

(1967) 06 DEL CK 0008
In the Delhi High Court
Case No : Regular First Appeal No. 3 of 1967

Union of India

APPELLANT

Vs

The Karnal Distillery Co. Ltd

RESPONDENT

Date of Decision : 09-06-1967

Acts Referred:

Citation : (1967) 3 DLT 579

Hon'ble Judges : S.K. Kapur, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : Sita Ram and M.R. Gupta, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) This first appeal by the Union of India herein after to be called the defendant) is directed against the judgment and decree passed by the Senior Subordinate Judge Simla whereby the plaintiff's suit for recovery of Rs. 25,270.00 has even decreed against the defendant with costs,

(2) The plaintiff, the Karnal Distillery Co. (Private) Ltd, alleged that it had entered into an agreement with the government of Himachal Pradesh on July 20, 1950 (Ex. P-I) whereby it agreed to supply 12,000 L. P. gallons, with 10% variation of quantity on either side. of country spirits to the Liquor Licensees of Mandi District during the remaining period of the financial year 1950-51, commencing from August I, 1950, at the rates mentioned in the said agreement. According to the agreement the Government had to provide a suitable building to enable the plaintiff to establish a Ware-house at Mandi, on a rent of Rs. 50.00 per mensern for the period of the contract. The plaintiff was also required to deposit a sum of Rs. 20001-1- as security for the due performance of the various clauses of the agreement.

(3) The plaintiff established the warehouse and commenced supplies of country liquor as per terms of the agreement but alleged that out of the .quantity supplied and stored by the plaintiff in the warehouse, the Liquor Licensees of

Mandi District lifted during the term of the contract only 7, 934.5 L. P. gallons of liquor leaving 2, 645.8 L P. gallons on its hands, which were taken over by the Government through the Excise Sub-Inspector, in charge of the warehouse on March 31, 1951. The plaintiff submitted its bill for Rs. 22,264/6/3 to the Government at the contractual rates mentioned in the agreement but the payment of the amount was withheld. The plaintiff thereupon filed a suit against the State of Himachal Pradesh Government of July 31, 1953 for recovery of Rs. 22,264/6/3 plus Rs. 3,005/9/9 as interest at the rate of 6% per annum making a total of Rs. 25,270.00.00 in the court of Senior Subordinate Judge, Karnal. The suit was contested by the defendant inter-alia on the ground that the civil courts at Karnal had no Jurisdiction to try the suit. The objection with regard to the territorial jurisdiction of the civil court Karnal prevailed with the Subordinate Judge who by his order dated February 27, 1954 directed- that the plaint be returned to the plaintiff for presentation to the proper court. The plaintiff preferred an appeal against that order to the High court of Punjab but the appeal was dismissed by G. D. Khosia J. of that Court on November 8, 1955. The order of the learned Single Judge was challenged by the plaintiff in further appeal to the Division Bench of the said High Court under clause 10 of its Letter Patent. The appeal was admitted to regular hearing but was eventually dismissed on September 1, 1958 with the following short judgment recorded by the learned Judges hearing the appeal:-

"MRBali states that he has no objection to the case being heard at Simla as another case between the same parties is already before the Courts in Simla. Let this appeal be dismissed. There will be no order as to costs." On December 8, 1958, the plaint was returned to the plaintiff for presentation to the court of competent jurisdiction and was then filed in the court of Senior Subordinate Judge, Simla on December 10, 1958.

(4) During the pendency of that suit India whereupon the plaintiff applied and obtained leave of the court of January 5, 1959 for substitution of Union of India as a defendant in place of the previously impleaded defendant Himachal Pradesh Government.

(5) The defendant in its written statement pleaded that the Civil Courts at Shula had also no Jurisdiction to try the suit, that the suit was barred-by time and that the Liquor Licensees of Mandi District to whom the liquor had been supplied were necessary parties to the suit. On merits, the defense raised was that although the agreement (Ex. P-1) was executed by the Government with the plaintiff the supply of liquor was actually- agreed by-the plaintiff to be made to the said Liquor Licensees and not to the defendant or through it. It was further contended that ;the supply of liquor was to be made by the plaintiff subject to the provisions:of: the Punjab Excise Act and the Rules framed there under. It was also pleaded that,the agreement was unilateral in the sense that the condition, of 10%.variation.on, either, side. applied to the quantity of the liquor and. not to the defendant and that the quantity of 2815.8 L.P. gallons of-liquor

