
(1989) 03 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9747 of 1988

P. Ram Reddy

APPELLANT

Vs

State of Andhra Pradesh and another

RESPONDENT

Date of Decision : 15-03-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Evidence Act, 1872 — Section 115
Interest Act, 1839 — Section 1
Interest Act, 1978 — Section 3, 4(2)

Citation : AIR 1990 AP 76

Hon'ble Judges : Sardar Ali Khan, J

Bench : Single Bench

Advocate : I. Koti Reddy, for the Appellant; Advocate Gener, for the Respondent

Judgement

1. The petitioner is a Senior Advocate of the Supreme Court. He was appointed by the Government of Andhra Pradesh as its senior counsel to appear for the State of Andhra Pradesh in the Supreme Court cases at the prescribed scales of fee. The petitioner prays for the issue of a writ of mandamus to the respondent to pay interest and/or compensation at the rate of 12% simple interest per annum on (a) the amounts in the bills in Annexure "A" and Annexure "B" to G.O. Ms. No. 227, dated 31-7-1986 (Annexure I to the writ petition) from the date of the bills to the date of payment, viz., 22-8-1986; and (b) on the amounts in bills in Part 1 and V of Annexure "D" to G.O. Ms. No. 35, dated 9-1-1988 (Annexure II to the writ petition) from the date of the bills to the date of payment, viz., 2-3-1988, after deducting interest (counter interest) payable by him at 12% simple interest from the dates of payment of the amounts made to the petitioner shown in Parts II, III, IV and VI of Annexure "D" to G.O. Ms. No. 35, dated 19-1-1988, to the final payment made to the petitioner, viz., 2-3-1988.

2. The question arising in this writ petition, therefore, is whether the petitioner is entitled to payment of interest or compensation @ 12% per annum on the amounts paid to him as legal remuneration on the ground that there was

inordinate delay in the payments of the professional fee to the petitioner. It may not be necessary to go into the details of the various applications filed by the petitioner before the concerned authorities for the payment of his fees which have been mentioned in the affidavit filed in support of the writ petition. It may, however, be stated that according to the petitioner he has been filing bills for payment of his fees in time and has been sending reminders to the State Government authorities to pay the professional fee due to him. As a result of the efforts put in by the petitioner, G.O. Ms. No. 227, Law Department, dated 31-7-1986 was issued granting an ad hoc payment of Rs. 4,98,596/- towards the bills in Annexures "A" and "B" attached to the said G.O. In view of the fact that an ad hoc amount was sanctioned in the said G.O. Ms. No. 227 dated 31-7-1986, various Departments were asked not to make any payment of bills to the petitioner. The actual payment was effected on 22-8-1986. The petitioner addressed a letter to the Chief Secretary dated 20-8-1986 expressing his thanks for the payment of bills in Annexures "A" & "B" and inviting his attention to settle the claims enumerated in Annexure "C", enclosed to the said letter, amounting to approximately Rs. 2 1/2 lakhs. He also demanded payment of interest at the rate of 12% in view of the long delay occurring in the payment and settlement of his bills. The petitioner also submitted voluntarily an indemnity bond duly stamped to the effect that he is prepared to make good the excess payment, if any, with interest at the rate of 12% P. A. Thereafter the petitioner issued a lawyer's notice dated 1-2-1987 demanding payment of a sum of Rs. 1,35,185/- with interest @ 12% on the amounts in the bills in Annexures "A" & "B" to G.O. No. 227, Dt. 31-7-1986 from the date of the bills to the date of payment, i.e., 22-8-1986 and, the amounts in bills in Annexure "C" attached to the letter dated 20-8-1986 from the date of the bills to the date of actual payments after deducting interest (counter interest) payable by him @ 12% in accordance with the terms of the indemnity bond voluntarily submitted by him.

