

(1985) 04 CAL CK 0028

In the Calcutta High Court

Case No : Appeal No. 143 of 1984 (Suit No. 601 of 1980)

State Bank of India

APPELLANT

Vs

B. Gupta (Tea) P. Ltd. and Others

RESPONDENT

Date of Decision : 30-04-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 1987 Cal 64

Hon'ble Judges : Dipak Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Banerjee, for the Appellant; Pratap Chatterjee, for the Respondent

Judgement

Ajit K. Sengupta, J.—On or about 14th July, 1980 the State Bank of India instituted a suit being Suit No. 601 of 1980 against the respondents, inter alia, for a decree for Rs. 3,89,646.80 which included interest up to 30th June 1980 calculated at the agreed rate of 16.15%. On or about 5th Sept., 1983 the Advocate on record of the respondents wrote to the Advocate on record of the plaintiff-bank, inter alia, as follows : --

"At the time of meeting held between your Mr. J. Sanyal and our Mr. S. Ray it was categorically made clear that our client the defendant abovenamed is ready and willing to settle the claims of your client without going into the actual account provided the plaintiff bank is ready to accept total claim of the suit together with interest calculated at the rate of 6% per annum from the date of filing of the suit until payment in full. However at the request of your Mr. Sanyal our Mr. S. Ray intimated him that the said rate of interest may be raised to 10% per annum from 6% per annum. Hence if your client is rigid in so far as the payment of interest is concerned at the rate of 16.15% then our client shall have no other alternative but to contest the suit and which would only delay in recovery of your clients" dues herein. It may be pointed out that there are very serious and major discrepancies in the claim of your client in the above suit and if the suit is not settled out client would strongly rely on such discrepancies of accounts at the

hearing. Therefore, we do hope that for expeditious recovery of public money the plaintiff bank would reconsider its views relating to the rate of interest."

"We are informed by your client above-named the defendant herein that if the suit is settled and a total figure of claim of your client with interest and costs is arrived at then our client would pay the same in one instalment simultaneously with the filing of the terms of the settlement before this Hon"ble Court."

2. The Bank, however, did not agree to the said proposal.

3. On 16th April 1984 the respondents submitted to a decree. The judgment and decree dated 26th April 1984 are to the following effect :--

"Inasmuch as on behalf of the defendants it was submitted that the whole claim of the plaintiff, namely Rs. 3,62,060.48 P. and interest thereon from the 1st of January 1980 up to 30th June, 1980 amounting to Rs. 27,586.32 P. totalling a sum of Rs. 3,89,646.80 P. is agreed to be paid by the defendants and a fortnight's time is asked for paying off the sum and a request also made that the interim interest should be reduced and that the plaintiff should not be entitled to more than 6% per annum from the 1st of July 1980 until payment, this Court considers the same to be a reasonable offer and grants the defendants' prayer. Mr. Suresh Majumdar appearing on behalf of the plaintiff had made over to the Court a letter of 5th Sept., 1983 wherein it appears that at that time the defendants were agreeable to pay the principal amount due to the plaintiff and interest thereon at the rate of 10% per annum. Mr. Majumdar, relying on this letter, submits that interest should be paid at least at the rate of 10% per annum. Mr. Majumdar contends that in fact a higher rate of interest of 16.15% should be allowed as claimed by the plaintiff and if the Court should accede to the request of the defendants, the Court should not allow interest to be less than 10% which was offered by their letter of the said date.

Having heard the respective contention of the parties, this Court is of the view that the letter of the defendants of 5th Sept., 1983 cannot be relied upon at this stage the plaintiff did not accept the same at the time it was issued. Moreover, in view of the fact that the defendants have submitted to a decree for Rs. 3,62,060.48 P. plus interest thereon for the period from 1st Jan., 1980 to 30th June, 1980 at the rate of 16.15% which amounts to a sum of Rs. 27,586.32 P. and offers to pay the same within a fortnight from date, no higher rate of interest is required to be paid by the defendants for the period after June 30, 1980. In this view of the matter there will be a decree in favour of the plaintiff for a sum of Rs. 3,89,646.80 P. with interim interest at the rate of 6% per annum thereon from 1st July 1980 till 11th May, 1984, on which date the said sum will be paid. In default of payment of the entire decretal dues with interim interest as above, the plaintiff will be entitled to execute the decree forthwith with interest on judgment at the rate of 18% per annum and cost which is assessed at Rs. 20,000/-. This decree is against defendant 1. The suit as against the guarantor will stand adjourned till 14th May, 1984. Upon payment of the entire decretal

dues including interim interest thereon and the cost assessed, the Deed of Hypothecation, referred to in the plaint, as well as the Deed of Guarantee will stand cancelled. Liberty to apply. All parties to act on a signed copy of the minutes of this order on the usual undertaking."