was surrendered by the plaintiff to the Collector Mandi District under the Excise Act. and the Rules made there under and not under the agreement (Ex p.1). It was also contended that at the end of the financial year the liquor surrendered by the plaintiff was taken over by the incoming warehouse contractors for the year 1951-52, namely, M/s Jagatjit Distilling and Allied Industry Ltd, Hamira and that this was done under Rule 5.39; (Sub-rule 30) of the Punjab Excise Manual, Volume 11, as applied to Himachal Pradesh and not under the agreement (Ex. P 1) and that since the price of the surrendered liquor had to be paid to the plaintiff by the incoming warehouse contractors and they both could not agree between themselves upon the price, the Collector of Mandi was under the Rules authorized to fix the price of the liquor so surrendered, that the Collector of Mandi District did fix the price in exercise of his powers under the Rules at Rs. 18,335/5/2 as against the contractual price of Rs. 22,264/6/3 demanded by the plaintiff, that this amount was offered by the incoming contractors to the plaintiff but it refused to take the same and the money had to be deposited in the Government Treasury at Mandi.

(6) After the plaintiff's replication to the written statement of the defendant was filed the trial court framed the following issues:-

1. Is the suit not barred by time? 2. Whether or not this court has jurisdiction to try this suit? 3. Are the retail sale country liquor licensees of Mandi district of Himachal Pradesh necessary party to the suit? 4. Are the defendants not estopped from taking the above plea in issue No. 3 by virtue of their position taken in a similar case No. 30 of 1954 decided by Senior Sub Judge, Simla, and matter is not res judicata between the parties?

5. Is the plaintiff not entitled to the contractual price of 2615.8 L.P. gallons of country liquor supplied to the defendant according to the rates mentioned in the agreement?

6. If issue No. 5 is decided in favor of the plaintiff to what amount the plaintiff is entitled on account of the price of quantity of liquor taken by the defendant and not paid for by the defendant?

7. Was it not obligatory on the part of the defendant to accept 10,800 L. P. gallons (minimum) of country liquor according to the agreement. Was the agreement unilateral so far as the condition of 10% variation on either side was concerned?

8. Is the plaintiff entitled to any interest, if so, at what rate and how much?

9. Relief.

(7) The trial court found issues Nos. 1, 2, 6 and 8 in favor of the plaintiff and issue No. 4 in favor of the defendant. Issues Nos. 3 and 5 were decided against the defendant while issue No. 7 was held to be unnecessary and therefore left undecided. In the result the plaintiff's suit, as stated above, was decreed with costs.

(8) Aggrieved by the judgment and decree passed by the trial court the defendant has come up in appeal to this court.

(9) Mr. Sita Ram learned counsel for the appellant has attacked the judgment of the trial court on two points only. The first contention urged by him is that the trial court has erred in holding that limitation which had started running against the plaintiff from 31st March, 1951, was saved u/s 14 of the Limitation Act and thus the plaint presented in the Court of the learned Senior Subordinate Judge, Simla on December 8, 1958 was presented within time. His second contention is that the trial court has fallen into error in holding that the plaintiff is entitled to demanded payment from the Government for the stock of liquor surrendered by it to the Collector of Mandi District on 31st March, 1951, and that too at the rates mentioned in the agreement (Ex. P-I) as against the price fixed by the Collector of Mandi District viz. Rs. 16,333/5/2 and collected from the incoming ware-house contractors and offered to the plaintiff.

(10) Learned counsel for the respondent on the other hand, has urged in support of the judgment of the trial court that section 14 of the Limitation Act is fully applicable to the facts of the case inasmuch as the plaintiff had been prosecuting with due diligence the suit filed by it in the civil court at Karnal on July 31, 1953 and that it was only on December 8, 1958 that the plaint which had been ordered to be returned by the High Court was received by it and then filed without any avoidable loss of time in the court of the Senior Subordinate Judge at Simla on December 10, 1953. As regards the second contention of the appellant's counsel the learned counsel for the respondent has argued that the transaction between the parties was governed by the terms and conditions embodied in the agreement (Ex P-I), that the said agreement made no reference to the Punjab Excise Act and the Rules framed there under, that the plaintiff was not a licensee under the said Act and as such recourse could not be had to any Rules for fixing the price of liquor taken over from it by the Collector of Mandi District and that the same had to be paid for at the contractual rates mentioned in the agreement between the parties. Learned counsel for the respondent further contends that although under the agreement the plaintiff was required to supply liquor to the liquor licensees of Mandi District, the responsibility for payment of the liquor rested at all time on the Government as a contracting party with the plaintiff.