3. The State Government issued another G.O. Ms. No. 35, Law Department, dated 19-1-1988 sanctioning a further payment of Rs. 1,28,759/- on ad hoc basis towards full settlement of his arrears of fee. The petitioner thereon conveyed his thanks to the Chief Secretary in his letter dated 6-3-1988 for the full settlement of his fee claims. The petitioner, however, has now filed the present writ petition claiming interest or compensation @ 12% P.A. on the amounts in the various annexures to G.O. Ms. No. 227, Law Department, dated 31-7-1986, and G.O. Ms. No. 35, Law Department dated 19-1-1988, as indicated above.

4. The scope of this writ petition, therefore, so, is limited to the question of payment of interest @ 12% P.A. to the petitioner on the amounts claimed by him towards his professional fee. There is no dispute about the fact that there are no arrears of fee now remaining to be paid to the petitioner as the matters have been mutually settled between him and the State Government. The only question on which attention has to be focussed in this writ petition is that of payment of interest on account of the delay occurring in such payments which have been

made to the petitioner in pursuance of the orders issued by the State Government.

5. In order to decide the question arising in this writ petition it is necessary to examine the provisions of G.O. Ms. No. 350, Home (Courts. C) Department, dated 7-7-1980, G.O. Ms. No. 227, Law Department, dated 31-7-1986 and G.O. Ms. No. 35, Law Department, dated 19-1-1988. In G.O. Ms. No. 350 dated 7-7-1980 the scales of fee payable to the petitioner are prescribed. It is, however, significant to note that there is no provision in the said G.O. Ms. No. 350 dated 7-7-1980 under which the petitioner can be said to be entitled to payment of interest on delayed payment of bills. In G.O. Ms. No. 227 dated 31-7-1986 sanction was accorded for payment of Rs. 4,98,596/- on ad hoc basis towards payment of arrears of fee for the work done by the petitioner in cases of various Departments. It is also provided that if any excess payment has been made to the petitioner he should refund such excess amount received by him. The concerned Departments in the Secretariat have been requested to stop payment in respect of pending bills to the petitioner as he was being paid on ad hoc basis the sum of Rs. 4,98,596/- towards his bills pending in the various Departments in the Secretariat and Departments under their control. Under G.O. Ms. No. 35, dated 19-1-1988 reference is made to the earlier G.O. Ms. No. 227 dated 31-7-1986 and the remaining amount of Rs. 1,28,759/- has been sanctioned on ad hoc basis towards payment in full settlement of the arrears of bills for the work done by the petitioner in the cases of various Departments of Secretariat and the Heads of Departments under their control. It is pertinent to state that in accordance with G.O. Ms. No. 35 dated 19-1-1988 payment has been made towards full settlement of all the arrears of fee due to the petitioner. The petitioner accepted the amounts sanctioned to him in G.O. Ms. No. 227 dated 31-7-1986 and G.O. Ms. No. 35 dated 19-1-1988 respectively and addressed a letter dated 6-3-1988 conveying his thanks to the Chief Secretary for the settlement of his fee claims. The sanction of the above amounts was done, by the Government without individual scrutiny of the bills and without following the necessary verification procedure and issuance of non-drawal certificates by the respective authorities. This was done with the avowed object of settling all the claims of the petitioner and sanctioning the amounts in lump sum to him by the Government as a special consideration of his case.

6. An analysis of the above situation clearly shows that the petitioner had made the claims for the payment of the outstanding bills which were considered by the Government on ad hoc basis and the necessary sanctions were made in his favour in G.O. Ms. No. 227 dated 31-7-1986 and G.O. Ms. No. 35 dated 19-1-1988 for the payment of the entire arrears of bills. In G.O. Ms. No. 35 dated 19-1-1988 it is clearly stated that the amount of Rs. 1,28,759/- has been sanctioned towards full settlement of the arrears of fee. Moreover, the petitioner received these amounts without any protest for the alleged non-payment of interest at the rate of 12% P.A. on the delayed bills, so much so that he had conveyed his thanks vide letter dated 6-3-1988 to the Chief Secretary for the

final settlement and payment of arrears due to him. Hence, after receiving the payments which have been made by the State Government without following the elaborate procedure, which is otherwise prescribed for the sanction of the individual bills and scrutiny of certificates etc., the petitioner cannot now claim interest @ 12% P.A., on account of undue delay caused in the payment of his fees.