4. This appeal is directed against the said Decree dt. 26th April, 1984 as regards the rate of interest allowed by the decree.

5. At the hearing before us it is contended by Dr. Banerjee on behalf of the appellant that the learned Judge erred in law in awarding interest at the rate of 6% from 1st July, 1980 till the institution of the suit i.e. 14th July, 1980. It is submitted that the appellant is entitled to interest at the agreed rate for that period. The Court has no discretion in the matter.

6. Dr. Banerjee further submits that the plaintiff bank is entitled to interest from the date of the suit to the date of the decree as well as from the date of the decree to the date of payment at the agreed rate. In the event the Court refuses to grant interest at the agreed rate, the Court should give reasons therefore. He further submits that even assuming the Court has the discretion to award interest at the particular rate from the date of the suit to the date of the decree and from the date of the decree to the date of payment ^such discretion has not been properly and judicially exercised. Dr. Banerjee has relied on several decisions in support of his contentions.

7. He has relied on a decision of the Privy Council in *Sophia Ordead v. Alexander Skinner* reported in (1880) 7 IA 196. In that case it was contended that the rate of interest allowed was excessive. Privy Council held thus :--

"What the judge has done has been to give 12 per cent, interest up to the date of the suit, to give 12 per cent, interest on the principal amount from the date of the institution of the suit up to the date of the decree, and to direct that the decree, when compounded of the principal, interest, and costs, should carry interest only at 6 per cent. It has been argued that the Court rate of interest is now 6 per cent.; and that the interest decreed should have been calculated throughout at that rate. The only rule or enactment regulating the conduct of the Judge in respect of the allowance of interest to which their Lordships have been referred is the 10th section of the Act of 1861, which says, "When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court may think proper 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 date of the suit; with further interest on the aggregate sum so adjudged and on the costs of the suit from the date of the decree to the date of payment." Of course, the Court must exercise a judicial discretion in giving effect to this section, and would not be justified in granting an inordinate or unusual rate of interest.

"Up to a certain time, however, 12 per cent, was notoriously the rate of interest prevalent in the mofussil wherever interest was allowed by the Court and it has

not been shown that there has been any enactment which absolutely controls the discretion given by this Act of 1861 to the Judge. A practice indeed of giving upon the aggregate sum decreed for principal, interest and costs, interest only at 6 per cent., does seem to have grown up but that may have been in order to prevent the parties from abstaining from enforcing their decree, and allowing their demand to roll on at 12 per cent. The rate of interest, however, to be allowed on the principal debt up to the date of the decree ought to be that, if any, which has been fixed by contract, express or implied, between the parties; and it appears upon the accounts that the rate of interest allowed and among the sharers themselves was that prevalent in the mofussil, viz., 12 per cent. Hence their Lordships are of opinion that the Judge in calculating the interest as he has done, has done nothing which he was not entitled to do."

8. The next decision relied on is in the case of Life Insurance Corporation of India Vs. Tada Tirupathayya, . There the Andhra Pradesh High Court held that discretion in awarding interest u/s 34 of the CPC has to be exercised on sound judicial principles and when so exercised, it will not be interfered with in appeal. Ordinarily interest pendente lite should not be; . refused except for sufficient reason.

9. The next decision cited is in the case of Union of India (UOI) Vs. Hindustan Lever Limited and Others, . There the High Court observed that the award of interest prior to suit is a matter of substantive law and contractual liability and is outside Section 34. It can be awarded; (1) when there is a contract (2) when there is a usage of trade having the force of law (3) when it is contemplated by any provision of substantive law or (4) under the Interest Act. It may also sometimes be awarded under a rule of equity.

10. It was also held there that the grant of interest between date of suit and the date of decree up to the limit of the contractual rate is in the discretion of the Court. The Court has a discretion u/s 34 of C.P.C. to award future interest up to date of payment, subject to the limit of 6 per cent per annum. The direction granting or not granting such interest would form part of the decree and is appealable. The appellate Court can interfere with the discretionary order granting or refusing interest when the discretion has not been exercised in a judicial manner.

