

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

% Judgment Pronounced on: 09.12.2010

+ **CS(OS) 1450/2006**

**SARDAR SARWAN SINGH**

**.....Plaintiff**

**- versus -**

**SHRI BALWINDER SINGH**

**.....Defendant**

**Advocates who appeared in this case:**

For the Plaintiff: Mr. Ram Prakash Gupta with Mr. Sushil  
Sharma

For the Defendant: None.

**CORAM:-**

**HON'BLE MR JUSTICE V.K. JAIN**

- |                                                                          |    |
|--------------------------------------------------------------------------|----|
| 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 Digest?                    | No |

**V.K. JAIN, J. (ORAL)**

This is a suit for recovery of Rs.22,40,250/-.

The case of the plaintiff, who is a farmer-cum-teacher, is that the defendant approached him with a proposal for sending the boys to the foreign countries for study purposes. The plaintiff paid a sum of Rs.15.45 lakhs to the defendant to send his son to U.S.A. for study and

employment. The payment was made on different dates between 16<sup>th</sup> September, 2002 and 12<sup>th</sup> December, 2003. Later, on realizing that the defendant had cheated him on the pretext of sending his son to U.S.A. for study and business purpose, the plaintiff requested the defendant to return back the money. The defendant thereupon issued two cheques one dated 20<sup>th</sup> December, 2004 for Rs.5 lakhs and the other dated 26<sup>th</sup> May, 2005 for Rs.6 lakhs both drawn on Syndicate Bank, Rohini, Delhi. The cheques, when present to the bank, were dishonoured for want of sufficient fund in the account of the defendant. The plaintiff, therefore, has claimed the aforesaid amount of Rs.15.45 lakhs which he had paid to the defendant along with interest therein @ 18% p.a. amounting to Rs.6,95,250/- thereby making a total of Rs.22,40,250/-.

2. The defendant filed the written statement contesting the suit. It was alleged in the written statement that the defendant had returned a sum of Rs.14 lakhs to the plaintiff after deducting Rs.1,45,000/- towards commission and expenditure. The case set up in the written statement is that in fact the defendant had facilitated purchase of a property by the plaintiff in Delhi and had paid Rs. 12 lakhs

as advance for purchase of the said property on behalf of the plaintiff. The plaintiff thereafter was unable to get the deed registered on account of his inability to raise further funds required for executing the sale deed. The defendant in good faith arranged for cancellation of the deal and in anticipation of receiving back the advance he agreed to return Rs.12 lakhs to the plaintiff despite the fact that he was not bound to arrange to return the money which the plaintiff had paid.

3. The defendant has admitted issuance of two cheques for a total sum of Rs.11 lakhs to the plaintiff as well as dishonour of those cheques. He has claimed that on return of the aforesaid cheques, he made cash payment of Rs. 11 lakhs to the plaintiff on 10<sup>th</sup> January, 2005, but the cheques were not returned on the pretext that they were with the advocate of the plaintiff. It is further alleged that after receipt of notice from the plaintiff, the defendant paid a further sum of Rs.3 lakhs in cash to the son of the plaintiff on 28<sup>th</sup> February, 2006 in full and final payment after deducting a sum of Rs.1.45 lakhs as commission and expenditure.

4. The following issues were framed on the pleadings

of the parties on 12<sup>th</sup> July 2007:-

- (i) Whether the defendant paid back a sum of Rs.14,00,000/- to the plaintiff in cash as alleged in preliminary objections No.2 and para 9 on merit of written statement? OPD
- (ii) Whether the defendant was entitled to retain a sum of Rs1,45,000/- towards commission and expenditure for alleged property deal? OPD
- (iii) If issue Nos. 1 & 2 are not proved, whether the plaintiff is not entitled to the suit amount? OPD
- (iv) Whether the plaintiff is entitled to interest, if so at what rate? OPP
- (v) Relief.

### **ISSUE No.1**

5. The onus of proving this issue lies upon the defendant. No evidence at all has been produced by the defendant. The alleged payment has been denied by the plaintiff. In his affidavit by way of evidence, the plaintiff has stated that the defendant had neglected to pay the amount due and payable to him along with interest. The issue is, therefore, decided against the defendant and in favour of the plaintiff.

### **ISSUE No. 2**

6. The onus of proving this issue was on the

defendant. The case setup in the written statement is that the defendant had facilitated a transaction for purchase of property by the plaintiff and an amount of Rs.12Lac was paid as advance on behalf of the plaintiff. This is also the case of the defendant that the plaintiff was unable to arrange the balance amount of Rs90Lacs and, therefore, the sale deed could not be executed in his favour. It is also alleged in the written statement that a sum of Rs1,45,000/- was deducted by the defendant towards commission and expenditure whereas the balance amount of Rs14Lacs was returned to the plaintiff. The case of the plaintiff on the other hand is that the money was paid to the defendant for sending his son abroad for studies and employment/business. Since no evidence has been led by the defendant to prove the averments made in the written statement, the issues is decided against him and in favour of the plaintiff.

