

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 1128/2004**

% **Date of decision: 4th September, 2009**

BANSAL COMMODITIES & ORS Plaintiffs

Through: Mr. Mohinder Rana, Advocate

Versus

RAKESH KUMAR AGGARWAL & ANR ... Defendants

Through: Mr V.N. Jha, Advocate for the defendant
No.1.
Defendant No.2 ex parte.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The suit is essentially for Rs 50,40,000/- together with interest thereon at 18% per annum from 28th April, 1989 till the date of payment. It is the case of the plaintiffs that the plaintiff No.1, a registered partnership firm of which the plaintiffs 2 and 3 are the partners, was trading in non-ferrous alloys; that the defendant No.1 Shri Rakesh Kumar Aggarwal was also trading in the same goods in several names, namely, M/s Popular Industries, M/s Prominent Enterprises, M/s Manoj Metal Industries and M/s Jasoria Industries; that in or about January, 1989 the plaintiffs desired to purchase 58 metric tonnes of copper alloy and negotiations ensued with the defendant No.1 who agreed to sell the same to the plaintiffs for a

total price of Rs 49.03 lacs; that the plaintiffs at the asking of the defendant No.1 got issued pay orders for a total sum of Rs 49.03 lacs in the aforesaid four names in which the defendant No.1 was carrying on business; that the defendant No.1 assured delivery of copper alloy within 30 days and also agreed to pay interest on the amount received by him @ of 18% per annum.; that the defendant No.1 however failed to deliver copper alloy to the plaintiffs though confirmed the monies received from the plaintiffs in his accounts for the period ending 31st March, 1989; that on 26th April, 1989 the defendant No.1 handed 7 pay orders to the plaintiffs for aggregate sum of Rs 50.40 lacs issued by Punjab National Bank, Mal Road Branch, Delhi i.e., Rs 49.03 lacs received together with interest due till then – the said pay orders were drawn in favour of M/s Hindustan Copper Limited; the plaintiffs were to approach Hindustan Copper Limited with the said pay orders and collect the base metal copper which could be converted into copper alloy.

2. It is further the case of the plaintiffs that the authorized officers under the Income Tax Act conducted search and seizure operation at the residential and business premises of the defendant No.1 on 27th April, 1989; in the course of the said operation the preparation of the pay orders aforesaid for Rs 50.40 lacs from the accounts on 26th April, 1989 was found; the Income Tax Officials on 28th April, 1989 itself passed an order effecting deemed seizure with respect to the 7 pay orders for Rs 50.40 lacs and served the same on the Manager, Punjab National Bank; however, the original pay orders were in the control and possession of the plaintiffs; in the circumstances the plaintiffs did not present the pay orders for payment and on the contrary approached the Income Tax Authorities

with respect the same. At this stage, it is not necessary to refer to the proceedings thereafter.

3. In the present suit, besides the defendant No.1, the Commissioner of Income Tax -XIII, Vikas Bhavan, I.P. Estate has been impleaded as the defendant No.2.

4. Upon notice of the suit being issued to both defendants, written statements came to be filed. It may be recorded that the defendant No.1 had filed IA.No.6704/2004 under Order 7 Rule 11 of the CPC but it was dismissed on 18th April, 2006. On 28th July, 2006 none appeared for the defendants and both the defendants were proceeded against ex parte and the plaintiffs directed to file affidavit by way of evidence. The written statement of the defendant No.1, in fact, was filed thereafter and there is no order taking the same on record. The plaintiffs filed affidavit by way of evidence and which was tendered before the court on 26th March, 2008. No attempt was made by the defendants for cross examination of the witness of the plaintiffs. The plaintiffs closed their ex parte evidence.

5. The defendant No.1 applied for setting aside of the ex parte. The said application itself was dismissed in default. An application was filed for restoration of the said application. During the hearing of the said application, on 11th September, 2008 it was deemed expedient to record the statement of the defendant No.1. The statement of the defendant No.1 was recorded on 18th September, 2008. Thereafter on 7th November, 2008 the application filed by the defendant No.1 for restoration of the application for setting aside the order proceeding ex parte against him, was dismissed. The defendant No.1 preferred FAO(OS)460/2008 against the said order and which was also dismissed on 26th November, 2008.

SLP.No.31529-31531/2008 preferred to the Supreme Court was dismissed on 17th December, 2008.

