

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 44 of 2003

Prashashak Gram Sewa Samitee, Raipur, Head Office Jail Road,
Kachahari Chowk, Raipur (C.G.)

---- Appellant

Versus

1. Surendra Kumar Dewangan, Aged about 41 years, Occupation- Bunkar, Kosafal Collector & Seller, R/o. Palace Road, Sarangarh, District Raigarh (C.G.).
2. Manager, Khadi Gramodyog, Police Station Road, Raigarh, District Raigarh (C.G.).
3. State of Chhattisgarh, Through Collector, Raigarh, District Raigarh (C.G.).

---- Respondents

For Appellant	:	Mr. Ashok Patil, Advocate
For Respondent No.1	:	Mr. B.D.Guru, Advocate
For Respondent No.2	:	Mr. R.S.Patel, Advocate
For Respondent No.3	:	Mr. D.R.Minj, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment On Board

12.10.2018

1. The instant appeal is against the judgment and decree dated 28.10.2002 passed in Civil Suit No.12-B/2002 by the Fourth Additional District Judge, Raigarh, whereby as against the claim of Rs.4,98,750/- claiming interest @ 18%, decree for Rs.2,85,000/- was granted and further the Court ordered to pay interest @ 6% from 02.08.1996 till the realization of the amount.
2. As per the plaint allegation, the plaintiff is engaged in the business of sale of Kosa alongwith Kosa Fabric. The defendant No.1 namely Gram Sewa Samiti Raipur had also its Branch in the name of Khadi Gramodyog at Raigarh who is arrayed as defendant No.2. The defendant No.3 was the State. It was pleaded that the defendant No.1 & 2 Khadi Gramodyog who prepared Kosa garments used to purchase Kosa Cocoons and the payments are made periodically according to the receipts. It was stated that on

02.02.1996 initially the defendant had purchased Kosa Cocoons worth Rs.2 Lakhs. As per the plaint allegation, it was stated that on 02.02.1996, the plaintiff had sold Kosa Cocoons worth Rs.2 Lakhs to the defendant No.1 for which the bill was bearing No.147 dated 02.02.1996 and were drawn in the name of Manager, Khadi Karyalay Raigarh, which was on credit. The same was received by the defendant No.2 and subsequently again on 02.05.1996 at the rate of 1350/- per thousand another one lakh Kosa Cocoons were purchased by the defendants for which the bill was bearing No.151 dated 02.05.1996. Both the bill contains the acknowledgment. It was stated that the defendant No.1 & 2 had total purchased Kosa worth Rs.3,35,000/- for which the payments should have been made within one month and out of the outstanding dues Rs.50,000/- was paid by the defendants thereby Rs.2,85,000/- was the remaining balance principle amount was to be paid to the plaintiff. It was further stated that despite follow up, the amount was not paid and eventually the notices were extended but the payment was not made and as such the suit was filed.

3. The defendant No.1 & 2 contended that they themselves directly purchased the Kosa and payments were made directly. They admitted that on 02.02.1996 the defendant had purchased Kosa Cocoons worth Rs. 2 Lakhs, however, the purchase on 02.05.1996 at the rate of 1350/- per thousand of one Lakh Kosa were denied. The entire outstanding dues which were claimed were disowned. It was further stated that the purchase bills were sent to the defendant No.2 for clarification and the payments were to be made by the defendant No.1. It was stated that the defendant No.1, the apex body, had not directed for purchase of

any such Kosa Cocoons, therefore, the defendant No.2 had not accorded the sanction for payment of the bill.

4. On the basis of the pleading of the parties, the learned trial Court framed seven issues and decreed the suit for Rs.2,85,000/- with interest @ 6%, therefore, the instant appeal by the defendant No.1 i.e. Prakashak Gram Sewa Samitee Raipur i.e. the Head Office.
5. Learned counsel for the appellant would submit that the nature of transaction were commercial and would further submit that the plaintiff has failed to prove his case beyond reasonable doubt. It was further contended that the grant of interest @ 6% per annum was wrong as there was no agreement *inter se* in between the parties for payment of the amount within stipulated time. It is further stated that the interest @ 6% from the first bill could not have been granted as there was no agreement of payment of interest in between the parties. He placed his reliance in case of ***State of Madhya Pradesh v. Chhindwara Cold Storage Co. Pvt.*** reported in ***2005 (4) M.P.H.T. 402*** and submits that interest could not be payable from the date of the dues as no agreement existed.
6. Per contra, learned counsel for the respondent No.1 supports the judgment and decree. It is submitted that the findings are in favour of the respondent No.1 which affirms the fact that the supply of the goods were made. Consequently, if the payments were withheld without any reason, the grant of interest and the award of interest is justified. It is submitted that the order of the Court below is well merited, which do not require any interference by this Court.
7. Perused the judgment & decree. In respect of the evidence, the record of the Court below is also perused. The plaintiff Surendra Kumar Dewangan stated that on 02.02.1996, he had supplied

