

IN THE HIGH COURT OF TRIPURA
AGARTALA

RFA No.03 of 2022

Sri Prakash Roy,

son of Shri Khulendra Ch. Roy, Prop. M/S.
Shree Durga Textilex, Shantipara, Pukurpar,
Agartala, 799001

..... **Appellant(s)**

- V e r s u s -

1. **The State of Tripura,**
represented by the Secretary, Home
Department, Government of Tripura, New
Capital Complex, Agartala-799006
2. **Director General of Police,**
Tripura, Police Head Quarter, Agartala,
West Tripura
3. **Shri Dinesh Kumar S. Mohta,**
Prop.-M/s. Mohta Cotton Company (a
Textile trading firm), 2/39, Bohara Market,
Ichal Karanji, Kolhapur, (Maharashtra),
PIN-416425,
(Omitted for the purpose of this appeal)

..... **Respondent(s)**

For the Appellant (s) : Mr. D.K.Biswas, Sr. Adv.
Mr. S.S. Debnath, Adv.

For the Respondent (s) : Mr. P.S. Roy, Adv.
Ms. S. Deb Gupta, Adv.

Date of hearing & delivery : 12.12.2023
of Judgment & order

Whether fit for reporting :

YES	NO
✓	

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard learned senior counsel for the appellant, Mr. D.K. Biswas assisted by Mr. S.S. Debnath, learned counsel as well as learned counsel for the respondents No.1 & 2, Mr. P.S. Roy and learned counsel for the respondent No.3, Ms. S. Deb Gupta.

[2] The present appeal is by the plaintiff, limited to their part of the impugned judgment and decree dated 02.03.2022 passed by the learned trial court, the Civil Judge, Sr. Division, Court No.1, Agartala, West Tripura, in Money Suit No.43 of 2017 by which pre-litigation interest and pendentilite interest have not been allowed over the sum adjudged due to the plaintiff i.e. Rs.54,59,424/- [Rupees Fifty Four lakhs Fifty Nine thousand Four hundred Twenty Four]. The plaintiff is also aggrieved as damages on account of plaintiff's loss of business were not allowed.

[3] By the impugned judgment dated 02.03.2022, passed by the learned Civil Judge, Sr. Division, Court No.1, Agartala, West Tripura in Money Suit No.43 of 2017, the plaintiff was held entitled to realization of Rs.54,59,424/- together with interest @ 8% per annum on the said amount with effect from the date of the decree till realisation of the said amount.

[4] The suit was instituted, *inter alia*, alleging non-payment of admissible dues amounting to Rs.51,99,000/- with claim of refund of security amount of Rs.2,60,000/- with interest and damages of Rs.5,00,000/- [Rupees Five lakhs] i.e. Rs.59,59,000/- on account of non-payment of the admissible dues after acceptance of the supply of clothes of the defined specifications to the defendant No.2. The supply order is dated 9th November, 2016. The supplies were made on 10th January, 2017. Since no objection were raised against the supply made within 30 days, the plaintiff treated it as deemed acceptance within 30 days i.e. by 10th February, 2017. When the payments were unusually delayed, he persuaded the office of the defendant No.2 to

clear the bills, though a criminal case was lodged by the defendant No.2 through SP (Procurement) on 1st August, 2017 against the said supply but the CID after investigation submitted a report with the observation "*pseudonymous complaints are to be ignored as per the direction of the CVC.*" This fact has been taken note of in the impugned judgment by the learned trial court. Thereafter, the plaintiff served legal notice under Section 80 of the CPC on 13th August, 2017.

Having failed to elicit any response, the plaintiff instituted the suit on 24th October, 2017. It was averred that the filing of the FIR was malicious only intended to frustrate payment of the admissible dues. According to the plaintiff, the first cause of action arose on 16th February, 2017, one month after the supply was completed and accrued on 1st August, 2017 when the illegal FIR was lodged to frustrate the legitimate claim of Rs.51,99,000/- of the plaintiff. Based on these averments, the aforesaid reliefs were sought for.

[5] The respondents contested the suit by filing the written statement alleging that no statutory period in the supply order for payment of bills has been stipulated and hence, the claim of the plaintiff regarding interest and damages are baseless, illegal and imaginary. No proper notice under Section 81 of the CPC was given before filing of the suit. The suit suffered from non-joinder of parties as the supply order was issued on 9th November, 2016 by the Assistant Inspector General of Police on behalf of the Director General of Police but he has not been made a party. The SP (Procurement)

has also not been made party whereas the materials were supplied as per the work order. Therefore, the suit was not maintainable.

[6] The defendants admitted supply order dated 9th November, 2016 for supply of Khaki Terry Cotton Clothes of Binny Company and supply was to be given to the SP(Procurement), AD Nagar wherein the rate and quantity were mentioned. It is contended that the plaintiff admitted in Para-4 that one invoice remains still undelivered in the godown of the carrier (invoice No.17). Therefore, the entire materials were not supplied by the plaintiff as per supply order. It is further stated that the Survey and Scrutiny Committee consisting of 3[three] members upon examination of the supplies made found that the colour of the clothes does not match with the sample but it accepted the supply items beyond the specification of the NIT or supply order. Further averments have been made that the complaint was received from one Mr. Arun Agarwal regarding the said supply and the CID enquiry was ordered who submitted its report on 3rd May, 2017. An FIR was lodged on 1st August, 2017 under Sections 409/417 of the IPC which was pending for investigation. Since the plaintiff did not supply clothes of Binny Mills and hence, the rate quoted in the supply order considering the rate of Binny Mills are not entitled to the plaintiff as the clothes of other mills are lower than Binny Mills. It was also averred that the FIR was pending for investigation. Based on these averments, *inter alia*, the defendants prayed for dismissal of the suit.

