NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 244 of 1999

M/s Mohan Singh Sohan Singh, through Sohan Singh son of Sadhu Singh, aged about 62 years, timber merchant, Saifabadi Gate, Patiyala (Punjab). **--- Appellant**

Versus

M/s Prakash & Company, a registered partnership firm, registered under Indian Partnership Act, 1932, carrying on business of timber merchants and order suppliers with its principal place of business at Indira Ward, Jagdalpur, District Bastar and Branch at Purushotthapuram, P.O. Chinnishi-wada, Visakhapatnam (Andhra Pradesh). **--- Respondent**

For the appellant	:	Mr. Anup Majumdar, Advocate.
For the Respondent	:	Mr. B. P. Sharma with Ms. Trisna Das, Advocates

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Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

22.10.2018

1. The present appeal is against the judgment dated 17.02.1999 passed in Civil Suit No.10-B/1995 by the Addl. District Judge, Jagdalpur, Bastar whereby a decree of Rs.3,57,420/- along-with interest @ 24% per annum from 02.03.1993 to 30.08.1994 and further interest of Rs.1,28,871/- over which further interest @ 24% per annum was awarded and subsequently further interest was awarded from 31.08.1994 on the decretal amount of Rs.4,86,091/-. It was further observed that pursuant to the award passed by the Railway Claims Tribunal by order dated 01.01.1997 if the amount has been recovered that has to be set off in the decretal sum.

2. The instant appeal is by the defendant judgment debtor. It

was the case of plaintiff respondent that in the month of August, 1991, the defendant has offered to the partner of Plaintiff's Firm namely Shrichand Lunia by telephone for purchase of 47 logs of Malasian round wood and the offer was accepted by Shrichand Lunia on phone. The quantity of the wood was 55.0756 metric tons and its value was Rs.3,51,414=95. According to the contract, the said goods i.e., wooden logs were to be sent from Simhachalam (Andhra Pradesh) to Patiala (Punjab) by means of Railways. The goods having been loaded in wagons, the Railway Receipts along-with Hundi drawn on State Bank of India, Jagdalpur were sent to the defendant which the consignee was obliged to retire after making payment of Hundi in Bank and obtain the original Railway Receipts. Subsequently by production of railway receipts to Railways the defendant would have received the goods from Railways. It was stated that the plaintiff and defendant were in the business of similar nature for a long time.

3. It was stated that pursuant to such agreement dated 07.08.1991, 3 railway receipts bearing No.720033, 720035 & 720036 were sent along-with Hundi through State Bank of India Jagdalpur to Patiala. The said Railway Receipts along-with documents Invoice Numbers were sent on 01.09.1991 through SBI Jagdalpur. It was stated that on 02.10.1991, the plaintiff received telegram from the defendant that the said railway receipts along-with Hundi have not been received at the SBI Patiyala and in turn since the goods were with Railways, it would attract demurrage charges to be paid to the Railways. The defendant therefore asked for indemnity

bond so that the goods could be received without the railway receipts. It was further pleaded that believing such statement of the defendant, the plaintiff sent an indemnity bond for Railway Receipt No.720036, dated 07.08.1991 and believed the assurance that the defendant would honour the Hundi of Rs.3,51,414=95 and would deposit the amount with the State Bank of India at Patiala. However the same was not honoured and the Hundi and Railway Receipts were sent back to the State Bank of India, Jagdalpur Branch as the Hundi was dishonoured.

4. Subsequently having received such information the plaintiff had sent the representative to Patiala where they came to know that on the basis of indemnity bond, the entire goods of 3 Railway Receipts were delivered by the Railways to the defendant as the information was given by the defendant that the original railway receipts have been lost. Therefore, by playing fraud, the defendant had taken delivery of the entire goods of 3 railway receipts.

