(1996) 01 BOM CK 0019

In the Bombay High Court

Case No : First Appeal No. 743 of 1988

Satish Solvant Extractions Private Limited APPELLANT

Vs

The New India Assurance Company Ltd. RESPONDENT

Date of Decision : 09-01-1996

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

Citation : AIR 1996 Bom 293 : (1996) 2 BomCR 695 : (1996) 98 BOMLR 968 : (1996) 1 MhLj 567

Hon'ble Judges : V.H. Bhairavia, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Navin B. Shah, for the Appellant;

Judgement

B. P. SARAF, J.—The controversy in this appeal pertains to the scope and ambit of the power of the Court to grant pendente lite interest u/s 34 of the CPC 1908 ("CPC"). The appellant had filed a suit against the respondent-insurance company for recovery of a sum of Rupees 51,500/- by way of damages on account of destruction of its boiler house by fire. The boiler house, which has been destroyed by fire in 8th Sept. 1982 was insured with the respondents-insurance company for Rupees 54,000/-. The appellant lodged a claim with the respondent-insurance company for a sum of Rs. 51,500/- -- Rs. 50,000/- on account of destruction of the boiler house by fire and Rs. 1,500/- by way of reimbursement of expenses incurred by it in extinguishing the fire. The claim was not accepted by the respondent-insurance company who estimated the loss at Rs. 18,400/- only and offered to pay the said amount to the appellant in full and final settlement of its claim. The appellant did not accept the above offer and filed a suit in the court of the Joint Civil Judge, Junior Division, Dhule for recovery of Rs. 51,500/- which was numbered as Special Civil Suit No. 32 of 1983.

2. The learned Joint Civil Judge ("trial Court") determined the loss caused to the boiler house by fire at Rs. 43,000/-. The trial court also found that the appellant

had paid a sum of Rs. 1, 500/- to the Dhule Municipal Council for the fire fighting services. Accordingly, the trial court decreed the suit for a sum of Rs. 44,500/-. The appellant was also awarded proportionate costs. The trial Court, however, refused to grant pendente lite interest as also future interest from the date of the decree till realization. In this appeal, the appellant has challenged the correctness of the order of the trial Court in so far as it relates to refusal to grant interest pendente lite and future interest. According to the appellant the trial court failed to appreciate the true scope and ambit of Section 34 of the C. P. C and committed manifest error of law in refusing to grant pendente lite the future interest. The contention of the appellant is that u/s 34 of the C. P. C. the Court has no discretion in the matter of grant of interest. It is obliged to grant interest. Discretion under that section according to the appellant, is confined only to the rate of the interest. Reliance is placed in support of the this contention on the decision of the Calcutta High Court in West Bengal Financial Corporation and Another Vs. Bertram Scott (I) Ltd. (In Liquidation), . The appellant submits that he is entitled to interest pendente lite as well as future interest from the date of the decree till realisation on the decretal amount at such rate as this Court deems reasonable.

3. We have heard the learned counsel for the appellant. To appreciate the same, it is expedient to pursue Section 34 of the C. P. C. which provides for grant of interest pendente lite and future interest from the date of the decree till realization. Section 34 provides:

"(1) Where and in so far as the decree is for the payments of money, the Court may, in the decree, order, interest at such rate as the Court deems reasonably 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.

Provided that where the liability in relation to the sum so adjudged the 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.

Explanation II. -- For the purposes of this section, a transaction is a commercial transaction, if it is a 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 separate suit therefore shall not lie."

A plan reading of the above section clearly goes to show that in a decree for payment of money, the Court has the power to grant interest pendente lite and future interest This power is, however, discretionary which is evident from the expression "may, in the decree, order interest" appearing in sub-section (1). The discretion is both in regard to grant of interest and the rate of interest. The exercise of this power is not dependent upon a specific claim being made by the plaintiff to grant interest. The Court has the power to grant interest pendente lite, whether claimed in the suit or not, if it is satisfied on the facts of the case that such interest should be granted. The question is one for the discretion of the Court, which it has to exercise judiciously having regard to the facts and circumstances of the case before it. Ordinarily interest pendente lite should be granted u/s 34 of the C.P.C. unless there are cogent reasons for depriving the plaintiff of the interest trial. In other words, grant of interest should be the rule -- refusal an exception. The discretion of the Court, as earlier stated, is not only in the matter of grant of interest but also as to the rate of interest. The Court has also to fix the rate of interest. The discretion in the matter of future interest is however restricted to six per cent per annum except in commercial transactions where under the proviso it may be allowed at the contractual rate or bank rate in relation to such transactions.