6. Final arguments in the suit have been heard from the counsel for the plaintiffs as well as counsel for the defendant No.1. They have also filed synopsis of their submissions.

7. In the circumstances aforesaid no issues were framed in the suit. Arguments of the defendant No.1 against the suit have been confined to the aspect of limitation, the suit having been instituted in this court on 14th July, 2004. In this regard it may also be stated that the plaintiffs alongwith the suit filed an application being IA.No.7753/2004 under Section 14 of the Limitation Act. This court vide order dated 18th April, 2006 on the said application held that the same could be decided only after evidence. Hence while considering the question whether the suit is within time or not, the aspect of Section 14 shall also be considered. It may also be recorded that alongwith the suit, IA.No.7752/2004 under Section 80(2) of the CPC was also filed, which was allowed on 18th April, 2006.

8. The plaintiffs have examined the plaintiff No.2. He has, inter alia, proved that the plaintiff No.1 is a registered partnership firm and the plaintiffs 2 and 3 are its registered partners.

9. The evidence of the said witness of the plaintiffs qua the transaction aforesaid with the defendant No.1 remains unrebutted. Thus the same is to be believed and the plaintiffs would be entitled to the decree for recovery of money against the defendant No.1 save for the aspect of limitation. This court while considering the application of the defendant No.1 for setting aside of the ex parte had also as aforesaid on 18th September, 2008 examined the

defendant No.1. From the said examination also, the liability of the defendant No.1 for the money claimed is established.

10. Thus the only question remaining to be examined is whether the suit is within time or not and if not within time, whether the plaintiffs are entitled to the benefit of Section 14 of the Limitation Act and whether the plaintiffs are entitled to any reliefs against the defendant No.2 as claimed.

11. The witness of the plaintiffs has proved that pursuant to the order dated 28th April, 1989 of the Income Tax Officials of seizure with respect to 7 pay orders for the total sum of Rs 50.40 lacs, the plaintiffs made a representation dated 24th May, 1989 to the Income Tax Authorities (Exhibit PW1/19); the witness of the plaintiffs has further proved that the defendant No.1 on 23rd June, 1989 stated before the Assistant Director of Investigation of the Income Tax Department that the pay orders aforesaid had been given by him to the plaintiffs; the plaintiffs have proved as Exhibits PW1/20 and PW1/20A the order of the Assistant Commissioner of Income Tax including the amount of the said pay orders in the income of the defendant No.1.

12. The plaintiffs have proved as Exhibits PW1/21 and PW1/21A the objections dated 22nd September, 1989 filed by them against the order of seizure of the pay orders, which were in the physical custody of the plaintiffs; it was the case of the plaintiffs in the said representation, reminders with respect thereto have been collectively proved as Exhibit PW1/22, that the said pay orders as on the date of the search and seizure operation were not the assets of the defendant No.1 and could not be seized.

13. The plaintiffs have proved as Exhibits PW1/23 and PW1/24 the orders of the Commissioner of Income Tax on the objection/representation aforesaid of the plaintiffs directing inspection of the books of accounts of the plaintiffs to verify the transaction claimed by the plaintiffs with the defendant No.1 and upon being satisfied of the same vacating the order of seizure.

14. It is further in evidence of the plaintiffs that inspite of the aforesaid order, Income Tax Authorities did not write to the bank revoking the earlier order and as such the plaintiffs could not realise the monies under the pay orders. The plaintiffs thereafter preferred writ petition No.1253/1990 in this court. However, the same was dismissed vide order dated 28th August, 1990 (Exhibit PW1/33) for the reason that as long as the assessment in the name of the defendant or his alias was not set aside, the question of payment of the amount to the plaintiffs did not arise. It is further in evidence of the plaintiffs that the said assessment in the name of the alias of the defendant No.1 was set aside by order dated 21st November, 1990 (Exhibit PW1/34) of the Commissioner of Income Tax (Appeals).

15. The plaintiffs preferred a Special Leave Petition to the Supreme Court against the dismissal of their writ petition aforesaid. The said Special Leave Petition was disposed of on 7th February, 1992 with the direction to the CIT to dispose of the application filed by the plaintiffs afresh. The CIT however vide order dated 4th July, 1992 dismissed the application of the plaintiffs and on 12th January, 1993 also issued notice (Exhibit PW1/39) to the Punjab National Bank to deposit the sum of Rs 50.40 lacs of the aforesaid pay orders with the Income Tax Department. It is the unrebutted statement of the witness of the plaintiff that the Punjab National Bank on 15th

March, 1993 deposited the said amount of Rs 50.40 lacs in the account of the Income Tax Department.