[7] On behalf of the plaintiff, one Prakash Roy was examined as PW-1. On behalf of the defendants, an examination-in-chief by Sri Subrata Chakraborty was filed and he was also cross-examined. After

considering the pleadings on record, the rival submissions of the parties and the materials adduced by the plaintiff and the respondents, the suit was decreed to the extent of Rs.54,59,424/- which included the security amount but interest @8% per annum was awarded only from the date of decree till realisation of the said amount.

The plaintiff being aggrieved by non-grant of interest for pre-litigation and pendentelite period has preferred this appeal.

[8] Though the plaintiff has also questioned non-award of damages but learned senior counsel for the appellant during course of argument has confined the challenge to the interest part only. In support of the challenge, it has been submitted that if the learned trial court gave a considered finding regarding withholding of admissible dues Rs.51,99,451/- plus security deposit Rs.2,59,973/- totalling Rs.54,59,424/- due to the plaintiff against the supplies made and accepted without objection or demur, the learned trial court ought to have awarded interest both for the pre-litigation period and pendentelite period atleast at the same rate at which post-decreetal interest was awarded in view of the specific provisions under Section 34 of the Civil Procedure Code. The learned trial court has however not given any reason as to why pre-litigation and pendentelite interest should not be awarded in favour of the plaintiff. Learned senior counsel for the appellant has also placed reliance upon the ratio rendered by the apex court in the case of **Aditya Mass Communications (P) Ltd. Vs. A.P. SRTC**, reported in **(2003) 11 SCC 17**. He submits that the respondents had retained the money

belonging to the appellant without authority of law and driven him to a series of litigations. The learned trial court ought to have granted interest for the admissible amount wrongly withheld from the date it was withheld i.e. for the pre-litigation period and pendentelite also. Rest of the findings of the learned trial court regarding the entitlement of the admissible dues of Rs.54,59,424/- are unimpeachable. The impugned judgment and decree has not been challenged by the State. As such, the limited relief regarding interest would be allowed by this court in appeal.

[9] Learned counsel for the respondents No.1 & 2 has contested the plea raised by the appellant on the question of grant of interest for pre-litigation and pendentelite period. He submits that the supply order did not specify any period for making payments. It is submitted that the direction of the learned trial court regarding post-decreetal interest is proper in the eye of law. It is also submitted that the plaintiff failed to establish any loss of business. Therefore, no damages were awarded in his favour. As such, the impugned part of the judgment and decree may not be interfered with by allowing interest for pre-litigation or pendentelite period.

[10] We have considered the submissions of the learned counsel for the parties and taken note of the relevant materials placed from record. The merits of the findings of the learned trial court on the issue of entitlement of the plaintiff for payment of the admissible dues of Rs.54,59,424/- against the supplies made of the specified quantity of clothes plus the refund of the security amount of Rs.2,60,000/- are not in question in appeal. The respondents have also not preferred

any appeal or cross-appeal against the findings of the learned trial court. The appeal is only confined to the issue of non-grant of pre-litigation and pendente lite interest. Section 34 of the Civil Procedure Code which provides for grant of interest by the court is extracted hereunder:

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

(2) Where such a decree is silent with respect to the payment of further interest [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

[11] As noticed hereinabove, the learned trial court has come to a definite finding that the plaintiff was entitled to realisation of the dues totalling Rs.54,59,424/- on account of supplies made against supply order dated 09.11.2016 and the security amount of Rs.2,60,000/- withheld by the respondents. Plaintiff has instituted the suit on 24th October, 2017 after serving notice under Section 80 of the Civil Procedure Code on 13th August, 2017. It appears that an FIR was lodged on 1st August, 2017 under Sections 409 and 417 of IPC against the supply order but it appears from the impugned judgment itself that CID had, after inquiry, made the observations noted hereinabove.

[12] In such circumstances, if the sum was adjudged as due to the plaintiff on account of the respondents' retaining the money

belonging to the appellant without any authority of law and compelling him to engage in a litigation, there is no reason why the principal sum i.e. Rs.54,59,424/- should not carry interest at least from the date of institution of the suit i.e. 24th October, 2017 i.e. the pendente lite interest at the same rate of 8% per annum granted as post-decreetal interest by the learned trial court till the realisation of the said amount. However, we are of the view that the plaintiff would not be entitled to pre-litigation interest as the first notice under Section 80 of the Civil Procedure Code was issued on 13th August, 2017 and thereafter, the suit was instituted on 24th October, 2017 without any delay. The terms of the supply order did not contain any specific date of payment on acceptance of the supply. However, since the amounts were found to be due to the plaintiff and illegally retained by the respondents, which finding is not in question, the learned trial court ought to have awarded pendente lite interest apart from post-decreetal interest at the same rate till its realisation.

[13] In view of the reasons recorded hereinabove, we are inclined to allow this appeal to the extent of grant of pendente lite interest from the date of institution of the suit at the same rate of 8% per annum apart from the post-decreetal interest already granted by the learned trial court till realisation of the said amount.

The appeal is allowed in the aforesaid terms.

Decree accordingly.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

Sujay