4. The above view of ours gets full support from the decision the this Court in Chaturbhuj Tulsiram Marwadi Vs. Ambarsing Harji, ; Nagpur High Court in AIR 1943 240 (Nagpur) ; Patna High Court in Bank of Bihar Ltd. Vs. Ramghulam Singh and Another, and Gauhati High Court in The United Commercial Bank, Silchar Vs. Satish Chandra Ghosh and Another, . In Bank Of Bihar v. Ramghulam, the Patna High Court held that the facts that the Court is given a discretion in the matter makes it nonetheless a right of the plaintiff, that is to say, a right which he may claim. In Yadaorao Kadu v. Ramarao Dhote, the Nagpur High Court observed:

"The question is one for its the discretion of the Court: vide sub-section (1) of Section 34, Civil P.C. and is not a matter of substantive law which must be pledged."

On the facts of the case, it was held in the above case:

"The plaintiffs have not been paid anything whatever on debts running since 1931, and there is no reason why they should be deprived of their interest during the trial."

In Chaturbhuj v. Ambarsing, this Court held:

".....having regard to the terms of the Section 34, Civil P.C. the Court has power to give interest after suit whether claimed specifically in the plaint or not."

Dealing with the nature of the power of the Court u/s 34 of the C. P. C., in United Commercial Bank v. Satish Chandra Ghosh, the Gauhati High Court observed:

"Though the power in discretionary, it has to be exercised judicially considering the facts and circumstances of each case..... Courts should apply their minds judiciously and order payment of interest unless there is justification for not doing so. Refusal to order interest affects seriously the right of a claimant. The Courts should therefore exercise their discretion to grant interest carefully and reasonably. Arbitrary refusal to order payment of interest without application of mind is neither contemplated by law nor justified".

5. We have also perused the decision of the Calcutta High Court in West Bengal Financial Corporation and Another Vs. Bertram Scott (I) Ltd. (In Liquidation), where on construction of Section 34 of the C. P. C., it has been held:

"..... We are of the opinion that there is no discretion about either granting or non-granting of interest but as to the rate there is the discretion of the court."

We have given a careful consideration to the above decision. However, We find it difficult to subscribe to the above opinion. In our views, as earlier stated, the Court has a discretion both in the matter of grant of the interest and the rate of interest. The decision however should be exercised judiciously and interest should be granted unless there are good reason for not granting the same.

6. We now turn to the facts of the present case to decide, in the light of the principles set out above, whether the trial Court was justified in refusing to grant interest. The uncontroverted factual position is that the appellant-plaintiff had claimed a sum of Rs. 51,500/- from the respondent-insurance company by way of damages to its boiler house by fire. The respondent offered to pay only a sum of Rs. 18,400/- in full and final settlement of the claim of the appellant, which the appellant refused to accept. Hence the suit. The trial Court determined the loss at Rs. 44,500/- a little less then the amount claimed but more than double the amount offered. The fire took place on 8th September, 1982. The suit was decreed after about five years on 2nd May, 1987. For all these years the appellant-plaintiff was deprived of the decretal amounts for no fault of his own. No fault can be found with the appellant in case like this where the Court itself has estimated the damages at Rs. 44,500/- and decreed the same, for not accepting the offer of the respondent of Rs. 18,400/- in full and final settlement of the claim. Nor can the interest denied for the failure of the plaintiffs to specify the rate of interest claimed. As stated earlier, interest can be allowed u/s 34 of the C. P. C. even if the plaintiff fails to claim the same at all if the facts of the case justify grant of the interest. The trial Court in this case has given the following reasons for refusal to grant interest u/s 34 of the C. P. C.:

"The plaintiffs has claimed interest in the prayer column of the plaint. No rate of interest is mentioned therein. The plaintiff is claiming in respect of the amount of damage by fire. It has come in the evidence that the defendant insurance company sent voucher for Rs. 18,400/- for the acceptance of the plaintiff. Since plaintiff did not accept the same, he has to file the present case. This is not a case wherein future interest can be given as question of method of calculation of the loss and damage is involved in the present suit. There is nothing in the insurance policy or there is nothing on record that there was an agreement in between plaintiff and the defendant that defendant shall pay interest if the amount is not paid. Thus, I hold that plaintiffs is not entitled to interest."

The above reasoning of the trial Court, no the fact of it, is fallacious and cannot be accepted. It is difficult to see why the plaintiff should be deprived of interest for the amount due to him form the defendant, which the defendant refused to pay and thereby forced the plaintiff to approached the Court. In our opinion, it is a fit case where the Court should have exercised its discretion u/s 34 of the C. P. C. in favour of the plaintiff. We, therefore, order payment of interest at the rate of six per cent per annum of the decretal amount from the date of the suit to the date of decree with further interest at the same rate from the date of the decree to the date the payment.

7. In the result, this appeal is allowed to the extent indicated above. In the facts and circumstances of the case, there shall be no order as to costs.

Issuances of certified copy of this order is expedited.

Appeal partly allowed.