5. The plaintiff had further pleaded that subsequently on 14.02.1992 a legal notice was sent by the plaintiff. Pursuant to the said demand notice, an amount of Rs.1,83,000/- by Demand Draft was sent by the defendant as part-payment. Despite that, further amount of Rs.3,57,420/- was due towards price of goods, interest, bank charges and further interest. Further the plaintiff had amended the suit on 13.09.1997 by inserting Para 13-A in the plaint and waived his claim over the two Hundies to the extent of Rs.2,30,000/- on the basis of the award passed by the Railway Claims Tribunal on 01.01.1997 in favour of plaintiff and it was

stated that the said amount shall be set off in the claim made by the plaintiff and for the rest of the amount, the decree was prayed for.

6. In the written statement, the entire plaint allegations were disowned. It was stated that no contract was ever entered into between the plaintiff and defendant, it was only on the ground to arrest the damages of the railways, the defendant on good faith got the goods released. It was further stated that no contract in respect of the interest was entered between the parties. As such the claim of interest could not be granted.

7. On the basis of pleading, the learned Court below framed 5 issues and decreed the suit in favour of the plaintiff. Hence this appeal.

8. Learned counsel for the appellant would submit that admittedly in this case the suit was for recovery of Rs.4,86,091/- wherein an amount of Rs.3,51,414.95 was claimed as price of goods sold on credit. The rest of the amount of Rs.49,954 and 1,43,052/- was claimed as interest and incidental charges. He would therefore submit that if the amount is calculated, out of 3,51,414/-, the defendant has paid Rs.1,83,000/-. Apart from that, Railways has released an amount of Rs.1,17,000/- which is also not in dispute as the bank guarantee was encashed and thus Rs.3 lakhs were already paid. It is further stated that pursuant to the award passed by the Railway Claims Tribunal, the plaintiff himself has waived the claim of Rs.2,30,000/-, therefore, virtually no outstanding dues would stand as against the defendant. He further submits that the plaintiff

has failed to prove that there was any contract between the parties for purchase of goods and particular contract was entered into between the parties about the rate of interest as the high rate of interest @ 24% as compound interest could not have been awarded by the Court. He further submits that the trial Court virtually without taking the notice of the award of Tribunal and the amendment made in the plaint whereby the plaintiff has waived his claim has again passed the decree which is completely illegal and such decree cannot be allowed to sustain.

9. Per contra, learned counsel for the respondent would submit that the judgment and decree is well merited. It is stated that the railway receipts Ex.P-4, P-5 & P-6 were sent through the Invoice Ex.P-7 and Bill Ex.P-8. He further submits that Ex.P-9 would show that it was drawn on Patiyala (Punjab) in the name of respondent for Rs.3,51,414.95 towards price of goods. As such, if the said railway receipts are read together with the invoice it would be covered under the definition of Bill of Exchange. He further submits that when the said bill of exchange was presented, it was dishonoured and the defendant appellant suppressing the fact took the delivery of the entire goods from the Railways on the basis of one indemnity bond which was meant for only one railway receipt no.720036 whereas the entire goods were received thereby with an intention of fraud the goods were received. He further submits that having received the goods if they have not been used that will be of no consequence. He further contends that as per section 61 of the Sale of Goods Act, 1930, interest by way of damages and special damages have

to be awarded and the Court was fully justified in doing so, therefore, no interference is required by this Court. He further submits that no evidence was adduced on behalf of the respondent, therefore, the claim of decree of suit in its entirety cannot be valid.