16. It is further the evidence of the plaintiffs that the plaintiffs thereafter made representation to the Member (Investigation) CBDT to reconsider the application of the plaintiffs but the same was declined on 15th March, 1994.

17. The plaintiffs again filed writ petition No.3738/1994 in this court with respect to the seizure of the aforesaid pay orders. The witness of the plaintiff has deposed that the CIT in its reply to the said writ petition for the first time took a stand that the pay orders at the time of the deemed seizure were with the defendant No.1. The witness of the plaintiffs has in this regard proved as Exhibits PW1/47, PW1/48, PW1/20, PW1/49 to 58, PW1/36, the various statements/correspondence in which the defendant No.1 had admitted the case aforesaid of the plaintiffs with respect to the transaction with the defendant No.1. The plaintiffs also rely upon the order dated 29th June, 1999 (PW1/62) of the Settlement Commission inter alia holding that the said pay orders belonged to the plaintiffs and could not be treated as an asset of or belonging to the defendant No.1 and allowing its deduction as a liability.

18. It is further the case of the plaintiffs that the defendant No.1 filed Civil Writ Petition no.5082/1999 in this court in which the defendant No.2 filed a counter affidavit reiterating that the said pay orders were not seized but were put under deemed seizure; that the case of the defendant No.1 throughout had been that the pay orders had been issued to the plaintiffs in refund of the monies received from them and that the amount of the said pay orders had not been

adjusted against the tax liability of the defendant No.1. This court vide order dated 15th November, 2000 (in Civil Writ Petition No.5082/1999) partly remanded back the matter to the Settlement Commission with the direction that the acceptability of the plaintiffs claim would be decided in writ petition 3738/1994 preferred by the plaintiffs and pending till then.

19. The Settlement Commission passed a fresh order dated 6th August, 2002 and directed that the amount of Rs 50.40 lacs was subject matter of writ petition No. 3738/1994 preferred by the plaintiffs and set aside the part of the earlier order of the said Commission holding the said amount to be belonging to the plaintiffs. The said amount was thus held to be the asset of the defendant no.1 and the defendant No.1 was held entitled to claim corresponding liability with interest of the amount, if any, payable to the plaintiffs.

20. The plaintiffs upon learning of the aforesaid order represented to the Settlement Commission on 26th August, 2002. Thereafter the defendant No.1 filed writ petition No.7030/2002 in this court for refund of the said sum of Rs 50.40 lacs in its favour. The stand of the Income Tax Department in response to the said writ petition was that the said sum of Rs 50.40 lacs had already been adjusted towards tax liability. This writ petition was disposed of on 25th March, 2003 recording the stand of the Income Tax Department that they were ready and willing to deposit and refund the amount in this court but in view of the conflicting claims of the plaintiffs and the defendant No.1 they should be protected. This court permitted the defendant No.1 to withdraw the amount from the Income Tax Department subject to furnishing security. The writ petition No.3738/1994 filed

by the plaintiffs came up for disposal on 20th May, 2004 when it was ordered that the Income Tax Department not disburse the amount of the pay orders for a period of eight weeks and in view of the conflicting claims, the parties were relegated to the civil court for sorting out their disputes. It may be stated that the plaintiffs had not impleaded the defendant No.1 as a party to the said writ petition; however, the defendant No.1 had applied for being impleaded as a party thereto and the said application was pending till the date of disposal of the writ petition; this court in the order disposing of the writ petition noticed the submission of the defendant No.1 that the writ petition was liable to be dismissed; the question of limitation was also raised before the Division Bench of this court on 20th May, 2004. The Division Bench however held that “it goes without saying that the party was agitating the cause before this court under a bona fide belief that this court will pass an appropriate relief but as the parties are now being relegated to the civil court, the question of limitation could not arise. It goes without saying that if the petitioner approaches the civil court the observations made by the Income Tax Department or the Settlement Commission with regard to the title over the said 7 pay orders will not bind the parties and will be decided by the civil court independently”.

21. To complete the narrative, it may also be recorded that the defendant No.1 preferred SLP No. 2694/2004 to the Supreme Court against the aforesaid order. However, the same was disposed of vide order dated 18th August, 2005 holding “since the petitioner was not made a party to the proceedings, before the impugned order was passed we do not entertain this petition as the order does not affect his rights”.

