IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WA.No. 1594 of 2012 () IN WP(C).11255/2006

AGAINST THE JUDGMENT IN W.P.(C) NO.11255 OF 2006 OF THE HIGH COURT OF KERALA DATED 03.12.2011

APPELLANT/PETITIONER:

M- FAR HOTELS LIMITED,
N.H.-47, BY-PASS, KUNDANOOR JUNCTION
COCHIN-682304, REPRESENTED BY ITS DIRECTOR.

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN

RESPONDENT/RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL ADMINISTRATION DEPARTMENT
THIRUVANANTHAPURAM-695 001.

2. THE MARADU GRAMA PANCHAYAT (NOW MARADU MUNICIPALITY),
MARADU P.O., PIN-682 304
REPRESENTED BY ITS SECRETARY.

3. THE SECRETARY,
MARADU GRAMA PANCHAYAT (NOW MARADU MUNICIPALITY)
MARADU P.O., PIN-682 304.

R1 BY SENIOR GOVERNMENT PLEADER SRI.P. FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

W.A. No.1594 of 2012

Dated this the 19th day of August, 2015

JUDGMENT

Antony Dominic,J.

Heard the learned counsel for the appellant and the learned Government Pleader. There was no representation for the respondent Panchayat or its Secretary.

2. Appellant filed Writ Petition No.11255 of 2006 challenging Exts.P10 and P11, which are the order issued by the 2nd respondent Panchayat in compliance with Ext.P9 order of the Government and the demand notice to the extent Rs.9,52,127/- towards penal interest was levied under section 209E of the Kerala Panchayat Raj Act for the delay in payment of property tax due from the appellant. By the judgment under appeal, holding that the penal interest of 24% that was prescribed under Section 209E of the Act was both compensatory and penal in nature, the learned Single Judge directed the appellant to pay 12% interest, it being compensatory. It is this judgment which is under challenge.

3. Brief facts of the case are that appellant company owns Le-Meridian Hotel at Kundannoor Junction in Maradu Panchayat which is a five star hotel. Property tax was assessed which was reduced in revision. Further appeal filed before the Deputy Director of Panchayat resulted in Ext.P1 order whereby the appeal was partly allowed. At the time of filing the appeal, 50% of the amount due was deposited. Ext.P1 order was challenged before this Court in O.P. No.7137 of 2002 and this Court passed an interim order of stay on condition that the appellant deposits 50% of the amount due. During the pendency of the original petition, recovery of the tax demanded for the subsequent years was also stayed by this Court subject to appellant remitting 50% of the amount due. These orders were complied with by the appellant.

4. During the pendency of the original petition, appellant filed an appeal before the Government against Ext.P1 order. Taking note of the pendency of the appeal, the original petition was disposed of by Ext.P6 judgment directing the Government to pass orders on the appeal. Appeal was finally dismissed by Ext.P7. On receipt of the order passed by the Government, appellant filed an application for review of the Government order. This was considered by the Government and by Ext.P9

order directing Panchayat to pass fresh orders in the matter and in the manner mentioned in Ext.P9. It was accordingly the Panchayat passed Ext.P10 order levying property tax.

5. In pursuance to Ext.P10, the Panchayat issued Ext.P11 demand notice in which penal interest of Rs.9,52,127/- was also demanded. The writ petition was filed challenging Exts.P10 and P11 to the extent penal interest was demanded. By the judgment under appeal, these orders were confirmed but however, the rate of interest was reduced to 12%. In this appeal, the appellant confines his challenge against the levy of interest and at the rate as ordered by the learned Single Judge.

6. The learned counsel for the appellant contended that under Section 209E of the Kerala Panchayat Raj Act as it stood at the time when Ext.P11 demand notice was issued if any amount payable under the Act, was not paid on the due date, it was recoverable together with penal interest at the rate of 2% per month. It is pointed out that this provision was amended w.e.f 07.10.2009 and the rate of 2% was reduced to 1% per month. According to the learned counsel, the term “penal interest” has been explained by the Apex Court in various judgments including **Hindustan Steel Limited v. State of Orissa** [1970 Supreme Court 253], **Central Bank of India v.**

Ravindra & others [AIR 2001 Supreme Court 3095] and **Punjab and Sindh Bank v. Allied Beverages Company Pvt. Ltd. & others** [2010(10) SCC 640]. It is contended that penal interest is distinct from interest and is levied as a penalty in cases where willful default or neglect is committed in paying amounts that are due. It is stated that when Section 209E of the Act provided for levy of penal interest at 2%, such interest could have been recovered only if willful default or neglect justifying penalty for such conduct is established. It is stated that in the case of the appellant when property tax was assessed, appellant pursued the legal remedies that are available to them. This culminated in Ext.P10 order passed by the Panchayat pursuant to Ext.P9 order of the Government. It is also stated during the intervening period, though they had obtained orders of stay from this Court and from the appellate authorities, such orders were all conditional requiring payment of part of the amount due. Counsel submits that these conditions were complied with and on the issuance of Ext.P11 demand notice, the tax due was also remitted. Therefore, according to the learned counsel, the Panchayat could not have invoked Section 209E against the appellant, which is not guilty of any willful default or neglect in paying the tax on the due date.

7. We have considered the submissions made. It is true that under Section 209E of the Panchayat Raj Act notwithstanding the other provisions of the Act any amount payable under the provisions of the Act which is not paid on the due date is made recoverable together with penal interest. Until the section was amended by Act 31 of 2009 w.e.f. 07.10.2009 penal interest was recoverable at the rate of 2% per month. This therefore, shows that at the time when Ext.P11 demand notice was issued by the Panchayat on 10.03.2006 the rate of penal interest that was leviable was 2% per month. The concept of penal interest is too well known and has been explained by the Apex Court in various cases including those cited by counsel. These judgments put it beyond any doubt that penal interest is levied in cases where willful default or neglect is committed in payment of the amount on due dates.

8. However, in so far as this case is concerned, apart from Section 209E of the Act, there is no other provision enabling the Panchayat to realise any interest from the defaulters from whom amounts are due to the Panchayat. For attracting the provisions of Section 209E, all that is required is that amount payable under the provisions of the Act, Rules or Bye-laws is not paid on due date. In other words, language used by the legislature does

not require any willful default or neglect for attracting Section 209E. It was taking note of this statutory provision that the learned Single Judge has taken the view that the provision is both compensatory and penal in nature. It was on that basis that the learned Single Judge held that the appellant is liable to pay 12% interest, it being to compensate for the default committed. Such a view taken by the learned Single Judge, in the facts and circumstances of the case, does not spell out any illegality.

9. While holding as above, we are not unmindful of the contention raised by the counsel for the appellant that having regard to the interim orders obtained by the appellant from the appellate authorities and this Court and as the appellant had complied with the conditions imposed for grant of stay, no amount was remaining unpaid on any due date and that the appellant was not a defaulter in order to make the appellant liable even for compensatory interest. Even though it is true that the appellant had obtained interim orders from the statutory authorities and this Court and also had complied with the interim orders granted, the interim orders passed in favour of the appellant would only absolve the appellant during the period when the order was in force, from the obligation to comply with the orders impugned before the concerned authorities.

Therefore, if ultimately liability is crystallized at a later point of time, that liability will revert back to the date on which amount was actually due and the appellant will also be liable for the consequence of non-payment of the amount on the due dates. If that be so the contention now raised by the appellant that the belated payment was on account of the interim orders obtained and that therefore, they are not liable for interest is absolutely unacceptable.

10. We do not find any reason to interfere with the judgment under appeal.

Appeal fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. to Judge

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