(11) I find substance in the arguments addressed to us by the learned counsel for the appellant on the second question raised by him ; but I have not at all been impressed by his argument on the question of limitation. To take the question of limitation first, the undisputed facts are that the plaintiff's right to sue accrued on March 31, 1951 when its stock of liquor was taken over by the Collector of Mandi District through the Excise Inspector in charge of the ware-house. The plaintiff could have Therefore filed its suit for recovery of price of that liquor till March 31, 1954. The plaintiff however filed its suit in the civil court at Karnal on July 31, 1953 after giving two months notice u/s 80 CPC . on March

25. 1953. The Senior Subordinate Judge, Karnal however held on February 2/, 1954 that the courts at Karnal had no jurisdiction to entertain the suit. The plaintiff was dissatisfied with that order and appealed against it to the High Court of Punjab on April 3, 1954. That appeal was decided by a learned Single Judge of that court on November 8, 1955. The plaintiff then filed a Letters Patent appeal against the judgment of the learned Single Judge on November 23 1955 which was admitted to regular hearing by a Bench of two Judges of that Court and ultimately dismissed on September 1, 1958 as a result of a statement made by the plaintiff's counsel to the effect that he had no objection to the case being heard at Simla as another case between the same parties was already pending before the courts in Simla. On these facts it seems hardly reasonable to contend that the plaintiff had not been prosecuting in good faith and with due diligence its suit in the civil courts at Karnal during the period commencing from July 31. 1953 till December 8, 1958. According to the Rules of the Punjab High Court, an appeal from the order of the Senior Subordinate Judge, Karnal returning the plaint for want of jurisdiction had to come up for admission before a Bench of two Judges of that court. The mere fact that the appeal was admitted to regular hearing by two learned Judges of that Court, itself indicates that the plaintiff's stand on the question of jurisdiction did merit consideration and was not completely lacking in good faith. It is that the appeal was eventually dismissed by G.D. Khosia J. on November 8, 1955 ; but an examination of that judgment (Ex. P-13) does not leave the impression that the learned Judge regarded the plaintiff's stand as totally devoid of merit. The conclusion that there was some substance in the plaintiff's stand is reinforced by the fact that the Letters Patent appeal filed against the judgment of the learned Single Judge, was again admitted by a Division Bench of that court and eventually when it came up for disposal before the Bench there was no decision of the appeal adverse to the plaintiff, on merits. On the other hand it was the convenience of the plaintiff itself which prompted its learned counsel to state before the learned Judges hearing the appeal that the plaintiff had no objection to the case being heard at Simla. In such circumstances, it is not legitimate to contend that the plaintiff's action in instituting the suit in the civil court at Karnal was either wanting in bonafides or the prosecution of the case by it lacked diligence in any manner.

(12) The argument of the learned counsel for the appellant however is that the benefit of section 14 could have been availed of by the plaintiff only if the plaintiff's appeal before the High Court had been disposed of on merits and the High Court had recorded a finding on the question of jurisdiction. In support of his argument reliance has been placed by the learned counsel on a Bench decision of the High Court of Calcutta in *Mohanlal Beheti and others v. Moulvi Tabizudin Ahmed* and on a Full Bench judgment of Allahabad High Court in *Sadavatan Pande v. Ram Chandra Gopal* what happened in *Mohanlal Beheti's* case was that the plaintiffs instituted a suit in the court of a Subordinate Judge against the defendant for recovery of money on the basis of an adjustment of accounts on January 1, 1935. The suit was admittedly filed beyond three years

from the date of the alleged adjustment. To get round the plea of limitation, the plaintiffs invoked the provisions of section 14, Limitation Act and it was stated by them in the plaint that they had instituted a suit against the defendant on the identical cause of action in the original side of the High Court on July 19, 1933 that the said suit was prosecuted in good faith and with due diligence and that on January 21, 1936, the High Court allowed the plaintiffs to withdraw the suit with liberty to institute a fresh suit on the same cause of action inasmuch as it had no jurisdiction to try the suit. The plaintiffs claimed that u/s 14, Limitation Act they were entitled to a deduction of period between July 19, 1933 and January 21, 1936 and it was not disputed that in that case the suit was well within time. The suit was however dismissed by the Subordinate Judge on the ground of limitation holding that section 14, Limitation Act was not applicable to the facts of the case and his decision was upheld by the first appellate Court. On second appeal before the High Court it was held, :-

