(1998) 01 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1079 of 1996

State of Punjab and Others — APPELLANT

Vs

Yashpal Gupta — RESPONDENT

Date of Decision : 21-01-1998

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

Citation : (1998) 118 PLR 440 : (1998) 2 RCR(Civil) 379

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : D.S. Cheema, DAG, for the Appellant; V.M. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—State of Punjab, has preferred this regular second appeal against the judgment and decree dated 25.91995 passed by 1st Appellate Court dismissing the appeal of the appellant. Mr. Yashpal Gupta, Ac counts Officer from Medical College, Patiala was deputed to Pepsu Road Transport Corporation (PRTC), Patiala w.e.f. 17.12.1981. He was permanently absorbed in that Department and final order of absorption was passed on 25.2.1988. No demand certificate against him was issued by the concerned Department. On his retirement, his case was forwarded for grant of pension and gratuity complete in all respects on 16.10.1987. It was forwarded By appellant No. 3 in August, 1988 after 20 months of the date of his retirement. Gratuity amount was ordered to be paid vide letter dated 20.9.1988 i.e. nearly 31 months after the date of retirement. Even this amount was disbursed on 6.12.1988. On these facts, the respondent herein claimed interest on the amount of gratuity from 17.3.1987 to 5.12.1988 at the rate of 12% per annum. This claim of the plaintiff was contested by the appellants. The objections with regard to maintainability of the suit and the suit being barred by time were taken. It was further averred that no amount was due and payable to the respondent on account of interest towards delayed payments or on any other amount.

2. Issues were framed by the learned trial Court and after the parties led then evidence, the learned trial Court decreed the suit of the plaintiff partly holding as under:-

"The suit of the plaintiff is partly decreed for declaration to the effect that the plaintiff is entitled to interest at the rate of 12% per annum on delayed payments of gratuity and pension which shall be calculated in the following manner :

The interest from the date when the payment on gratuity and pension became due till the date of payment at the rate of 12% PA. shall be calculated and be considered as principal & till the date of payment of amount of interest the said principal amount shall also carry interest at the rate of 12% P.A.

In view of the facts and circumstances of the case, the parties are left to bear their own costs. Decree sheet be prepared. File be completed and consigned to record room."

3. As already noticed first appeal of the appellants against the decree in favour of the respondent was dismissed. Learned 1st Appellate Court, after detailed discussion, gave the following relief in favour of the respondent in that appeal:-

"Coming to the rate of interest to which the plaintiff is entitled, he has claimed the same 18% per annum when as the defendant-appellants have challenged the same to be on the higher rate. I, however, allow the interest 12% per annum on the different amounts from the period as decided above. To be more precise the plaintiff-respondent is held entitled to interest on the gratuity amount of Rs. 43,577.10 from 25.6.1988 to 6.12.1988 and on the commutation pension amount of Rs. 1,72,941.60 from 25.8.88 to 20.3.89 & on the amount of Rs. 46,995/- from 25.8,1988 to 30.4.1990 and on the amount of Rs. 11,413.70 from 25.8.1998 to 4.2.1992.

As a result of the above discussion, the appeal of the defendant- appellant is partly accepted and the suit of the plaintiff-respondent stands decreed, for interest to be calculated as above.. The plaintiff is also held entitled to future interest 12%. P.A. till its payment."

4. It is the judgment & decree of 1st appeal which has been assailed in this Regular Second Appeal. When Regular Second Appeal came up for motion hearing, the claim only with regard to rate of interest was pressed on behalf of the State. The Court on 28.5.1996 passed the following order :-

"The learned counsel for the appellant submits that the respondent could have been awarded pendente lite and future interest only at the rate of 6% u/s 34 C.P.C. whereas in the present case he has been granted interest at the rate of 12%.

Notice of motion to the respondent for 26.8.1996."

5. From the above order, it is dear that it is the rate of interest which was mainly disputed on behalf of the State and no other contention appears to have been

pressed. Notice of motion obviously was limited to that question. In any case there is concurrent finding of fact based upon proper appreciation of evidence by the learned Courts below, which is in consonance with the settled principles of law and therefore would not be open to any interference by this Court in Regular Second Appeal.

6. Coming to the question of rate of interest, both the Courts below have awarded interest at the rate of 12% per annum on the amounts payable to the respondent herein. The learned counsel for the respondent has relied upon the cases of Chhatrasal Singh v. State of Haryana 1996 (4) SCT 767 and S.R. Bhanrale Vs. Union of India and others, to argue that the interest at the rate of 12% has been rightly awarded by the courts below. On the other hand, the learned counsel for the appellant argued that the present proceedings arising out of the suit are to be controlled, by the provisions of the CPC i.e Section 34 of C.P.C. His submission is that under the provisions of Section 34 interest in excess of 6% is not permissible except in the cases specifically provided under the said provision. Firstly, this contention of the learned counsel for the appellant is not well-found. As held in the case of Jagdish Chander Vs. Punjab National Bank, pendente lite interest is one of the provisions within the discretion of the Court. The interest on the principal amount adjudged from the date of the decree to the date of payment should not be allowed at a higher rate than 6% except in commercial transactions and other exceptions provided in the provision. Pendente lite interest thus is primarily in the discretion of the Court. The Courts below have exercised the discretion in consonance with the settled principles of law and relevant provisions and no fault can be found in the judgments of the Courts below. There is basic fallacy in the argument of the learned counsel for the appellant inasmuch as the present suit is for recovery of interest on delayed payments. The interest prayed for in the plaint is 12% and it is for the Court to grant given rate of interest which is considered by the Courts to be just fair and proper. Section 34 of the Code of Civil Procedure, thus has no application on the claim raised by the respondent prior to the institution of the suit. Section 34 comes into play at the time of passing of the decree for the purpose of awarding interest pendente lite and future interest.

7. There is no doubt to the fact that the payments lawfully due to the respondent and in fact which were paid subsequently, were delayed, without any reason much less a sufficient cause. In the case of State of Kerala and Others Vs. M. Padmanabhan Nair, the Apex Court held as under :-

"Pension and gratuity ate no longer any bounty to be distributed by the Government to its employees on their retirement but have become; under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

.... "Unfortunately such claim for interest that was allowed in respondent''s favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since/the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross-objections in the High Court it would not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant."

8. Applying the aforesaid principle to the facts of the present case and the fact that the plaintiff has specifically prayed for 12% per annum interest on the delayed payments, the Courts below cannot be faulted is granting the relief to the plaintiff-respondent.

9. Learned Courts below have granted the relief to the respondent which he was entitled to in law and as such, no error can be traced in the said judgments. Well reasoned orders supported by proper appreciation of evidence on record takes it beyond the scope of jurisdiction exercisable by the High Court while deciding Regular Second Appeal. Reference in this regard can be made to the judgment of the Supreme Court of India in the case of Rajender Kumar Vs. Jamna Das Kotewala, . The State first delayed the payments lawfully due to the respon dent herein without any justification or reason and thereafter opted to contest this prolonged litigation unsuccessfully. Keeping in view the principles enunciated by the Supreme Court of India in the case of State of Bihar and others Vs. Subhash Singh, , I would dismiss the present appeal with costs which are assessed at Rs. 3,000/-. The costs shall be paid by the State at the first instance and there upon the amount of costs so paid shall be recovered from the erring officers/officials for causing this delay in accordance with the rules, within a period of six months from the date of payment.

10. With the above direction, the appeal is dismissed.