22. After the disposal of their Writ Petition No.3738/1994 aforesaid, the plaintiffs instituted the present suit along with an application for interim relief. Vide order dated 19th July, 2004, the statement of the counsel for the defendant No.1 that he would not approach the defendant No.2 i.e. the Income Tax Authority for refund subject to the defendant No.2 being directed to deposit the amount in the court was accepted. Though there is no order thereafter directing the defendant No.2 to deposit the amount in the court, the status as on that day continues. Thus, the money of the aforesaid pay orders is still lying with the Income Tax Authorities.

23. The defendant No.2 though ex parte has in its written statement inter alia stated that its position in this suit is that of a garnishee i.e. to whom it should refund the money; it was further averred that the question of refund, if any, to the defendant No.1 was subject to the liability of the defendant No.1 to the Income Tax Department.

24. Thus it follows that if the controversy between the plaintiffs and the defendant No.1 is decided in favour of the plaintiffs, the defendant No.2 is to reimburse / refund the monies to the plaintiffs. Though the defendant No.1 in its written statement has controverted the claim of the plaintiffs, as aforesaid in the face of the defendant No.1 having not contested the suit, the ex parte evidence of the plaintiff is to be believed. The plaintiffs have proved having given pay orders for Rs.49.03 lacs to the defendant No.1 and of the pay orders for Rs.50.40 lacs having been handed over by defendant No.1 to the plaintiffs in lieu thereof, together with interest.

25. Coming back to the question of limitation, the counsel for the defendant No.1 has contended:

- i. that the plaintiffs are not entitled to the exclusion of any time under Section 14 of the Limitation Act because the defendant No.1 was not a party to the writ petition No.3738/1994 and the plaintiffs had vehemently opposed the impleadment of the defendant No.1 therein; that the plaintiffs had not filed any case against the defendant No.1 prior to this suit; that the earlier proceedings had not failed due to defect of jurisdiction; that the relief sought in the writ petition and the suit were entirely different.
- ii. that the plaintiffs had not produced any evidence that they were prosecuting any case against the defendant No.1 before a wrong forum.
- iii. that the plaintiffs had not explained the time lag of 60 days between the disposal of the writ petition on 20th May, 2004 and institution of this suit on 14th July, 2004; that the plaintiffs are also not entitled to any benefit of Section 18 of the Limitation Act inasmuch as neither had the defendant No.1 acknowledged any liability and even if there was any, the same was upto 1990 only and the suit filed in the year 2000 is barred by time.

26. The counsel for the defendant No.1 has also relied upon:

- (a) ***Consolidated Engineering Enterprises Vs Member Secretary, Irrigation Department*** (2008) 7 SCC 169 laying down the conditions to be satisfied for applicability of Section 14 of the Limitation Act; and b) ***J.C. Budhraja Vs. Chairman Orissa Mining***

Corpn. 2008 (2) SCC 444 on acknowledgement of liability within the meaning of Section 18 of the Limitation Act.

The counsel for plaintiff during oral submissions also relied on

c) **Deena Vs. Bharat Singh** (2002) 6 SCC 336 laying down that time taken in proceeding without impleading necessary party, cannot be excluded under Section 14 of the Limitation Act.

27. Per contra the counsel for the plaintiff has urged that the defendant No.1 acknowledged the liability from time to time and never denied his liability.

Reliance is placed upon, a) **J.C. Budhraj** aforesaid on the extension of limitation by acknowledgment;

(b) **Food Corporation of India Vs Assam State Cooperative Marketing & Consumer Federation Ltd** (2004) 12 SCC 360;

(c) **Prabhakaran Vs M Azhagiri Pillai** (2006) 4 SCC 484;

(d) **Syndicate Bank Vs R. Veeranna** (2003) 2 SCC 15;

(e) **Hiralal v. Badkulal** AIR 1953 SC 225;

all on Section 18 of the Limitation Act.

Qua Section 14 of the Limitation Act, reliance is placed on –

(f) **Raghunath Das v. Gokal Chand** AIR 1958 SC 827;

g) **Union of India Vs West Coast Paper Mills Ltd** (2004) 3 SCC 458 and;

h) **Nrityamani Dassi Vs L Chandra Sen** AIR 1916 Privy Council 96.