11. Dr. Banerjee has also relied on & decision of the Supreme Court in the case of State of Rajasthan Vs. Raghubir Singh and Others, . In that case it was contended that no interest should have been awarded for the period before the filing of the suit and that the rate of interest should not have been enhanced by the High Court for the period subsequent to the filing of the suit. It was also contended that the trial Court having, in exercise of its discretion, awarded interest at the rate of 4 1/2% pendente lite the High Court ought not have interfered with the discretion of the trial Court by enhancing the interest to 6%. There Supreme Court held that the claim for past interest would necessarily imply the claim for future interest. The Supreme Court held as follows :--

"While awarding interest pendente lite the trial Court adopted the rate of 4 1/2% but the trial Court gave no reasons for so doing. The High Court considered the matter in some detail and having regard to the various continuous defaults committed by the defendant and Us Officers, the High Court enhanced the rate of interest to 6%. The High Court was justified in doing so and we see no reason to interfere with the discretion exercised by the High Court. In the result the appeal is dis

12. Mr. Pratap Chatterjee, learned Advocate on behalf of the respondents has submitted that the rate of interest is solely at the discretion of the Court. It is not necessary for the Court to give reasons why interest is allowed at a particular rate. In any event from the facts and circumstances of this case it is apparent that the learned Judge considered all the relevant facts in awarding the interest at the rate of 6%. He has submitted that the plaintiff bank did not accept the proposal of the defendants in September, 1983 when the entire sum would have been paid. He has further submitted that because the rate of interest was reduced the defendants had to pay costs which is excessive. He has relied on a decision of this Court in the case of West Bengal Financial Corporation and Another Vs. Bertram Scott (I) Ltd. (In Liquidation), .

13. We have considered the rival contentions. Section 34 of the Civil P.C. is concerned with interest on the principal sum adjudged from the date of the suit to the date of the decree and further interest on the principal sum adjudged from the date of the decree to the date of the payment. Section 34 does not deal with interest prior to the date of the suit. If there is a stipulation for the payment of interest at a fixed rate, the Court has no discretion in awarding interest antecedent to suit at any rate other than the contractual rate. Interest accrued due prior to the institution of the suit on the principal sum adjudged is not a matter of procedure but of substantial law. The contention of Dr. Banerjee that the plaintiff bank is entitled to interest from 1st July, 1980 to 14th July, 1980, the date of the institution of the suit, at the contractual rate has to be accepted. It appears to us that the learned Judge thought it fit to award interest up to the date of the institution of the suit at the rate of 6% instead of 16.15% being the agreed rate presumably on the ground that the period involved is only for 14 days. The plaintiff bank will be entitled to interest at the rate of 16.15% on the sum of Rs. 3,89,646.80. from 1st July, 1980 till 14th July, 1980 which approximately comes to Rs. 2,369/-.

14. The rate of interest from the date of the suit to the date of the decree is solely in the discretion of the Court and this discretion is not taken away even if there is agreement for payment of interest at a fixed rate up to the date of the realisation. The contention of Dr. discretion should award interest at the agreed rate cannot be accepted. If the Court has to award interest at the agreed rate in that event no discretion remains with the Court. It has been held by the Division Bench of this Court in West Bengal Financial Corporation and Another Vs. Bertram Scott (I) Ltd. (In Liquidation), that the Court has no discretion as to

whether pendente lite interest should be granted or not. The Court has discretion only as to the rate of the interest. There the Appeal Court directed to pay interest at 1/2% per annum having regard to the facts that the assets of the company were not sufficient to meet the full claim of the secured creditors and only a small fraction of the claim of another secured creditor, a nationalised bank should be met. We are, therefore, unable to accept the contention of Dr. Banerjee that the pendente lite interest should be awarded at the contractual rate. Only question that may be considered is whether the discretion has been exercised on sound principles or not.

15. The rate of interest from the date of the decree to the date of the payment is also in the discretion of the Court. The Court can award interest on the principal sum adjudged at a rate not exceeding 6% per annum except in case of commercial transaction where interest may exceed 6% but shall not exceed the contract rate of interest. The question is whether in awarding interest pendente lite and the future interest the Court has exercised discretion on sound principles or not. The contention of Dr. Banerjee is that the learned Judge in awarding or refusing the interest at the contractual rate should give reasons. We are however not impressed by the submission of Dr. Banerjee. Section 34(2) of the Civil P.C. provides that where the decree is silent with respect to the payment of further interest 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. If for the purpose of refusing any interest, no reasons are required to be given, on a parity of reasoning, where the interest is allowed at a particular rate no reasons are to be recorded. Whether discretion has been judicially or properly exercised will have to be determined in the context of the fact of the particular case. It cannot be said that if the interest at the agreed rate is not allowed, it would mean that the Court did not exercise the discretion properly. In most of the decisions cited before us no reasons are found to have been recorded while awarding interest at a particular rate. In this case, as would appear from the judgment and decree under appeal, that the learned Judge took into consideration the following facts. :