10. Heard learned counsel for the respective parties and also perused the records.

11. The plaint as would reveal was filed for a claim of Rs.4,86,091/-. The suit was filed on 31.08.1994. In bifurcation of the claim amount as has been shown in plaint, the following particulars have been pleaded at Para 12 which is reproduced here-in-below :

> 12. Thus a sum of Rs.3,97,368.95 remained due to the plaintiff from the defendant on 01.03.1993 after appropriating the said sum of Rs.1,83,000.00 as detailed hereunder:

(a)	Price of goods sold Credit	3,51,414.95
(b)	Interest and incidental charges debited by the Bank to the Plaintiff's A/c after the dishonour of Hundi	45,954.00
(c)	Further interest @ 24% on Rs.3,97,368/- upto 01.03.1993	1,43,052.00
	Total due on 01.03.1993	5,40,420.00
	Less D/D received on 01.03.1993	1,83,000.00
	Balance due on 01.03.1993	3,57,420.00

12. A perusal of the aforesaid claim would show that the main price of goods sold on credit was Rs.3,51,414.95 and admittedly the demand draft for Rs.1,83,000/- was received

on 01.03.1993. A perusal of the document Ex.D-1 which was a letter written by the defendant also fortifies the same. The contents of D-1 however do not admit to the fact about any concluded contract. Ex.D-1 which is a letter of defendant also purports that Rs.1,17,000/- was further paid which is also fortified by the averments of Ex.P-13 which is an award passed by the Railway Claims Tribunal, Secunderabad on 01.01.1997. In the award, the aforesaid fact is supported that the bank guarantee of Rs.1,17,000/- given by the M/s. Mohan Singh Sohan Singh, the appellant herein, was encashed by the railways for delivery of goods. The award Ex.P-13 which was filed by the plaintiff M/s. Prakash and Company would show that the Railway Claims Tribunal has passed an award of Rs.2,30,000/- for two receipts of bearing no.720033 & 720035 which have apparently been exhibited as Ex.P-4 & Ex.P-5 respectively. Accordingly after such award the amendment was made in the plaint as 13-A whereby the plaintiff waived his claim against the defendant in respect of two Railway Receipt Nos.720033 and 720035.

13. In view of the waiver of claim for the value of the goods of two railway receipts, further decree could not have passed on account of admission made by the plaintiff himself. So far as payment of Rs.1,83,000/- is concerned, it is not in dispute that it was received by the plaintiff through demand draft. A perusal of statement of P.W.1 shows that P.W.1 Srichand Luniya has stated that he entered into an oral agreement for supply of goods. Even if such statements are admitted it do not show that any agreement of contract was entered into between the parties for payment of interest and at what rate

it was to be paid. The plaintiff further stated that on 02.10.1991 a telegram was received by their Firm at Jagdalpur from defendant about the non-receipt of railway receipt and Hundi at State Bank of India Patiala. Though the said document is crucial one so as to establish and draw inference about existence of any contract but the same has not been placed or exhibited by the plaintiff. At this stage the defence raised by the appellant cannot be shelved that there may not be any particular agreement for supply of goods and the goods were released to arrest demurrage from Railways as the defendants were in business terms.

14. 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 paras 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.
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> 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."

15. In the instant case, the plaint averments would show that Rs.1,83,000/- has already been received by demand draft. In respect of railway receipt bearing No.720036 what was the actual cost of goods covered under the said railway receipts, is completely vague. As mentioned in the preceding paragraph, the plaintiff has waived his claim for other two railway receipts No.720033 & 720035 pursuant to the award passed by the Railway Claims Tribunal which has directed to pay Rs.2,30,000/- towards the value of goods covered by the above two railway receipts. Therefore, if the payment amount of Rs.1,83,000/- is considered which is admitted by the plaintiff to have received and by further evaluating the abandoned/waived claim of Rs.2,30,000/- after the award of the Railways Claims Tribunal, if the amount is added together, the value comes to Rs.4,13,000/- which apparently appears to be more than Rs. 3,51,414=95. Since the plaintiff has failed to prove by documentary evidence as to what was the terms of the contract and what was the rate of interest agreed for, merely on presumption interest cannot be

awarded.

16. Prima facie it appears that the court below has failed to take into account the question of waiver of claim by the plaintiff instead went on to pass a decree for the entire amount which cannot be sustained.

17. In the result, the appeal succeeds and the judgment and decree of the court below is set aside. No order as to cost.

Sd/-
GOUTAM BHADURI
JUDGE

Rao