The counsel for plaintiffs during oral submissions also referred to –

j) **Damodaran Pillai Vs. South Indian Bank Ltd.** (2005) 7 SCC 300, though not on Section 14 but in support of proposition that

knowledge of proceeding even without being a party thereto is sufficient.

28. From the order dated 20th May, 2004 in writ petition 3738/1994 it stands established that the defendant No.2 had no claims over the said monies if the same were found to be belonging to the plaintiffs. The defendant No.2 has in its written statement also taken the same stand. Though a plea is taken that the question of validity of the order of seizure could not be adjudicated before the Civil Court, however, that is not the question which falls for adjudication in the present proceedings. The said question was raised by the plaintiffs in the writ petition No. 3738/1994 preferred by them. Upon the said writ petition being disposed of with the direction that the release/refund was dependent upon the adjudication of the lis between the plaintiffs and the defendant No.1, it stands adjudicated that if at all the stand of the defendant No.1 is to be negated, there was no objection of the defendant No.2 to release of the monies to the plaintiffs.

29. The counsels have addressed the aspect of limitation, treating the suit as only for recovery of money by the plaintiffs. However, this aspect looses sight of the admitted fact that the "said money" already stood paid by the defendant No.1 to the plaintiffs in the form of Pay Orders, though in the name of M/s Hindustan Copper Ltd.; however the plaintiffs on presentment of said Pay Orders to M/s Hindustan Copper Ltd., could obtain the base metal copper of the value thereof. Thus the said Pay Orders, in the hands of the plaintiffs were as good as cash. However, the worth thereof could not be realized by the plaintiffs owing to intervening events aforesaid. Now, as aforesaid, the said intervening event has ceased and this suit has

been necessitated only because of the dispute raised by the defendant No.1 and the writ court finding such dispute to be not capable of adjudication in the writ proceedings. That dispute also as aforesaid has been decided against the defendant No.1. There is thus no impediment to the release of the monies in the form of Pay Orders to the plaintiffs and in my view, no question of limitation as raised, treating the suit as simple suit for recovery of money arises.

30. On the proposition that delivery of Pay Order is as good as payment in cash, I find,

- a. The Supreme Court in ***Sohan Singh Vs. Sarwan Singh*** (1996) 5 SCC 759 found that the agreement for payment of sale consideration of immovable property in cash to have been performed on tender of Pay Order/Bank Draft for the amount. It was held, it was as good as cash in hand;
- b. The Division Bench of this court in ***Kohli Housing and Development Pvt. Ltd. Vs. Convenience Enterprises Pvt. Ltd.*** MANU/DE/1286/2009 also held that a Pay Order/Bank Draft/Banker's Cheque is issued after debiting a party's account – it is almost as good as cash; in that case, consideration was held to have passed between parties to compromise on delivery of Pay Orders and the plea of failure of consideration for the reason of return as unpaid of the Pay Orders for a technical defect was negatived;
- c. A single judge of the Andhra Pradesh High Court, in ***Santhi Enterprises Vs. Texmaco Ltd.***

MANU/AP/0803/2005 held that once a Banker's Cheque is given and the said Banker's Cheque is dishonoured, there will be a claim on the Bank who issued the same – that there could be no question of dishonour of a Banker's Cheque – unless the amount is deposited in the Bank, no Bank will issue the Demand Draft or Banker's Cheque – that being so, it cannot be said that the said amount was not equated with cash – under the Banking Regulations, the Banker's Cheque as well as Demand Draft is as good as cash;

- d. Lastly, the Rajasthan High Court in ***Radhey Shyam Gupta Vs. CIT*** MANU/RH/0291/1998 held that where a Demand Draft in the name of assessee was seized by the Income Tax Department, even though not encashed, upon the appeal being decided in favour of the assessee, the amount of the Demand Draft is refundable by the Department to the assessee, together with simple interest at 15% p.a., under Sections 237, 240 & 244 (1A) of the Income Tax Act. While holding so, it was held that it made no difference whether cash or Demand Draft was seized, because Demand Draft was as good as cash and if any such Demand Draft is kept in office and not encashed, the Department is liable to pay interest.

31. Once it is held that on delivery of Pay Orders by defendant No.1 to the plaintiffs, the money stood paid by the defendant No.1 to the plaintiffs, by depositing in the bank account of the defendant No.1, if the defendant No.1 thereafter contends that it was not releasable to the plaintiffs from the Bank, it was for the defendant

No.1 to initiate appropriate action in this regard. Not only has the defendant No.1 not taken any action, in this suit also, it neither filed the written statement in time, nor cross examined plaintiffs' witness or led any evidence of own. In these circumstances, it cannot be said that this suit wherein plaintiffs, in aid of realization of the amount of the Pay Orders have inter-alia sought declaration of their rights and other ancillary reliefs.

