

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 21.02.2011

+ **CS(OS) No. 1879/2010**

SHRI MANJIT SINGH MEHTA Plaintiff

- versus -

SHRI PRABHJOT SINGH Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr.B.L. Garg and Ms. Meenakshi
Kotwal, Advocate.

For the Defendant: Nemo.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 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)

1. This is a suit for recovery of Rs.50,24,000/-. The case of the plaintiff is that he had entered into an agreement with the defendant to purchase the entire Ground Floor of property No.700, Dr. Mukherjee Nagar, Delhi, built on a land measuring 160 sq.yds., along with proportionate share of freehold rights

underneath the aforesaid building. The sale consideration is stated to have been fixed at Rs.19 lacs.

2. The plaintiff claims to have paid a sum of Rs.10 lacs to the defendant in cash vide receipt dated 20th February, 2008. A further payment of Rs.6 lacs is alleged to have been made⁴ to the defendant on 7th April, 2008. It is further alleged that the defendant cancelled the Agreement on 25th April, 2008 and agreed to pay double the amount of earnest money and part payment i.e., Rs.32 lacs to him. The defendant issued a cheque dated 25th April, 2008 for Rs.32 lacs drawn on Indian Overseas Bank, Pitam PUra. The cheque when presented to the Bank on 14th July, 2008 for encashment, was dishonoured with the remarks "Funds Insufficient". A complaint filed by the plaintiff against the defendant under Section 138 of the Negotiable Instruments Act is stated to be pending before the learned Metropolitan Magistrate, Delhi. The plaintiff has also claimed interest at the rate of 24% per annum with effect from 25th April, 2008 amount to Rs.18,24,000/-, thereby making a total claim of

Rs.50,24,000/- against the defendant.

3. The defendant did not contest the suit despite service of summons on him and was proceeded ex parte on 3rd February, 2011. Though Vaklatnama on his behalf was filed on 28th January, 2011, no written statement was filed by him.
4. In his affidavit by way of evidence, the plaintiff has stated that vide Agreement to Sell 'Ex.PW1/1', he had agreed to purchase the Ground Floor of property No.700, Dr. Mukherjee Nagar, Delhi, from the defendant along with a proportionate share of freehold rights underneath the building for a total consideration of Rs.19 lacs and had paid a sum of Rs.10 lacs to the defendant in cash, which was acknowledged vide receipt 'Ex.PW1/2'. He further states that a sum of Rs.6 lacs was paid by him to the defendant vide receipt 'Ex.PW1/3'. The Agreement to Sell is stated to have been cancelled vide cancellation of deal 'Ex.PW1/4'.
5. A perusal of the Agreement to Sell executed between the parties on 20th February, 2008 would show that the defendant Shri Prabhjot Singh, who claimed to be

the owner of the entire ground floor of property No.700, Dr. Mukherjee Nagar, Delhi, had agreed to sell the same to the plaintiff for a consideration of Rs.19 lacs and had received a sum of Rs.10 lacs from the plaintiff as earnest money.

6. The receipt executed by the defendant while receiving Rs.10 lacs from the plaintiff on 20th February, 2008 confirms the deal between the parties. A perusal of the document 'Ex.PW1/4' would show that the defendant cancelled the deal between him and the plaintiff and expressed his willingness to pay penalty for the deal, equivalent to double the amount of the deal. Double the amount of the deal, ordinarily would amount to Rs.38 lacs, since the defendant had agreed to sell the ground floor of property No.700, Dr. Mukherjee Nagar, Delhi, to the plaintiff for a total consideration of Rs.19 lacs, though the plaintiff has claimed receiving only Rs.32 lacs since according to him the understanding was that the defendant would refund double the amount which he had paid to him. The cheque for a sum of Rs.32 lacs('Ex.PW1/5') was issued by the defendant to the plaintiff on 25th April, 2008.

`Ex.PW1/7' is the certified copy of the Memo issued by the Indian Overseas Bank, Pitam Pura Branch on 5<sup>th</sup> July, 2008, which shows that the cheque `Ex.PW1/5' when presented to the Bank was dishonoured for want of sufficient funds.

7. I see no reason to disbelieve the testimony of the plaintiff which otherwise stands corroborated from documentary evidence such as the Agreement to Sell, Receipts and cancellation documents executed by the defendant and finds further corroboration from issue of cheque `Ex.PW1/5' which when presented to the Bank was dishonoured for want of sufficient funds. The plaintiff is, therefore, entitled to the aforesaid principal sum of Rs.32 lacs from the defendant.
8. There is no agreement between the parties for interest. No custom or usage of trade can be applicable in a suit of this nature. Interest cannot be awarded as damages, by a Civil Court. However, since the defendant issued a cheque, which is a negotiable instrument, to the plaintiff, interest can be awarded to the plaintiff under Section 80 of Negotiable Instruments Act, which reads as under:-

Interest when no rate specified.-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.

Explanation- When the party charged is the endorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

9. In **Nath Sah vs. Lal Durga Sah**, AIR 1936 Allahabad, 160, a Division Bench of Allahabad High Court held that where no rate of interest is specified in a written instrument, then, notwithstanding any contract to the contrary, the interest is to be calculated at the rate of 6% per annum and the date from which such interest should be calculated should be the date on which the Principal amount ought to have been paid. In that case the suit was based on a promissory note which contained no mention of any liability to pay interest and the defendant had denied his liability to pay any interest.

In **Ghasi Patra vs. Brahma Thati**: AIR 1962, Orissa 35, the pronote payable on demand did not provide for payment of interest. It was contended before the High Court that under Section 80 of Negotiable Instruments Act , interest could have been allowed only from the date of demand and not for any earlier period and since no demand was proved in the case, no interest should have been allowed from the date of the execution of the pronote till the date of the suit. It was held that the plaintiff was entitled to interest under Section 80 of Negotiable Instruments Act from the date of execution of the pronote. In taking this view, the High Court followed the decision of Bombay High Court in Ganpat Tukaram v. Sopana Tukaram, AIR 1928 Bombay 35, where it was held that where a promissory note is payable on demand, but is silent as to interest, the interest can be awarded under Section 80 of Negotiable Instruments Act at 6% per annum from the date of the promissory note. A Division Bench of Patna High Court in **Bishun Chand v. Audh Bihari Lal**, AIR 1917 Pat 533 also took the view that if the handnote is payable on demand but

does not provide for the payment of interest, it carries interest at the rate of 6% per annum from the date of execution of the hand note until the realisation of the debt.

In **P. Mohan vs. Basavaraju** AIR 2003, *Karnataka*, 213, the suit was based on cheques which when presented were dishonoured. There was an agreement between the parties not to pay interest. It was held by Karnataka High Court that in view of the provisions of Section 80 of Negotiable Instruments Act, the defendant/appellant would be entitled to pay interest and that agreement between the parties not to pay interest would be valid only until the cheques were dishonoured.

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 allow 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 cheque was issued to the plaintiff.

11. Calculated at the rate of 18% per annum, the amount of interest from the date of the cheque till the institution of the suit comes to Rs.13,68,000/-. Accordingly, the plaintiff is entitled to the aforesaid amount as interest.
12. For the reason given in the preceding paragraphs, a decree for recovery of Rs.45,68,000/- with proportionate cost and pendente lite and future interest at the rate of 6% per annum is hereby passed in favour of the plaintiff and against the defendant.

13. Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

FEBRUARY 21, 2011
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