"The first question is whether the plaintiffs can claim the benefit of S. 14 even though they themselves withdrew the previous suit with liberty to institute a fresh suit on the same cause of action. Order 23, Rule 2 lays down that in any fresh suit instituted on permission granted under the last preceding Rule the plaintiffs would be bound by the law of limitation in the same manner as if the first suit has not been instituted. This is apparently an exception engrafted on the provisions of S. 14, Limitation Act, and the Rule clearly means that the suit withdrawn is to be ignored altogether and deemed non-existent for the purpose of considering the period of limitation for the fresh suit. I agree however with the view taken by the Allahabad High Court that there is no real conflict between Order 23, Rule 2 and S. 14 Limitation Act, and the expression "unable to entertain it" which occurs in S. 14, Limitation Act, does not merely mean that the Court has expressed its opinion that there is defect regarding jurisdiction or otherwise but the Court must actually by its order terminate the litigation on the ground of defect of jurisdiction or other cause of like nature. (13) It is clear that the learned Judges in that case were not dealing with an appeal from the order of the lower court returning the plaint but were considering the question of applicability of section 14, Limitation Act in the context of an order of withdrawal of the original suit under Order 3 Rule 2 C.V.C. It is apparent that in the case of a suit which has been allowed to be withdrawn the suit is to be ignored altogether and deemed to be nonexistent for the purpose of considering the period of limitation for the fresh suit. This is not the case when the plaint has been ordered to be returned to the plaintiff and the order returning the plaint is challenged by him in appeal. As soon as such an appeal is filed by the plaintiff the suit instituted by him is to be treated as still pending as the court's decision with regard to its inability to entertain the suit is to be treated as if it is still pending before it. *Sadayatau Pande*'s case before the Full Bench of Allahabad High Court also relates to withdrawal of a suit and the effect of section 14, Limitation Act on such a suit. Both these cases are therefore of no help to the learned counsel for the appellant.

(14) Learned counsel for the appellant has not been able to cite any direct authority having a bearing on the question raised by him nor has any such case been brought to our notice by the learned counsel for the plaintiff. A close examination of section 14(1) Limitation Act however makes it clear that the plaintiff can claim the benefit of exclusion of time for that purpose of saving limitation only if he can establish that he has been prosecuting with due diligence another civil proceeding against the defendant which proceeding related to the same matter in issue and was being prosecuted by him in good faith in a court which from defect of jurisdiction or other cause of a like nature was unable to entertain it. The time to be excluded is not what is spent in the conduct of proceedings in the court of first instance only but it also extends to the proceedings in appeal. The only order envisaged by the section Therefore is the order of the court in the previous proceeding holding that it is "unable to entertain it" and in a case where the appeal filed by the plaintiff is directed against the order returning the plaint the word "court" in the concluding portion of sub-section (1) of section 14 must mean the court of first instance only, because it is that court alone which has to hold by its order that it is unable to entertain the plaint from defect of jurisdiction or other cause of like nature. From the very nature of things when an appeal is filed against such order it cannot be predicted of a court of appeal that it is unable to entertain the plaint or suit. That inability to entertain the plaint is Therefore an attribute of the Court of first instance alone and the requirement of sub-section (1) is a fortiori confined to determination of the point by that court. Once that requirement is satisfied no further order of adjudication as such is necessary at the hand, of the Court of appeal. To secure the benefit of the section all that remains to be seen thereafter is whether the plaintiff's action in filing an appeal from the order of the court of first instance is for good cause and satisfies the conditions of prosecuting the case with due diligence and in good faith.

(15) As already observed by me, I have no doubt that there was ample Justification for the plaintiff to file an appeal against the order of the learned Senior Subordinate Judge, Karnal and to prosecute the same till it was finally dismissed by the Letters Patent Bench of the Punjab High Court.

