

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.4632 of 2013 (O&M)
Date of Decision: 09.02.2015

M/s Amar Dairy, Sirsa

.....Appellant

Vs.

M/s Milk Specialities Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

Present:- Mr.Subhash Ahuja, Advocate for the appellant.

Mr.V.K.Sachdeva, Advocate for the respondent.

MAHAVIR S. CHAUHAN, J. (ORAL)

Civil Suit No.489-C of 2007/2009/2011 was brought by M/s Milk Specialities Limited, respondent herein for recovery of ₹76,405/-, from the appellant on the allegations that the respondent had supplied to the appellant goods i.e. milk and milk products at different intervals but payment therefor was not made by the appellant. Suit was contested by the appellant. Learned Court of Additional Civil Judge (Senior Division), Sirsa ('trial Court' for short), after a full fledged trial, found respondent entitled to recovery of the aforesaid amount along with simple interest @9% per annum from the date of filing of the suit till the date of decree and future interest @6% per annum from the date of decree till the date of payment/realization of the decretal amount and accordingly decreed respondent's suit vide judgment/decreed dated 15.11.2011.

Appellant filed Civil Appeal No.295 of 12.12.2011. As it was dismissed by learned District Judge, Sirsa, vide judgment and

decree dated 14.08.2013, the appellant is before this Court in regular second appeal.

While issuing notice of motion, this Court passed the following order:

“After arguing for some time, when this Court was not agreeing with the submissions made, learned counsel for the appellant has confined this appeal only to the extent of imposing of interest upon the appellant. According to him, the seven years' delay in the matter has been caused due to wrong presentation of the plaint by the respondents before a Court which has no territorial jurisdiction and therefore, the appellant is not liable to pay interest for such a long period.

Issue notice of motion to the aforesaid limited extent only, for 17th February, 2014.”

From the above, it is clear that the appellant restricted his prayer only to the question of interest only with respect to the period during which the respondent was litigating before a wrong Court. A perusal of the impugned judgment/decreed would reveal that the suit was initially filed by the respondent before a Court at Chandigarh but it was ordered to be returned to the respondent under the provisions of Rule 11 of Order VII of Code of Civil Procedure, 1908. The order so passed by the learned trial Court was challenged by the respondent by way of a miscellaneous appeal and after dismissal of miscellaneous appeal, the plaint was presented before Sirsa Court. It is not disputed that right to appeal was available to the plaintiff/respondent to challenge the order of return of the plaint and that being so, going by the maxim that Court cannot work to the prejudice of any of the parties the respondent cannot be denied interest for the period it was litigating before a wrong forum, bona fide.

However, in the given facts and circumstances of the case award of interest at the rate of 9% per annum from the date of filing of the suit till the date of decree is found to be on the higher side and accordingly, it is reduced to 7.5% per annum for the aforestated period.

With the aforesaid modification in the impugned judgment and decree, the appeal fails and is hereby dismissed.

No costs.

(MAHAVIR S. CHAUHAN)
JUDGE

09.02.2015

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