### **ISSUE No. 3**

7. In view of the findings on issues No. 1 and 2, the plaintiff is entitled to recover the principal amount of Rs.15,45,000/- from the defendant.

### **ISSUE No.4**

8. Admittedly, there is no agreement between the parties for payment of interest. No custom or usage of trade for payment of interest has either been pleaded or claimed. Interest cannot be awarded as damages. Since this is not a suit for price of goods sold and delivered, interest cannot be awarded even under Sale of Goods Act. However, the defendant issued two cheques, one for Rs.6Lacs and the other for Rs5Lacs to the plaintiff. Those cheques, when presented to the bank, were dishonoured for want of funds. This factual position has been admitted in the written statement and has also been proved by the plaintiff.

9. Section 80 of Negotiable Instruments Act, to the extent it is relevant provides that when no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

10. In the case before this Court, there is no agreement between the parties that no interest will be paid by the defendant to the plaintiff. I find no justification for restricting the scope of Section 80 of Negotiable Instruments Act to only those cases, where the instrument provides for payment of interest, but the rate of interest is not specified and thereby allows unjust enrichment to a person who has defaulted in honouring his contractual obligation with respect to repayment of Principal sum. In my view, the provisions of Section 80 of Negotiable Instruments Act would equally apply to those cases where no term regarding payment of interest is contained in the instrument. Since the aforesaid provision, as amended, carries interest at the rate of 18% per annum, consequently, the plaintiff is entitled to interest at the rate of 18% per annum under Section 80 of Negotiable Instruments Act and the interest would be payable from the date on which the principal amount ought to have been paid by the defendant to the plaintiff. The view being taken by me find support from the decision of a Division Bench of Allahabad High Court in **Nath Sah v. Lal Durga Sah**, AIR 1936 Allahabad, 160, decision of the Orissa High Court in **Ghasi Patra v.**

**Brahma Thati**, AIR 1962 Orissa 35, decision of Patna High Court **Bishun Chand v. Audh Bihari Lal**, AIR 1917 Pat 533 and decision of Karnataka High Court in **P. Mohan v. Basavaraju**, AIR 2003 Karnataka 213.

11. Hence the plaintiff is entitled to interest at the rate of 18% per annum on the amount of Rs11Lacs from the date these cheques were dishonoured till date of filing of the suit. The interest cannot be awarded from the date of the cheques for the simple reason that till the cheques were presented to the bank, there was no obligation on the defendant to get them honoured. Calculating at the rate of 18% per annum, interest on the amount of Rs.11Lacs, according to learned counsel for the plaintiff, comes to Rs.271305/- from the date these cheques were dishonoured till date of filing of the suit. The plaintiff is entitled to recover this amount from the defendant.

12. Section 3 of Interest Act, 1978 to the extent it is relevant, provides that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person

making such claim, as the case may be, at a rate not exceeding the current rate of interest. It further provides that if the proceedings do not relate to any debt other than a debt payable by virtue of a written instrument at a certain time, the interest can be award for the whole or part of the period computed from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

13. Ex.PW1/D is the legal notice sent by the plaintiff to the defendant. The receipt of the notice has been admitted in the written statement and the defendant also sent a reply to the notice, which is Ex.D-1. Vide this notice, the plaintiff called upon the defendant to pay a sum of Rs.15,45,000/- along with interest thereon at the rate of 18% per annum. However, the notice did not require the defendant to pay interest from any date prior to the date of the notice. Hence, the plaintiff would be entitled to interest under the provisions of Section 3 of Interest Act from the date of the notice till the date of filing of the suit. Since interest on the amount of Rs.11Lacs is being awarded under Section 80 of Negotiable Instruments Act, interest under Section 3 of

Interest Act, 1978 is to be awarded only on the balance amount of Rs.4,45,000/-. In my view, taking into consideration the nature of transaction between the parties, it would be appropriate to award interest to the plaintiff at the rate of 10% per annum from the date of the notice till filing of the suit. The amount of interest on Rs.4,45,000/- @10% p.a., from the date of notice till the date of filing of the suit, according to the plaintiff, comes to Rs.3110/-.

14. In view of my findings on the issue, the plaintiff is entitled to recover the principal sum of Rs.15,45,000/- from the defendant along with interest amounting to Rs.2,74,415/- making a total of Rs18,19,415/-. The suit is hereby decreed for recovery of Rs18,19,415/- with proportionate costs. The plaintiff will get pendente lite and future interest at the rate of 10% per annum. Decree sheet be prepared accordingly.

**(V.K. JAIN)**  
**JUDGE**

**NOVEMBER 09, 2010**

*Ag*