(16) Coming now to the second contention of the learned counsel for the defendant appellant, the question resolves itself into one of construction of the agreement (Ex. P-I). There is no doubt that the contracting parties in this agreement are the Government of Himachal Pradesh and the plaintiff company but there is nothing in the said agreement from which a contract of sale and purchase of goods may be spelt out between the parties nor does the agreement provide for supply of liquor by the plaintiff to the Government as such. The supply of liquor under clause (1) of the agreement, is to the liquor Licensees of Mandi District. Even the arrangement with- regard to return of empty bottles is between the liquor licensees and the plaintiff company. The only obligation which the Government took upon itself under clause (2) of the agreement is to provide a suitable building to the contractors for establishing a ware-house at Mandi for

which the plaintiff was required to pay a monthly rent of Rs. 50.00. It is Therefore not permissible to infer from this agreement that it is a contract for the sale or purchase of country liquor between the plaintiff and the Government. To put it in different words, the whole arrangement under the agreement comes to this. The sale of country liquor in the State being subject to payment of excise duty and its distribution from the stage of manufacture till the stage of its reaching the ultimate consumer being controlled by the Government, the latter granted permission to the plaintiff, a manufacturer of liquor, to establish a warehouse at Mandi where it was required to maintain certain minimum stocks in order to ensure its regular supply to the retailers. The plaintiff having been granted a kind of monopoly the standards of quality and the prices at which various kinds of liquor were to be made available to the retailers were also fixed by the agreement granting such permission to the plaintiff and the performance of those conditions was guaranteed by the plaintiff by means of a security furnished by it for the purpose.

(17) This being the true Import of the agreement between the parties it is impossible to accept the contention of the learned counsel for the respondent that at the end of the financial year the Government was under an obligation to take over the extra stock of liquor lying at the Mandi ware-house and to pay for it at the contractual rates. But it is equally difficult to hold that the Collector of Mandi District had any jurisdiction or authority to fix the price at which the said stock was to be paid for by the incoming ware-house contractors. Mr Sita Ram has however urged that the Collector derived his authority from rule 5 5.39(31) of the Punjab Liquor license Rules contained in the Punjab Excise Manual, Volume Ii which reads thus:- A licensee to whom any intoxicant is made over under the preceding clause shall be bound to pay such price for the same as the Collector in his discretion may fix."

(18) An examination of Rule 8.39 and the sub-rules there-under however shows that they relate to general conditions applying to various kinds of licenses granted under the Act. It is not established on the record of this case that any such license was ever granted to the plaintiff or that supply of liquor by the plaintiff was under any such license. It is no doubt true that on the expiry of the financial year i. e. 31st March, 1951 the Collector through the Excise Sub-Inspector, in charge Mandi Ware-house tookover the stock of liquor lying in the said warehouse in purported exercise of his power under sub-rule (3) of Rule 5.39 and made over the Fame to the incoming ware-house contractors. The case of the defendant is that the aforesaid stock of liquor was voluntarily surrendered by the plaintiff while the plaintiff alleges that the stock was taken over without its consent. Whatever be the position, there is no gain-saving the fact that Sub-Rule (30) of Rule 5.39 has no application to the facts of this case. The said sub-rule reads:-

"If any person, who has held a license under these rules, shall have in his possession on the expiry or determination from any other cause of his license,

any intoxicant which he is unable forthwith to dispose of under the provisions of these rules, to any person license I or authorised to purchase it he shall at once surrender the same to the Collector The Collector shall make such intoxicants over, in any quantity not exceeding that which the transferee is likely to sell within two months, to the incoming licenses or otherwise to any licensee within the district who is licensed to sell intoxicants of the kind surrendered provided that, if any part of such intoxicant, or part thereof, be declared by the Civil Surgeon or other qualified officer to be unfit for use, the Collector shall cause the same to be destroyed." (19) It is apparent that the application of this sub-rule (30) is restricted to the case of a person who has held a license under these rules and since there is no evidence that the plaintiff held such a license there was no question of the Collector taking over the stock of liquor under sub-rule (30) and fixing its price under sub-rule (31).

