

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 74 OF 2017

Philfran Tours and Travels
Sujay Apartments,
Through its Proprietor,
Shri Francis Pereira,
Opposite Sushila Building,
18th June Road,
Panaji-Goa.

..... Appellant

V e r s u s

J. P. Nunes and Sons
Transport Operators
Near General Post Office,
Panaji, Goa.

..... Respondent

Mr. Preetam Talaulikar, Advocate for the Appellant.

Mr. R. G. Ramani, Advocate for the Respondent.

Coram :- **F. M. REIS, J**

Date : **17th July, 2017**

ORAL JUDGMENT

Heard Mr. Talaulikar, learned Counsel appearing for the Appellant and
Mr. Ramani, learned Counsel appearing for the Respondent.

2. Admit, on the following substantial question of law :

(i) Whether the pendente lite interest awarded by the
Courts below at the rate of 18% per annum is
contrary and unreasonable in terms of Section 34 of
the Civil Procedure Code ?

3. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondent, waives service.

4. Though, during the course of the hearing, Mr. Talaulikar, learned Counsel appearing for the Appellant has raised various contentions with regard to the findings of the learned Judge that the Appellants are not liable to pay the amount as claimed by the Respondents in the suit, I find that there are no substantial questions of law which arise in the present Appeal on that count. Admittedly, in the present case, the fact finding Courts have come to the conclusion that the Appellants had hired the vehicles of the Respondents and invoices for the payment of such amount were duly submitted by the Respondents to the Appellants. On the basis of the appreciation of the evidence on record, the fact finding Court below have found that the Appellant is liable to pay such amount to the Respondent and there is no perversity in such findings.

5. Mr. Talaulikar, learned Counsel appearing for the Appellants, has also accepted the contents of such invoices were not disputed by the Appellants herein. Apart from that, the Courts below have also noted that the Appellants have not entered the witness box and, consequently, proceeded to decree the Suit. As such, I find that there are no substantial questions of law which arise in the present Appeal for consideration based on the claim put forward by the Respondents in the Suit.

6. The only aspect to be considered in the present Appeal is whether the

interest at the rate of 18% per annum from the date of the filing of the Suit stands justified. In the present case, admittedly, there was no contractual rate of interest agreed between the parties. The invoices which were submitted by the Respondents to the Appellants also did not disclose that in case of any delay or default in payment, interest would be charged. No doubt, the Respondents have issued a notice demanding the amount of Rs.74,614.77 together with interest of 18% per annum. In such circumstances, I find that as a notice was issued to the Appellants to pay interest from the date of receipt of such notice, there is no case made out for any interference on the interest awarded in the impugned Judgment prior to the filing of the Suit.

7. What remains to be examined is whether the pendente lite interest awarded by the learned Judge at the rate of 18% per annum stands justified. In the present case, in terms of Section 34 of the Civil Procedure Code, the Court has discretion to award interest from the date of the filing the Suit. Section 34 clearly provides that the Court can grant interest which is reasonable from the date of the filing the Suit up to the passing of the Decree. It further contemplates that as far as commercial transactions are concerned, the Court can grant interest which does not exceed landing rate as prevailing to Nationalised Banks. Considering that the subject transaction took place in the year 1997 and the Suit was filed from the year 2001, I find that the reasonable interest, from the date of the filing of the Suit up to actual payment in the peculiar facts of the present case, payable by the Appellant would be at the rate of 15% per annum. To that extent, the impugned Judgment deserves to be modified. The substantial question of law is answered accordingly.

8. In view of the above I pass the following :

ORDER

- (I) The appeal is partly allowed.
- (II) The impugned Judgment and Decree dated 17.01.2007 passed by the learned Trial Judge and Judgment dated 15.02.2014 of the learned Appellate Court directing the payment of a sum of Rs.74,614.77 to the Respondents along with interest at the rate of 18% per annum up to the date of filing of the Suit stands confirmed.
- (III) As far as the payment of interest subsequent from the date of filing of the Suit, the Appellants are directed to pay such amount together with interest thereon at the rate of 15% per annum, from the date of the filing of the Suit up to actual payment.
- (IV) Decree stands modified accordingly.

F .M. REIS, J.

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