(a) Although the defendants were ready and willing to pay the entire sum claimed in the suit on 5th Sept. 1983 subject to payment of interest from the date of the institution of the suit till the date of the payment at the rate of 10% the plaintiff Bank did not accept the said proposal;

(b) The defendants offered to pay the entire sum claimed in the suit along with interest at the rate of 10% in one instalment without raising any objection as to the correctness of the claim made by the plaintiff Bank;

(c) The rate of interest at 6% was conditional upon the payment of the entire decretal dues within stipulated time of two weeks. This was an inducement to the defendants to clear the entire dues within two weeks so that the plaintiff Bank does not incur further expenditure in execution of the decree;

(d) In default of payment of the entire decretal dues along with the interest at

the rate of 69c within the stipulated time the decree would be executable forthwith and the interest would be payable at the rate of 18% per annum;

(e) The cost was assessed at Rs. 20,000 -which by any standard was excessive. This was intended to compensate the plaintiff for delay in realisation of the claim made in the suit;

(f) The awarding of excessive cost instead of taxed cost goes to show that a part of the cost is virtually in lieu of the interest.

16. From the facts as appearing from the judgment and decree we are of the view that the learned judge took into consideration the relevant facts in exercising the discretion as regards award of interest at 6%. In the case of Raghubir Singh (supra) relied on by Dr. Banerjee, trial Court directed the payment of interest at the rate of 4 1/2% which was enhanced by the Appeal Court to 6% and such enhancement was confirmed by the Supreme Court. On a consideration of the facts and circumstances of this case we are of the view that the discretion exercised by the learned Judge in respect of the rate of interest pendente lite does not call for any interference.

17. Mr. Chatterjee, on behalf of the respondents has fairly submitted that the respondents would pay interest at any enhanced rate which might be fixed by this Court. But he submits that the respondents should not be asked to pay more than what they agreed to pay in Sept. 1983.

18. Had the proposal of the defendants been accepted in September, 1983 then the Bank would have realised approximately Rs. 1,22,000/- as and by way of interest at the rate of 10% on the principal sum adjudged. The interest already paid by the defendants amounts to Rs. 90,376.70 at the rate of 6% from 1st July, 1980 till 1st May, 1984. On an equitable consideration the Bank cannot in any event realise more than Rs. 1,22,000/- as and by way of interest from the date of the suit to the date of payment. After taking into consideration the entire facts and circumstances of this case and concession made by Mr. Chatterjee we modify the decree as follows :

(a) The respondents shall pay interest from 1st July, 1980 till 1st July, 1980 at the rate of 16.15% calculated on the sum of Rs. 3,89,646.70 which amounts to Rs.2,368/-.

(b)The respondents shall pay interest at the rate of 7% from 15th July, 1980 till 26th April, 1984 on Rs. 3,89,646.80 which comes to Rs. 1,04,000/- approximately.

(c) The respondents shall pay interest at the rate of 10% from the 27th April, 1984 till 11th May, 1984 on Rs. 3,89,646.80 which comes to Rs. 1,624/-.

19. Thus the respondents are required to pay as and by way of interest a sum of Rs. 1,07,992/- (say Rs. 1,08,000/-) being the interest from 1st July, 1980 till the date of payment as calculated hereinabove as against the interest already paid to

the tune of Rs. 90,376/-. If the amount of interest is taken into consideration along with the costs of Rs. 20,000/- already paid by the respondents the plaintiff-bank would be amply compensated and the respondents would be not also required to pay more than what they had agreed to pay on 5th Sept. 1983 and what they would have paid had the offer of the respondents been accepted.

20. In the premises the decree dt. 26th April, 1984 will stand modified to the extent indicated above. The respondents shall pay a further sum of Rs. 17,624/- as and by way of interest (1,08,000/- as determined by this order minus Rs. 90,376/- already paid). Such payment shall be made within a fortnight from date.

21. Save as aforesaid all interim orders are vacated, Each party will pay and bear its own costs. All parties to act on a signed copy of the minutes of this order.

Dipak Kumar Sen, J.

22. I agree.