7. Mr. R. Venugopal Reddy, learned counsel for the petitioner, has relied upon a judgment of this Court in W.P. No. 14817/85 dated 8-7-1986 wherein dealing with a similar matter it was held that the petitioner, who was a former Government Pleader in that case, was entitled to be paid a sum of Rs. 1,000/- over and above his legal fee, towards costs. The point involved in that case was as to whether the petitioner was entitled to a sum of Rs. 8,400/- being the balance of the claim submitted by him towards his professional fees. The learned Judge came to the conclusion that the petitioner was unduly deprived of the amount of Rs. 8,400/- due to him for two years and deserves to be compensated. In that view of the matter a further sum of Rs. 1,000/- was directed to be paid towards costs. The basic point of difference between that case and the present one is that in this case no amount is due to the petitioner by way of arrears of professional fee and the only claim which is made in this writ petition is for payment of interest @ 12% P.A., for the delayed payment of professional fee as indicated above. Hence, there is a basic difference between these two cases in the sense that in W.P. 14817/85 the very question that was involved was whether the petitioner, who was a former Government Pleader, was entitled to payment of Rs. 8,400/- or not as his professional fee. Since it was held that he was entitled to that amount which was denied to him for a period of two years, a compensation of Rs. 1,000/- by way of costs was awarded to the petitioner. I do not think any parallel can be drawn between the judgment in W.P. No. 14817/85 and the case on hand.

8. Mr. Venugopal Reddy has also placed strong reliance on certain other judgments of this Court like W.P. Nos. 20054/87 and 585/88 (common judgment) dated 4-2-1988 (reported in P. Venkatamuni Reddi Vs. Government of Andhra Pradesh and Others, and W.P. No. 8665/86 dated 27-11-1987 (reported in (1988) IIS (AP) 59). In all these cases the question that was considered was payment of the actual amount due as professional fee to the various Law Officers and in that view of the matter some compensation was awarded to the Government Pleaders who were denied the payment over a long number of years due to the unreasonable attitude of the State Government in not making the payments in time. Therefore, I find much force in the contention raised by the learned Advocate-General that the reliance placed upon the above said cases by the learned counsel for the petitioner is misplaced as the facts of this case are essentially different and in this matter it is only a pure and simple question of payment of interest on the amounts which have already been paid and accepted by the petitioner. In O.P. Gupta Vs. Union of India (UOI) and Others, it was held that as a matter of settled practice the court has been making direction for

payment of interest at 12% on delayed payment of pension and there was no reason to depart from that practice in view of the facts of the case (before the Supreme Court). It is obvious that the Supreme Court in that case granted 12% interest on an ascertained sum of money which was due to the petitioner by way of pension. The matter arising in this case is of a different texture altogether wherein the question of ascertaining the amount due to the petitioner as legal fee is involved which has been later settled between the petitioner and the authorities concerned. Therefore, there cannot be an automatic direction of 12% interest to be paid to the petitioner on such unascertained sums of money which have been delayed to the petitioner. Similarly, in *State of Kerala and Others Vs. M. Padmanabhan Nair*, the question involved was one of payment of pension and gratuity. It was held in that case that there was culpable delay in the settlement of pension and gratuity claims due to the petitioner and hence he was held to be entitled for payment of interest at the rate of 6% P.A. In *M.C. Desai and Others Vs. Union of India (UOI) and Others*, the question of payment of retirement gratuity to a High Court Judge was considered and interest 12% P.A. was awarded from the date of retirement till date of payment. In all the above three cases the point involved was nonr; payment-of an ascertained sum of money due: to the petitioners either by way of gratuity or retirement pension and since there had been" inordinate delay in the payment of the same, interest was awarded by the court. The learned Advocate-General has rightly stressed the point that the principle involved in the above cases cannot be made applicable to the instant case as the facts arising in this case are entirely different, involving the question of determination of the amount due to the petitioner as professional fee which has already been paid to him by the Government in full settlement of his claims and acknowledged by the petitioner without any protest.

