restoring to a party",,,
on the modification, variation or reversal of a decree or order, what has been lost
to him in execution or decree or order or the court or in direct",,,
consequence of a decree or order (See : Zafar Khan and Ors. v. Board of
Revenue, U.P., and Ors., . In law, the term 'restitution' is used in three",,,
senses; (i) return or restoration of some specific thing to its rightful owner or
status; (ii) compensation for benefits derived from a wrong done to,,,
another; (iii) compensation or reparation for the loss caused to another. (See
Black's Law Dictionary, Seventh Edition, p.1315). The Law of Contracts",,,
by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that
'restitution' is an ambiguous term, sometimes referring to the",,,

disgorging of something which has been taken and at times referring to compensation for injury done:,,,

Often, the result in either meaning of the term would be the same. Unjust impoverishment as well as unjust enrichment is a ground for restitution.",,,

If the defendant is guilty of a non-tortuous misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as",,,,

relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need",,,,

to be weighed."",,,,

The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 of the C.P.C. speaks not",,,,

only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide",,,,

enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed",,,,

by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision",,,,

going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with",,,,

all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been",,,,

passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b)",,,,

to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the",,,,

restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles",,,,

of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed",,,,

which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is",,,,

nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have",,,,

existed.,,,,

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its,,, sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly,,, apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error,,, committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable",,,, has resulted in one party gaining an advantage which it would not have otherwise corned, or the other party has suffered an impoverishment which it",,,, would not have suffered but for the order of the Court and the set of such party. The quantum of restitution, depending on the facts and circumstances",,,, of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might",,,, reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the,,, court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and,,, countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial",,,, justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by",,,, the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary,,, would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element,,, of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders",,,, favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is,,, excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even",,,, though the battle has been lost at the end. This cannot be countenanced, we are, therefore, or the opinion that the successful party finally held entitled",,,, to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for",,,,

the period for which the interim order of the court withholding the release of money had remained in operation.â??,,,

52. Judged in light of the aforesaid exposition of law, we are of the considered view that the ends of justice would be subserved in case the plaintiff is",,,

awarded interest at the rate of 6% per annum from the date of filing of the suit i.e. on 19.5.2004 till the date of its realisation. Ordered accordingly.,,,

53. In view of the issue-wise findings recorded above, the appeal is allowed. The judgment and decree passed by the learned Single Judge is setâ??",,,

aside. However, even though the plaintiff is held entitled to the entire amount of Rs.18,79,871/â?,but as regards the security amount of Rs.1,00,000/â?"",,,

the same shall be refunded to him only in the event of his submitting CPF clearance certificate. In addition thereto, the plaintiff is held entitled to",,,

interest at the rate of 6% per annum from the date of filing of the suit i.e. on 19.5.2004 till its realisation. Pending application, if any, also stands",,,

disposed of. Decree-sheet be prepared accordingly.,,,