32. Thus, the cause of action as far as for release/recovery of Rs 50.40 lacs is concerned was the action of the defendant No.2 of deemed seizure and not of denial of the defendant No.1 of the same. For redressal of the said cause of action, the plaintiffs took the remedy by filing the writ petition aforesaid. The said writ petition was not dismissed as being barred by time or latches. On the contrary, it was disposed of with the order dated 20th May, 2004 aforesaid. The plaintiffs may have been entitled to the order against the defendant No.2 in the writ petition, but for the dispute raised by defendant No.1.

33. Seen I this light, together with dicta of ***Supreme Court in West Coast Paper Mills Ltd.*** (Supra) of Section 14 Limitation Act to be liberally construed, it cannot be said that the plaintiffs were not diligently prosecuting their claims with respect to the said monies. The writ petition remained pending in this court for long. The question of impleading the defendant No.1 as party thereto, at the time of institution thereof did not arise in view of the then stand of the defendant No.1 qua the said monies. The defendant No.1, when started controverting the claim of the plaintiffs, applied for impleadment in the said proceedings. This court cannot also ignore the fact that the writ petition was disposed of on 20th May, 2004 with

observations qua limitation. The defendant No.1 was represented before the court then. Had the writ court not felt that the limitation will not come in the way of plaintiffs, the order may have been different. It is also significant that the plea recorded of defendant No.1 in the said order is on the merits of the writ petition and not qua limitation. Of course the defendant No.1 preferred Special Leave Petition to the Supreme Court against the said order. However, the observations in the order dismissing the Special Leave Petition are in the absence of the plaintiffs and cannot be said to be an adjudication. The fact remains that the Special Leave Petition was dismissed.

34. Thus I find that the question of the claim for the principal amount of Rs 50.40 lacs being barred by time does not arise. The plaintiffs are thus entitled to a decree from this court of declaration that the said amounts belong to the plaintiffs and the defendant no.1 has no claim over the same and for the defendant No.2 to release the said amounts in favour of the plaintiffs.

35. The next question which arises is of interest. The plaintiffs have been deprived of the said monies for over 20 years. The said monies w.e.f. 15th March, 1993 when the same were received by the defendant No.2 from the Punjab National Bank have been retained by the defendant No.2. The defendant No.2 in fact could have had the monies transferred to it earlier. However since the representations of plaintiffs were pending earlier, liability of interest till then is not fastened on defendant No.2. According to me the defendant No.2 having enjoyed the monies ought to pay interest thereon. The question is at what rate? According to me the defendant No.1 should pay interest on the said monies at the rate at which it pays on the refund of income tax allowed by it. As per

Radhey Shyam Gupta (Supra) and even otherwise, the defendant No.2 is directed to pay interest on the said sum to the plaintiffs at 15% p.a. from the date of receipt of monies in its accounts and till the date of refund thereof.

36. The plaintiffs have established that contractually they are entitled to interest at the rate of 18% per annum. The interest allowed as aforesaid is less than that. However, the claim of the plaintiffs for differential in interest can be only for three years prior to the institution of the suit and thereafter only. Thus, a decree for interest in favour of the plaintiffs and against the defendant No.1 on the principal sum of Rs.50,40,000/- at the differential rate of 3% per annum is passed w.e.f. three years prior to the institution of the suit and till the date of release of the monies to the plaintiffs by the defendant No.2.

37. I may notice that the defendant No.1 is held liable for such interest also on the ground that the defendant No.1 after having initially admitted the said monies to be belonging to the plaintiffs is found to have, in malafide fashion, started disputing the entitlement of the plaintiffs and which has resulted in the plaintiffs being not able to recover/realizes the monies till date.

38. The claim of the plaintiffs for damages against the defendants (prayer f) is dismissed. Though the defendant No.1 is found to have taken a false stand in written statement filed in this court and also in his statement in oath recorded in this court, I refrain from proceeding against him in the hope that he will not flog this litigation further.

39. The plaintiffs are also entitled to costs of this suit from the defendant No.1. Counsels fee assessed at Rs 50,000/-. Decree sheet be drawn up.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**September 4th, 2009
M**