9. Mr. R, Venugopal Reddy, learned counsel for the petitioner, has relied upon the provisions of S. 3 of the Interest Act, 1978 (Act No. 14 of 1978) wherein it is provided, that the court may, if it thinks fit, allow interest to the person entitled to the debt or damage, as the case may be at a rate not exceeding the current rate of interest. It is evident that under the said section, viz., Section 3 a discretion is vested in the court to award interest and payment of interest has not been made mandatory under all circumstances. The learned counsel for the petitioner also relied upon Section 4(2)(b) of the Interest Act, 1978, which is reproduced as follows:--

4. "Interest payable under certain enactments :--

(1) xx xx xx (2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely:--

(a) xx xx xx (b) where the obligation to pay money or restore any property

arises by virtue of a fiduciary relationship, from the date of the cause of action.

XX XX XX" It is no doubt true that there is a fiduciary relationship between a lawyer and a client as the lawyer enjoys a position of a trust. But even under the provisions of Section 4(2)(b) of the Interest Act, 1978 it is stipulated that if the court is satisfied that there are special reasons why interest should not be allowed the same may be denied to the petitioner. In this case the petitioner has accepted the amount without any demur in full settlement of all his claims towards the arrears of his professional fee which has been sanctioned disregarding all procedures and now it is not available to him to raise the question of payment of interest @ 12% P.A., on the amounts which were paid to him in full settlement of all his claims. Therefore, even under the provisions of S. 4(2)(b) of the Interest Act of 1978 it is difficult to see how the petitioner can be said to be entitled to the payment of interest @ 12% P. A. as claimed by him.

10. The learned Advocate-General has relied upon a decision reported in *B.N. Railway v. Ruttanji Ramji*, AIR 1938 PC 67 in which Section 1 of the Interest Act of 1839 was considered. The Privy Council laid down the principles regarding the award of interest for the period prior to the date of the suit by explaining that such interest is payable when there is an agreement for the payment of interest at a fixed rate or it is payable by the usage of trade having the force of law or under the provision of any substantive law entitling the plaintiff to recover interest. The Privy Council also considered the proviso to Section 1 of the Interest Act of 1839 which is to the effect that "provided that interest shall be payable in all cases in which it is now payable by law". This proviso has been explained by stating that it applies to a case in which the court of equity exercises jurisdiction to allow interest but in order to invoke a rule of equity, an observation of Lord Tomlin in *Maine and New Brunswick Electrical Power Co. Ltd. v. Hart*, 1929 AC 631 was relied upon. According to the observation of Lord Tomlin, in order to invoke a rule of equity, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as, for example, the non-performance of a contract of which equity can give specific performance. Even though this case of Privy Council deals with S. 1 of the Interest Act of 1839, the principles laid down by the Privy Council are applicable in cases arising under the provisions of the Interest Act of 1978. In any case it is evident that u/s 4(2)(b) of the Interest Act of 1978 a discretion is vested in the court not to allow interest for any special reasons even in cases where the obligation to pay money or restore property arises by virtue of a fiduciary relationship existing between a lawyer and a client. The very concept of fiduciary relationship is based upon the principles of equity and, therefore, the observation that a case will have to be made out to attract the equitable jurisdiction is relevant in the present circumstances of the case. Similarly, in *Gulab Shanker and Another Vs. Mul Chand-Nimi Chand*, , the same principle is affirmed that where there is no stipulation in the document as to the date on which the principal is to be repaid, interest cannot be claimed by virtue of Section 1 of the Interest Act of 1839. It is obvious that in so far as the question

of payment of professional fee is concerned, there is no provision under which interest can be said to be chargeable for delayed payment on such account. More over, the payments have been accepted by the petitioner in full settlement of all his claims without raising any question of payment of interest. After accepting all payments in final settlement of his claims he cannot now claim interest on the amounts paid to him.

11. In view of the existing circumstances of the case and for the reasons given above, this writ petition is dismissed. No costs. Advocate's fee Rs. 250/-.

12. Petition dismissed.