

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CS(OS) 2861/1998

%

4th October, 2012

INDO ARYA CENTRAL TRANSPORT LTD.

..... Plaintiff

Through: Mr. Rahul Gupta and Mr. Shekhar Gupta,
Advocates.

VERSUS

M/S KHATEMA FIBERS LTD. & ORS.

..... Defendants

Through: Mr. Manish Garg and Mr. Parmod Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit was filed by the plaintiff for recovery of ₹ 1,01,18,685.50 being the balance due on a running account between the plaintiff and the defendant No.1. Plaintiff is a transporter and it transported the goods of the defendant No.1. The invoices which have been raised by the plaintiff upon the defendant No.1 are with respect to transportation charges. The suit was filed on 26.12.1998. Immediately, after filing of the suit and service of the summons, the

suit was compromised on 7.1.1999 i.e just within 14 days. As per the compromise application, being I.A No. 80/1999, it was agreed that the principal amount due with respect to the freight was ₹ 69,26,298.50. This amount was admittedly paid by the defendants to the plaintiff under the compromise. As per para 7 of the compromise application, the issue of interest was to be mutually decided between the plaintiff and the defendants. The suit was disposed of in terms of the compromise on 7.1.1999, however, the same was revived on an application being I.A No. 654/2000 of the plaintiff on the ground that no settlement could take place with regard to the interest.

2. The issue now to be decided is therefore only as regards the interest which the plaintiff claims to be payable by the defendants. The following issues in this regard were framed by this Court on 24.5.2007:-

“1. Whether there was any oral settlement or any other settlement whereby the plaintiff agreed to waive interest? (OPD)

2. Whether the plaintiff is entitled to any interest? If so, at what rate, on what amount and for which period? (OPP)

3. Relief.”

ISSUE NO. 1 AND 2

3. Both these issues can be dealt with together. Interest is payable from the date from which there is default in making payment of the principal amount

due. In the present case, I put it to counsel for the plaintiff that how the plaintiff has proved the invoices with respect to the principal amount paid under the compromise of ₹ 69,26,298.50, and to which the counsel for the plaintiff had no option but to frankly concede that there does not exist on the record all the invoices for proving as to what are those invoices which totals to the said principal amount. The different invoices would be of different amounts and different dates and thus the amount of interest (if payable) would have been different qua each invoice. It was necessary for the plaintiff to file and prove all the invoices (each and every one of them) because the interest would be payable at best from the date of invoice or from the date fixed for payment after the grace period till payment. The figure of ₹ 69,26,298.50/- is not one consolidated figure of one invoice containing only that one figure. Since the invoices will be of different dates and for separate amounts obviously interest would be of different amounts i.e separate amount and different periods. Unless the different periods are proved by proving the invoices interest cannot be calculated. Therefore, since invoices have not been filed and proved by the plaintiff, there cannot be awarded any interest to the plaintiff. Counsel for the plaintiff, therefore, at this stage, confines his relief to grant of pendente lite and future interest.

4. Counsel for the plaintiff argues that the plaintiff is entitled to interest during the entire pendency of the present suit i.e. from the date when suit was filed till today and thereafter till payment.

5. The issue is that what is the pendente lite period and what should be the rate of interest for that pendente lite period. The plaintiff claims that interest due prior to filing of the suit had become a principal amount due on which interest is payable for pendente lite period and till the date when such amount will be paid.

6(i). Firstly there can be no valid claim of interest because as already held above that to claim interest all the invoices had to be proved for determining the separate amounts of the interest qua the separate invoices and the separate periods for the separate amounts and which the plaintiff has failed to do.

(ii) Secondly, it is settled law vide a Constitution Bench judgment of the Supreme Court in the case of *Central Bank of India Vs. Ravindra & ors (2002) 1 SCC 367* that only if there is an agreement to pay compound interest and that compound interest is not paid, the same merges into the principal amount i.e interest payable thereafter would be on the total of the amount of the principal plus interest. In the present case, admittedly, there is no contract to pay compound interest. The invoices in question relied upon by the plaintiff, issued to the defendants, only mentions interest at 24% per annum. Obviously, therefore, this

means that the interest at 24% per annum is a simple interest and not compound interest. Though the invoices with respect to freight charges have not been filed and exhibited by the plaintiff, since the defendants have filed a few of them, I am referring to the same. Therefore, there is no contract between the parties to pay compound interest and since there is no contract between the parties to pay compound interest, interest amount if remaining due cannot be merged with the principal amount for future interest to be claimed on the total amount of the principal plus interest. I, therefore, reject the argument urged on behalf of the plaintiff that plaintiff is entitled to compound interest.

(iii) In my opinion, even assuming that the interest payable was compound interest, the issue of interest would only have arisen if the principal amount was not paid. Interest is always payable on the principal, and if principal is paid, there does not arise the issue of continuation of interest. As already stated above, the suit was filed on 26.12.1998, and the defendants paid the principal amount of ₹ 69,26,298.50 on 7.1.1999. At best therefore, the amount of interest which would be payable on this principal amount of ₹ 69,26,298.50 would be for the pendente lite period and which will be from 26.12.1998 to 7.1.1999 only. There does not arise any issue of payment of interest after 7.1.1999 inasmuch as, once the

principal amount stood paid on 7.1.1999 there does not arise any issue of payment of interest thereafter.

(iv) Though, as per invoices, plaintiff seeks interest at 24% per annum, however, the Supreme Court in its recent trend of judgments reported as ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700, Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra, 2007 (2) SCC 720 & State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140 (SC)*** has held that high rates of interest should not be granted by the Courts as on account of the changed economic scenario where rates of interest have consistently fallen. I am therefore not inclined to grant interest @ 24%, and I grant the plaintiff interest at the rate of 9% per annum simple on the amount of the ₹ 69,26,298.50 from 26.12.1998 to 7.1.1999.

7. The liability under the present judgment will only be of defendant No.1-company, and there will be no liability of defendant Nos.2 to 4, who have no privity of contract, and hence no liability towards the plaintiff. In fact, the plaint

does not even contain averments as to how liability can be legally fastened on to the defendant Nos.2 to 4.

Relief.

8. Issue nos. 1 and 2 are therefore decided by holding that the suit of the plaintiff shall stand decreed against defendant No.1 only for the interest component on ₹ 69,26,298.50 at 9% per annum simple for the period from 26.12.1998 to 7.1.1999. Parties are left to bear their own costs. Decree sheet be prepared.

OCTOBER 04, 2012
ib

VALMIKI J. MEHTA, J.