Kosa worth Rs.2 Lakhs to the Khadi Office, Raigarh and was received by Prabhunath Pandey, who was the Manager of the said office. The first bill is marked as Ex.P-1. Likewise, he has stated that on 02.05.1996 one lakh Kosa at the rate of 1350/- per thousand worth Rs.1,35,000/- was sold to defendant No.1 & 2. The bill is marked as Ex.P-2. Perusal of Ex.P-1 & P-2 would reveal that it was received by the Manager, Prabhunath Pandey and in acknowledgment thereof, the signatures were scribed. In the cross-examination of Prabhunath Pandey, examined on behalf of defendant No.2, he admitted and proved the bill Ex.D-1 and marked the copy as Ex.D-1(c). He further stated that the said bill was entered into the sale Register of the Head Office at Raipur, which is marked as Ex.D-2. Perusal of Ex.D-2 also affirms the fact that the Kosa Cocoons worth Rs.2 Lakhs were received from the plaintiff Surendra Kumar Dewangan. Thereafter, it is stated that the said Kosa Cocoons worth Rs. 2 Lakhs were given to Khadi Bhandar, Raigarh, the defendant No.2 and the endorsement to the bill is marked as Ex.D-3. He further stated that the said sale was further registered in the Head Office and the copy of the Head Office Register was marked as Ex.D-4. Further, it is stated that the said Kosha Cacoons were sold to Khadi Bhandar Sarangarh by Ex.D-5. The entry of receipt of the Head Office, Gram Sewa Samitee in the purchase Register also affirms the fact that the Kosa Cocoons worth Rs.1,35,000/- were purchased by the Gram Sewa Samitee and the copy of the Register is marked as Ex.D-7 and further it was sent to the Khadi Bhandar Raigarh, which was proved by the bill Ex.D-8(c).

8. The DW-2 admitted the fact that the goods of bill No.147 & 151 were received by him and entry was made by him. He further

stated that for payment of such bill, it was sent to Head Office Raipur and the value of the bill was Rs.2 Lakhs was of 02.02.1996 and Rs.1,35,000/- was of 02.05.1996, which was purchased. He further admitted the fact that out of the total sale, the purchase value of Rs.3,35,000/- Rs.50,000/- was paid and Rs.2,85,000/- were to be further paid to the plaintiff. The plaintiff further admitted that after he received the instruction from Head Office and received the amount in the gradual intervals, Rs.50,000/- was paid in different intervals. The witness further admitted that since the payments of the bill were delayed, he had sent a letter to the plaintiff by Ex.D-3. The witness further admitted to have received the notice and the reply thereof. Therefore, clear admission exists in between the parties that the goods worth Rs.3,35,000/- were given to the defendant No.1 & 2 out of which Rs.50,000/- was paid by the defendant No.1 & 2 on different intervals i.e. on 05.01.1998 Rs.10,000/- on 24.01.1998 Rs.5,000/-, on 10.02.1998 Rs.5,000/-, on 24.03.1998 Rs.5,000/- on 16.10.1998 Rs.15,000/- and on 05.12.1998 Rs.10,000/-. Therefore, the payments were made in intervals up till 05.12.1998. The last payment and the entries were made in the usual course of business in their account. Therefore, the outstanding dues were acknowledged and part payment was made, which would amount to acknowledgment of debt outstanding. The suit was filed on 24.08.2000, therefore, was within limitation as the same was preferred within three years of the last acknowledgment date. As such, the finding of the Court below that the suit was within limitation appears to be just and legal.

9. Admittedly, the part payment was made for the goods worth Rs.3,35,000/- and Rs.50,000/- was paid, thereby, an amount of

Rs.2,85,000/- was due. The bill bearing Ex.P-1 No.147 and Ex.P-2 No.151 do not contain any specific clause about the stipulated date of payment. The said bill also do not contain any stipulation of the interest to be paid in case of non-payment.

10. Learned Court below has granted interest @ 6% from the date of due of the first bill dated 02.02.1996. There is no doubt that the proposition laid down by the learned counsel that the interest prior to the suit is a matter of substantive law. It is also not in dispute that when interest is not payable under the agreement or under mercantile usage or statute, mere retention of money due to the plaintiff by defendant is no ground for awarding it. There must be something above, such as fraud or breach of trust or some ground in equity in a suit for refund of money paid in excess.

11. The Supreme Court in case of ***Rampur Fertiliser Limited v. Vigyan Chemicals Industries*** reported in **(2009) 12 SCC 324** while adjudicating the like issue has laid down the ratio that in absence of any agreement interest payable can be only at the market rate and will depend on totality of the circumstances justifying exercise of such equitable jurisdiction. The Court in para 18 & 19 has held as under :

“18. In *Clariant International Ltd. v. SEBI*, (2004) 8 SCC 524, it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory.

19. It was further held in *Clariant International* case that in absence of any agreement or statutory provision or a mercantile

usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in *Kaushnuma Begum v. New India Assurance Co. Ltd.*, (2001) 2 SCC 9; *H.S.Ahammed Hussain v. Irfan Ahammed*, (2002) 6 SCC 52 and *United India Insurance Co. Ltd. v. Patricia Jean Mahajan* (2002) 6 SCC 281 and it was observed that even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.”

12. Applying the aforesaid principles, the facts of this case would suggest that the goods worth Rs.3,35,000/- was supplied to the defendants. Admittedly, the payment was not made within a reasonable time though time line was not prescribed. Only Rs.50,000/- was paid that too in installments of a meager amount. Perusal of the record would show that the suit was filed by the plaintiff as an indigent person, however, subsequently, the Court fee was deposited. This part of the circumstances, the Court cannot lose the sight coupled with the fact that despite supply of the goods by a marginal businessman of a cottage industries, if the payments are withheld in the like nature then the equity would lean in his favour to grant the interest. The Court can take judicial notice of both inflation as also fall in Bank rate interest and, as such, if the amount is withheld admittedly the plaintiff would have been deprived of the rights to use the same in future for which the equity needs the balance to be made. Therefore, considering the aforesaid circumstances, I am of the view of the interest granted at

the rate of 6% cannot be said to be exorbitant from the date of non-payment and not inflated to be struck down and needs interference.

13. In a result, the appeal has no merit and is dismissed. The appellant shall also be liable to pay the cost of the suit to the plaintiff/ respondent No.1.

Sd/-
(Goutam Bhaduri)
Judge