(20) The position that merges from the above discussion is that the plaintiff under an agreement with the Government had stored certain quantity of liquor which it had agreed to supply to the liquor licensees of Mandi District during the financial year ending 31st March, 1951. This liquor was to be paid for by the liquor licensees direct at the price agreed upon between the plaintiff and the Government. The plaintiff had also agreed to bind itself to keep in stock and supply 10800 L. P. gallons of liquor during the term of the contract and in performance of its obligation it had stored 10580.3 L. P. gallons in the ware house. The liquor licensees were also able to take delivery of 7934.5 L. P. gallons only. The contract having come to an end by efflux of time the plaintiff still had 2645.8 L. P. gallons lying un-disposed of in its ware-house. The plaintiff could have very well insisted upon removing this extra stock of liquor to its own distillery at Karnal and the Government could not have lawfully prevented-ft from doing so. The plaintiff however allowed the Collector of Mandi to take over the said stock and to deliver it to the incoming ware-house contractors. If the action of the Collector was against the law the remedy of the plaintiff lay in suing the defendant for damages for wrongful seizure of its property. If on the other hand the plaintiffs of its own accord surrendered the stork to the Collector the delivery could not be under the terms of the contract because there is absolutely no evidence to show that the collector accepted the goods and agreed to pay for the same on Government account pursuant to the terms of agreement between the parties. The case of the Government, as already stated, is that the stock of liquor was taken over in exercise of the powers of the Collector under rule 5.39 (30) of the Punjab Excise Manual, Volume Ii and made over by him to the incoming ware-house contractors who having declined to pay the price mentioned in Ex. P. L. the same had to be fixed by the Collector under Rule 5.39.(31) of the Punjab Excise Manual.

(21) It has also been pointed out that the sale of liquor under the agreement was not to the Government but to the liquor licensees of the District. If the plaintiff's case was that it had stored 105803 L. P Gallons of liquor in the ware-house at Mandi and was Therefore entitled to be paid for the whole of that quantity then

the obvious thing for it to do was to sue the liquor licensees of Mandi District to whom it had agreed to sell the liquor. But in that case it would have perhaps been met with the difficulty of there being no privity of contract as such between the plaintiff and those persons and in any event their liability to pay at the contract price could have arisen only in the event of purchase of the surplus quantity of liquor by them and not otherwise. Moreover, according to the evidence the surplus liquor was ultimately delivered by the Collector to the incoming warehouse contractors and not to the liquor licensees and the plaintiff totally refused to implead the contractors as well as licensees as parties to the suit. No relief could therefore have been awarded to it against either of them.

(22) Faced with this difficulty the learned counsel for the respondent submits that it is open to this court to mould the relief in the light of the facts established on the record. I agree that this court has ample power to grant such relief to the plaintiff as it may deem just and proper in the circumstances of the case. His submission is that since the evidence on the record establishes a case of wrongful seizure of the plaintiff's property by the Government the plaintiff is entitled to reasonable compensation and that the contract price of liquor may be treated as the basis for awarding such compensation. I do not think it is open to us to do so as it would amount to our changing the entire compensation of the suit. The plaintiff came to court with a definite claim for price of the goods on the basis of an agreement. To convert that suit at this stage into one for compensation and to hold the contract price without any evidence whatsoever, as the market price of the goods, would amount to making out an altogether new case for the plaintiff in appeal. On the other hand there is also no escape from the conclusion that the plaintiff's goods having been taken over by the Government the plaintiff is certainly entitled to be paid for them. The only question however is at what rate and by whom? It is established on the record that the Government did not retain the stock of liquor with itself but passed it on to the incoming warehouse contractors. It is not alleged by the plaintiff that the Collector while fixing the price acted unreasonably or unfairly or that he had any interest in the incoming warehouse contractors. The plaintiff has also not shown that the price fixed by the Collector is not the market price of the goods. In the absence of any such evidence, it is legitimate to infer that the price fixed by the Collector is reasonable and fair.

(23) Learned counsel for the defendant-appellant has stated at the bar that the sum of Rs. 16,333/5/2 realized by the Government from the incoming warehouse contractors is still lying as a revenue deposit in the Government Treasury at Mandi and the Government has no objection if a decree is passed against it in favor of the plaintiff for that amount. According to the evidence the said amount was offered to the plaintiff but it declined to accept the same. In the circumstances the plaintiff is not entitled to the interest on the above amount. The decree of the court below is therefore modified to the extent that the defendant shall pay the plaintiff the afore-mentioned sum of Rs. 16333/5/2. In the circumstances of this case however there will be no order as to costs.

S.K. Kapur, J.

(24) I agree.