

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 487 of 1997

- M/s Manish Enterprises, a registered partnership firm through the Partner Nathhu Prasad s/o. Shri Mithalal Rathi, Seller of Electrical Appliances, r/o.; of 74-A Akash Ganga Complex, Supela, Bhilai, District Durg (CG).

---- Appellant.

Versus

- The Municipal Corporation Durg through the Commissioner, Hindi Bhawan, G.E. Road, Durg (CG).

---- Respondent

For appellant:	:	Ms. Raksha Awasthy, Advocate.
For respondent	:	Ms. Sharmila Singhai, Advocate.

SB: Hon'ble Mr. Ram Prasanna Sharma, J

Judgment on Board

13-07-2018

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 8-7-1997 passed by the 3rd Additional District Judge, Durg, (CG) in Civil Suit No.35-B/94, wherein the said Court passed the decree in favour of the appellant and against the respondent for a sum of Rs. 1,58,850.40 and interest @ 6% thereon from 21-12-1994.

2. The case, in brief, is that the appellant is a partnership firm and seller of electric appliances whereas the respondent is a local body of Municipal Corporation Durg. The suit was filed by the appellant/plaintiff against the respondent that the respondent purchased the electric goods and appliances but did not pay for the same. A suit for recovery of the sum of Rs.3,33,883.60 is filed before the trial Court and after recording the evidence of both sides and hearing the both sides, the trial Court passed a decree as mentioned above.
3. The decree is passed in favour of the appellant, but the present appeal is for enhancing the rate of interest upto 18% per annum cumulative with quarterly balance amount.
4. The core issue for consideration of this Court is whether the appellant is entitled for interest @ 18% per annum cumulative with quarterly balance.
5. Learned counsel for the appellant would submit that the appellant to pay interest to the Bank @ 18% for the period during which suit was pending and, therefore, rate of interest @ 6% awarded by the trial Court is unjust, unfair and unreasonable.
6. To deal with the issue, Section 34 of the Code of Civil Procedure, 1908 is relevant which may be read as under:

“ 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”.

7. In the present case, there was no contractual rate of interest between the parties. In absence of any written contract regarding rate of interest and binding on the respondent, the trial Court was not in a position to grant interest at excessive rate. The situation would have been different, if any contract was signed by the parties regarding the interest. Awarding of interest is

discretionary relief and the same should be exercised judiciously. It is not a case that the court has refused any interest . The court granted the interest @ 6% invoking discretionary jurisdiction. Unless it is shown that discretion is exercised arbitrarily, the same cannot be interfered with while invoking jurisdiction of the appeal. When there was no binding document against the respondent for payment of rate of interest @ 18%, awarding of 6% is just and proper and the same is not liable to be interfered .

8. Accordingly, it is ordered and decreed as under.

- (I) The appeal for enhancement of rate of interest is dismissed.
- (II) Parties to bear their own costs.
- (III) Pleader's fee, if certified, be calculated as per certificate or as per Schedule whichever is less.
- (IV) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju