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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 12th January, 2018

Date of decision : 13th April, 2018

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RFA 754/2016

DHANI RAM (THRS LRS)

. Appellant

Through: Mr. Anand Yadav and Ms. Anita
Tomar, Advocates. (M: 9810126454)

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents

Through: Mr. Rajiv Bansal, Senior Advocate
and Mr. Niharika Ahluwalia,
Advocate. (M: 9818099957)

AND

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RFA 771/2016

TARA CHAND (THR LRS)

.....Appellant

Through: Mr. Anand Yadav, Advocate.
(M: 9810126454)

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Mr. Rajiv Bansal, Sr. Advocate along
with Ms. Niharika Ahluwalia & Ms.
Vasudha Trivedi, Advocates.
(M: 9818099957)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh J.

1. The present appeals arise out of a suit for damages filed by the Appellants/Plaintiffs (*hereinafter 'Plaintiffs'*) against the Delhi

Development Authority (*hereinafter 'DDA'*), its Senior officers and two members of the Delhi Police (*Defendants 8 and 9*). It is the case of the Plaintiffs that land measuring 3 bighas 8 biswas comprised in Khasra No. 156, village Naharpur, Delhi (*hereinafter 'suit property'*) is their ancestral property and a portion of the said land was also built up. DDA acquired large portions of land in the surrounding areas, but the suit property was left out of the acquisition as the same was built up area. By a policy dated 16th February, 1977, DDA decided to regularize both residential and commercial structures. The land belonging to the Plaintiffs continued to remain their property and was later on adjusted in the portion of Sector 7 of Rohini Development Scheme prepared by the DDA. The entire village of Nahapur was notified as a development area under Section 12 of the Delhi Development Act, 1957 (*hereinafter, 'DDA Act'*) but was later de-notified vide notification dated 22nd June, 1987. Thus, the DDA ceased to have any jurisdiction on the land.

2. On 18th June, 1988 at about 12:30 p.m., the staff of the DDA including the Defendant nos. 3 to 7 and the police officials, suddenly came to the spot and without any notice demolished and damaged the building of the Plaintiffs constructed on the suit property. It is the Plaintiffs' case that the land never belonged to the DDA and the DDA had illegally trespassed into the land. The Plaintiffs filed a suit seeking the following reliefs:

“a) A decree for payment of Rs.8,00,000/- be passed in favour of the plaintiffs against the defendants and the defendants be held liable to pay the said amount jointly severally.

b) The defendants be directed to restore the buildings of the plaintiff demolished by them and, in the

alternative, the defendants be restrained from interfering with the restoration of the buildings to their original condition by the plaintiffs themselves.

c) Interest pendente lite and till date of payment @ Rs.18.00 % per annum be awarded to the plaintiffs against the defendants.

d) Cost of the suit be awarded to the plaintiff against the defendants.”

The officers involved in the drive were also made parties to the suit. The Defendants submitted in the written statement that the said land was properly acquired by the DDA and hence there was no encroachment. The Plaintiffs' structure was an unauthorized structure.

3. The following issues were framed in the suit:

- “1. Whether the building of the plaintiff was legally demolished by the defendants? (OPP)*
- 2. If Issue no.1 is not provided, to what amount of damages, if any, are the plaintiffs entitled? (OPP)*
- 3. Relief.”*

4. The Plaintiffs led the evidence of the following seven witnesses - PW1-Sh. C.B. Verma, PW2-Sh. Subhash, Patwari, PW3-Sh. Amit Sharma, PW4-Sh. Ved Singh, PW5-Sh. Satya Prakash, PW6-Sh. Mukund Lal Aneja and PW7-Sh. Surat Singh. The DDA examined the following three witnesses - DW1-Sh. Ram Kumar Yadav, DW2-Sh. Satbir Kaushik and DW3-Sh. Baljeet Singh Rathi. The Trial Court has summarised their respective testimonies in para 9 of the impugned order.

5. On Issues 1 and 2, the Trial Court observed that the DDA conceded that the suit land was a private land and was not acquired by the DDA. **Exhibit - C1** is an exhibited document of the official notings of the DDA

obtained under RTI and filed before the Court. As per Exhibit - C1, Sh. S.K. Mahto Director, Land and Management DDA confirmed that the structure which was demolished on 18th June, 1988 was partly located in the acquired land Khasra No. 157 and partly located in Khasra No. 156 which was the unacquired land. Thus, the DDA admitted that all the four shops of the Plaintiffs in Khasra No. 156 which was subject to demolition was part of un-acquired land. Subsequently, an inquiry was also undertaken within the DDA and the file notings dated 17th October, 1988 also concluded that the owners need to be compensated. The relevant extracts of Exhibit-C1 are set out below:

“Shri Surat Singh r/o 33, Naharpur in his representation (at page 54/c) to the L.G. has stated that structures situated on acquired land of Kh.No.156 of village Naharpur were demolished by DDA.

It is a fact that fresh unauthorised constructions in village Naharpur were demolished by Demolition Squad of the D.P. Branch on 18.6.88. One such structure was situated partly on un-acquired land falling in Kh. No.156 and partly on acquired land of Kh.No.157 of village Naharpur. The details of the area covered by the unauthorised structure are as under :-

- | | |
|---|--|
| <i>1. Area of the structure falling on the acquired land.</i> | <i>12'x80' (108 sq.yds approx.) of Kh.No157 of village Naharpur.</i> |
| <i>2. Area of the structure situated on un-acquired land</i> | <i>80' x 18' (160 sq.yds.) of Kh.No.156 of village Naharpur.</i> |

Since the structure was situated partly on acquired and partly on un-acquired land, as a result of

*demolition the portion of the structure on un-acquired land was also demolished. In this connection it may be mentioned that the structure was constructed without getting the building plans sanctioned from the Competent Authority. However, no notice was issued against the defaulters. **Since the unauthorised structure was demolished without due process of law, the owners are to be compensated. It is, therefore, proposed that we may restore the possession of the site to the owners. According to the revenue records the land where the portion of the structure was situated was on Kh.No.156 min. [marked as A to A1 in TCR]** Of Naharpur, it belongs to Sh.Dhani Ram, Tara Chand, Smt. Ved Wati and Vimla daughters of Sh. Thani Ram. It is, however, to be decided whether the owners can be compensated for the super-structure which they had constructed without getting the building plans passed from the competent Authority which is M.C.D. in this case. The factual position given in this case is after consulting DD (NC), NT.*

Sd/-

(R.D. Saklani)

Director

A.C (Lands)

(Lands Management)

17.10.88

*Demolition was beyond jurisdiction.
But at the same time structure was
unauthorised.*

Sd/-

17.10.(88)”

Marked B to B1 in TCR

“Suggested by the V.C. please get the loss assessed by Engineering staff for determining the amount of compensation to be paid.

Sd/-

7.11.88”

Marked C to C1 in TCR

“The issue of alternative allotment is to be taken by DLM/Commissioner (Land) because this is a policy matter.

*Sd/-
26.12”*

6. The Trial Court after considering the pleadings and evidence held that the stand of the DDA was clear in Exhibit C-1 to the effect that the shops of the Plaintiffs which were demolished were in the un-acquired land. The relevant extracts of the impugned judgement referring to the findings of the said Inquiry Report are set out below:

“13. At the very outset I may observe that in so far as this limited aspect is concerned, the DDA has, before this Court, conceded that as per their own record, the suit land was a private land and not acquired or put at disposal of the DDA. In order to cut short the controversy between the parties, at the final stage an RTI reply and notings of the file of the DDA was placed before this Court which notings are Ex.C-1, which notings and official file reflects the official stand of the department/ DDA and had been admitted by both the Plaintiffs and the DDA and not disputed by anyone. Sh. S.K. Meena, Director (Land and Management), DDA has made a categorical statement to this effect that the said notings Ex.C-1 reflect the official stand of the department/ DDA and as per the official stand of the Defendant/ DDA so reflected in Ex.C-1 (notings on the official record of the DDA) and also duly confirmed by the Director (Land and Management), DDA Sh. S.K. Meena, the super structure which was demolished on 18.06.1988 by the Demolition Squad of IP Branch was situated partly on the acquired land i.e. Khasra No. 157 of village Naharpur measuring 12' x80' (108 square yards) and partly on unacquired land i.e. Khasra No. 156 of

village Naharpur measuring 80' x18' (160 square yards which is the suit land).

14. Secondly, it is also an admitted case that since the structures were situated partly on the acquired land and partly on un-acquired land as a result of demolition the portion of the structure on un-acquired land was also demolished and hence the DDA has admitted that all the four shops of the Plaintiffs which were subjected to demolition by the Defendant/ DDA were on the un-acquired land.

15. Thirdly, it is also established from the notings of the DDA that in order to justify the demolition action, the concerned officers of the Defendant/ DDA though admitting that the shops were on unacquired land yet claimed that since the construction had been made on the land without getting the building plan sanctioned from the competent authority hence there was no illegality. This, I may observe, is only a desperate attempt on the part of the officials to justify their illegal acts since no demolition action could have been undertaken under the given circumstances without issuing a Show Cause as per law and the Director (Lands and Management) Sh. R.D. Saklani was also of the same view that since no notice was issued against the defaulters, the unauthorized structure was demolished without due process of law, which fact is reflected from the official note Ex.C-1.

16. Fourthly, it is also an admitted case of the Defendant/ DDA that the competent authority/ DDA was of the view that the owners were required to be compensated and the possession of the site was to be restored since as per the land revenue records the land where the portion of the structure was situated was on Khasra No. 156 Min of Naharpur which belonged to Dhani Ram, Tara Chand, Smt. Ved Wati and Vimla daughters of Dhani Ram i.e. Plaintiffs before this Court. It is this which brings the controversy before

this Court to a closure and clinches the issue and I hold that there is no dispute that the demolition action dated 18.06.1988 on the suit land was in fact carried out on the unacquired land of the Plaintiffs and the said action was without following the procedure of law, a fact which is also admitted by the Defendant/ DDA as borne out from their own record and notings Ex.C-1. In fact the Local Commissioner Sh. C.B. Verma Advocate (PW 1) appointed by the Court has also similarly proved this aspect that the suit land does not form a portion of the land, so acquired by the Government. He has duly proved his proceedings and report which are Ex.PW1/A and Ex.PW1/B respectively and the land/ revenue records so relied upon by the Local Commissioner have also been proved by the Patwaris i.e. Subhash (PW2), Satya Prakash (PW5) & Mukundlal Aneja (PW6) and Kanoongo Ved Singh (PW4) which evidence confirms the stand of the Plaintiff.

17. Lastly, in so far as the aspect of damages/ compensation is concerned, it is evident from the notings of the DDA Ex.C-1 that the case was taken up with senior officers and the Vice Chairman DDA had taken a decision that the owners need to be compensated, hence the Engineering Staff was directed to determine the amount of compensation but despite the same the file was never processed for determining the extent of compensation or to grant an alternative allotment of land.

The above findings of the Trial Court are not under challenge before this Court and the DDA has accepted the same. Thus, the said findings have attained finality.

7. In so far as damages are concerned, the Plaintiffs have sought a sum of Rs.8,00,000/- as damages. The Plaintiffs produced a Government approved valuer to prove damages on that behalf. The Trial Court notices

that the valuer was not cross-examined except for some suggestions which were put to him.

8. In so far as DDA is concerned, Sh. Ram Kumar Yadav who was produced as DW-1 deposed that no damage was caused to the Plaintiffs. His cross-examination could not be completed and hence his testimony was discarded by the Trial Court. The DDA thereafter, led the evidence of Sh. Satbir Kaushik as DW-2 who also denied that any damage was caused. The said witness confirmed that he had no personal knowledge of the demolition drive.

9. On the issue of damages, the Trial Court considered the evidence and held as under:

“21. On the one hand, despite the directions of the senior officers/ Vice Chairman the Defendant/ DDA failed to calculate the extent of compensation, whereas on the other hand the Plaintiffs have placed on record the report of the government approved valuer which has not been duly controverted. According to the said report Ex.PW3/1, there were sixteen shops of RCC roof with rolling shutters, complete with electrical work and three shops constructed upto roof level which were demolished and for removing the malba at the site a sum of Rs.30,000/- would be required. Further, the total cost of construction together with the cost of removing the malba is only Rs.6,08,550/- only. In addition to that the Plaintiffs have explained that they have suffered the rental loss to the extent of Rs. Four Lacs, but they are claiming damages to the tune of Rs. Eight Lacs only.”

10. On the basis of the above findings, the Trial Court granted a decree for the sum of Rs. 8,00,000/- along with the future interest at 8% per annum

from the date of decree till realization. The Plaintiffs did not press any relief against the police officers who were impleaded as D-8 and D-9.

11. The Plaintiffs thereafter moved an application seeking amendment/clarification in the order dated 4th June, 2016 as the Trial Court had not granted any *pendente lite* interest. The Trial Court after hearing arguments in the said application dismissed the same on 6th August, 2016.

12. In the present appeal, the prayer of the Plaintiffs is that *pendente lite* interest ought to have been granted by the Trial Court at 18% per annum from the date of the suit till realisation. Thus, the only question in this appeal is whether the Plaintiffs are entitled to *pendente lite* interest from the date of filing of the suit and if so at what rate.

13. The DDA has accepted the judgment of the Trial Court and has also called upon the Plaintiffs to receive the compensation awarded by the Trial Court vide letter dated 4th January, 2017. It is the submission of the Plaintiffs that a statutory notice dated 29th July, 1988 was served upon the DDA under Section 53B of the DDA Act. Upon the expiry of six months and upon not receiving any response, a suit was filed by the Plaintiffs in December 1988, claiming recovery of Rs.8,00,000/- along with the *pendente lite* interest till the date of payment at 18%. It is further submitted that the matter remained pending for about 27 years and the DDA's own inquiry has concluded that the demolition was wrongly carried out on private land. The Vice Chairman of DDA has himself approved the proposal of compensation to be paid. It is further submitted on behalf of the Plaintiffs that the Plaintiffs had duly served a statutory notice and despite the same it continued to defend its illegal actions. In order to save its officials, DDA continued to insist that the demolition was rightly carried out. Even in the

written statement, it was not disclosed by the DDA that the competent authority had approved the payment of compensation to the Plaintiffs. Due to the deliberate mis-statements by the DDA, the litigation continued to remain pending for 27 years. Counsel for the Plaintiffs relies on the following judgments - *State Bank of India Vs. Shri Ghulam Nabi and Another* AIR 1998 J & K 46, *M/s Bharat Agencies Vs. State of M P and Others* 1998 AIHC 4203, *Boda Ram Vs. Devi Das.Hari Chand* AIR 1936 Lahore 668, *Thakur Umed Singh Vs. Amolak Chand* AIR 1963 Rajasthan 93, *Thazhathe Purayil Sarabi & Ors Vs. Union of India & Anr.* AIR 2009 SC 3098, *M/s Jagdish Rai & Bros. Vs. Union of India* AIR 1999 SC 1258 and *B. Shivananda Vs. Andhra Bank Ltd. & Anr* (1994) 4 SCC 368.

14. On the other hand, the DDA submits that the Trial Court has exercised its discretion rightly and has chosen not to grant *pendente lite* interest. DDA further submits that there were several adjournments taken by the Plaintiffs and the delay before the Trial Court is not attributable solely to it. It further submits that the application for review was rightly rejected by the Trial Court. DDA relies upon the following judgments - *Mahabir Prashad Rungta Vs. Durga Datta* - (1961) 3 SCR 639-AIR 1961 SO 990, *The State of Madhya Pradesh and Others Vs. M/s. Nathabhai Desai bhai Patel* - (1972) 4 SCO 396, *United Bank of India Vs. Rashyam Udyog and Others etc.* - AIR 1990 Gal 146 [MANU/WB/0022/1990] and *State of Punjab Vs. Darshan Singh* - (2004) 1 SCC 328. It is further submitted by DDA that the Plaintiffs have still not taken the compensation money despite the letters and the cheque having been prepared and issued to them as per the Trial Court judgement.

15. Before going into the issue of award of interest, the Court wishes to note the conduct of the DDA in this case. The written statement was originally filed by DDA by taking a categorical stand that there was no construction on Khasra No. 156. In fact the DDA denied demolishing any structure on the land bearing Khasra No. 156 and allegations were leveled upon the Plaintiffs that the Plaintiffs were trying to encroach upon the land bearing Khasra No. 157. DDA further contended that Khasra No. 156 lies outside the Lal Dora and therefore it cannot be said to be part of the village 'Abadi'. The DDA sought to justify the actions of its officials by contending that they were within their right to demolish and remove any unauthorized construction. In effect the written statement made allegations that the Plaintiffs encroached upon this land, leading to a long drawn trial. A local commissioner was appointed by the Trial Court, who demarcated Khasra No. 157 and 156. The findings of the local commissioner are set out below:

“The Field No. 156 was thus correctly demarcated and the whole of the demolition has been occasioned in this No. Khasra. The DDA’s Naib Tehsildar said that part of the construction was also in Khasra No. 157 which, on one more all-bound measurement, proved to be a fallacy and I showed him that it was the debris which has fallen on some part of Khasra No. 157 which appears to have been pulled down that way as also no part of debris on the Southern side of demolition has fallen on any part of Khasra No. 157 and the original constructed wall on both sides is in a length side of nine Gathas from Pacca wall along Khasra No. 155-153.”

16. It was only in 2016 when Exhibit-C1 was brought on record that it was revealed to the Trial Court that the competent authority had already directed payment of compensation. When the Court had appointed a local

commissioner who had carried out the demarcation, the DDA sought to file objections against the same, but finally on 20th January 1992, an injunction was granted restraining DDA from interfering with or obstructing the Plaintiffs in restoring the building in Khasra No 156. The Plaintiffs have restored the building in Khasra No. 156. The Plaintiffs' evidence was closed as far back on 23rd May, 2006. The Trial Court also directed DDA to explore the possibility of settlement in the matter on 11th May, 2015. However, the DDA refused that there is no possibility of settlement. On 8th January, 2016, the following order is passed by the Trial Court.

“Heard arguments. Ld. Counsel for the plaintiff submits that before filing of the suit in the year 1989, a representation had been made to the then L. G. / Vice Chairman, DDA wherein the L. G. / Vice Chairman, DDA had conceded to the grant of compensation for wrong demolition of the suit property as the Khasra number of the suit property had been left out and was not part of the land transferred to the DDA. Ld. Counsel for the DDA submits that there is no such proceedings and if any, he will try to locate in his office. Ld. Counsel for the DDA is directed to place on record the relevant documents confirming the acquisition of land of the plaintiff after demarcation of the same which shows that it is in Khasra No. 157/2 after which the compensation was granted to the plaintiff and the possession taken over and subsequent transfer to the DDA.

In so far as the plaintiff is concerned, he will highlight the relevant documents showing that the land in question falls in Khasra No. 156 and has been left out from the acquisition, particularly in the light of communication dated 06.01.1981 of the DDA in which the then Lt. Governor / Vice Chairman, DDA had subsequently decided that the built up residential area around village abadi prior to 30.6.1977 may be left

from awards for the present, in terms of Government of India letter dated 16.2.1977 as subsequently notified vide their dated 6.12.1978.

Both the parties seek a longer date for the said purpose. Ld. Counsel for the DDA seeks a date in the first week of March to which the counsel for plaintiff has no objection. In this background, be listed for clarifications as aforesaid and arguments for 4.3.2016.”

A perusal of this order shows that the DDA even at this stage continued to behave in a completely unfair manner and did not agree that there was a decision by the Vice Chairman to grant compensation. Thereafter, on 4th March, 2016, the DDA again misled the Court and did not bring to the notice of the Court, the decision of its competent authority/Vice Chairman.

17. Finally, on 27th April, 2016, the copy of the reply received under RTI was filed by the Plaintiffs. It contained the file noting dated 17th October, 1988. The Director (Lands Management) of the DDA had proposed that they should restore the property to the site owner and also compensate the owner for the illegal demolition. Order dated 27th April, 2016 is extracted hereinbelow:

“Heard part oral arguments. Copy of RTI reply filed by the plaintiff. Copy is supplied. According to which the Director (Land Management) vide noting dated 17.10.1988 had proposed that they should restore the possession of the site to the owners and also accordingly compensate the owners for illegal demolition which had taken place unacquired land pertaining to Khasra No. 156. Ld. Counsel for the defendant / DDA submits that he seek necessary instructions from the department. Let the competent officer of defendant to appear along with the relevant record containing the noting in question on next date.

Be listed for part heard oral arguments on 01.06.2016.”

18. On 1st June, 2016, the Trial Court directed the presence of the Deputy Director of DDA. On the said date the file noting is taken on record by the Trial Court and the following order is passed:

“The officer of the DDA has brought the departmental file and placed on record the noting of Sh. R.D. Saklani, Director (Lands and Management) which is present on page 3 of the file which is Ex-C1. He submits that the stand of the Department/DDA is clearly reflected from the notice at portion marked A to A1, B to B1 and C to C1. He further submits that since the competent authority was of the view that the demolition of the super structure was improper, hence the competent authority/ Vice Chairman had directed the Engineering Staff to determine the amount of compensation to be fixed. He has also submitted that the issue relating to the alternative allotment of four shops was also taken up but in the meanwhile the present suit was filed and no final decision as regards the extent of compensation could be taken and the issue of alternative allotment is also left open as per the official records. He has confirmed that as on date the possession of the suit land is with the plaintiffs and the aspect of compensation has not been decided by the department, which this Court may decide and the suit may accordingly be disposed off. His statement to this effect is recorded separately.

The LRs of the plaintiffs are also present in the Court who also made a joint statement to the effect that since the possession of the suit property has been restored and there is no further obstructions, they are not pressing the said relief of restoration and alternative allotment [prayer clause 22 (b) of the plaint) as against the DDA either in the present suit or with the

Department and they confine themselves only to the relief of compensation and the interest/costs thereof. Heard oral arguments. Be listed for orders for 04.06.2016.”

19. On the same day statement of S.K. Meena Director DDA was recorded to the following effect:

“I have brought the departmental file pertaining to the present case. The noting of Sh, R,D, Saklani, Director (Lands Management) is present on page 3 of the file which is now Ex.C-1. The stand of the Department/ DDA is clearly reflected from the notice at portion marked A to A1, B to B1 and C to C1, Since the competent authority was of the view that the demolition of the super structure was improper, hence the competent authority/ Vice Chairman had directed the Engineering Staff to determine the amount of compensation to be fixed. The issue relating to the alternative allotment of four shops was also taken up but in the meanwhile the the present suit was filed and no final decision as regards the extent of compensation could be taken and the issue of alternative allotment is also left open as per the official records. As on date the possession of the suit land is with the plaintiffs. The aspect of compensation has not been decided by the department and this Hon'ble Court may decided the same. Suit may accordingly be disposed off,”

Under these circumstances, the suit was decreed for Rs.8,00,000/-.

20. From the facts, it is clear that the DDA has not been candid with the Court as it misrepresented the facts by not placing on record the file notings of 17th October 1988. This necessitated a long drawn trial as admittedly the demolition was illegal and unlawful. A perusal of **Exhibit-C1** which is the file noting dated 17th October 1988 shows that the competent authority i.e Director (Lands Management) had taken a decision that the owners need to

be compensated and the engineering staff was directed to determine the amount of compensation. Despite this being the position, the DDA did not reveal this to the Court and actively misled the Court.

21. The Plaintiffs waited for many years to receive the compensation and prosecuted the suit diligently. The demolition was admittedly illegal and unlawful. The DDA itself had taken a decision to pay compensation. The statement of the Director (Lands Management) clearly records that the competent authority/Vice Chairman has decided to grant the compensation. In so far as grant of interest is concerned, Section 34 of Code of Civil Procedure is clear. The said provision is extracted below:

“34. Interest-(1) 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.

Explanation 1.—In this sub-section, "nationalised bank" means a corresponding new bank as defined in

the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.”

22. The law on this is settled by the Supreme Court in ***Jagdish Rai v. UOI AIR 1999 SC 1258***, as under:

“... interest under Section 34 CPC is a matter of procedure and ought to be granted in all cases when there is a decree for money unless there are strong reasons to decline the same”

23. The above position is reiterated in ***Thazhathe Purayil Sarabi & Ors. v. Union of India & Anr. AIR 2009 SC 3098*** where the Supreme Court held as under:

“16. It is, therefore, clear that the Court while making a decree for payment of money is entitled to grant interest at the current rate of interest or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and /or awarded, from the date of claim or from the date of the order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claim ants.

17-18 The Courts are consistent in their view that normally when a money decree is passed, it is most essential that interest be granted for the period during

which the money was due, but could not be utilized by the person in whose favour an order of recovery of money was passed. As has been frequently explained by this Court and various High Courts, interest is essentially a compensation payable on account of denial of the right to utilise the money due, which has been, in fact utilized by the person withholding the same. Accordingly, payment of interest follows as a matter of course when a money decree is passed. The only question to be decided is since when is such interest payable, on such a decree. Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings in the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute.”

24. In **C.K. Sasankan v. Dhanalakshmi Bank Limited (2009) 11 SCC 60**, the Supreme Court further held:

“12. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount. It is needless to point out that although the amount of interest from the date of filing of the suit till the date of the decree and thereafter till realisation is in the discretion of the Court as is confirmed by the use of the word ‘may’ but such discretion has to be exercised by the Court properly, reasonably and on sound legal principles and not arbitrarily and while doing so the Court is also

to consider the parameter, scope and ambit of Section 34 of Code.

13. The aforesaid scope and ambit of Section 34 of the Code has been the subject of discussion in many cases of this Court.

14. We are inclined to refer to the decision in Clariant International Ltd. v. Securities & Exchange Board of India, where 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 therefore, for which a written demand is mandatory. It was further held 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., H.S. Ahammed Hussain v. Irfan Ahammed and United India Insurance Co. Ltd. v. Patricia Jean Mahajan 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. Direction to pay such rate of interest is also found to be reasonable and fair as the Plaintiff was deprived to utilize and roll its money in commercial transaction and kept out of it

due to wrongful withholding of the same by the Defendant.

15. Considering the facts and circumstances of the present case, we find that the rate of interest as awarded for pendente lite and future interest is exorbitant and thus we direct that pendente lite and future interest at the rate of 9% shall be paid which is found to be just, proper and reasonable. The appeal stands allowed to the aforesaid extent.”

25. In ***Union Bank of India v. Rashyan Udyog and Ors AIR 1990 Cal 146*** relied upon by the DDA, the Court notices that when the Trial Court does not apply its mind to the question of interest and has not awarded interest by the exercise of discretion, interest is liable to be granted.

26. The Plaintiffs had rightly approached the Trial Court under Section 152 of CPC but the Trial Court refused to exercise its discretion.

27. The conduct of DDA in this case of not having disclosed to the Court the decision of competent authority, in fact, makes the DDA liable to higher rate of interest. The decision goes back to 17th October 1988 and ought to have been communicated to the Plaintiffs and compensation ought to have been awarded. Even when the Plaintiffs gave an advance notice prior to filing of the suit, the DDA did not disclose the decision which was in its own records. It continued to mislead the Court deliberately and with impunity. The demolition in this case took place on 18th June, 1988 and the decision of competent authority is dated 17th October, 1988. The statutory notice was served on 29th July, 1988 and the suit was filed on 16th December, 1988. The Plaintiffs have been made to fight this litigation for almost 30 years. Under the facts and circumstances, it is directed that interest is liable to be paid to the Plaintiffs. The decree is modified and it is

directed that Plaintiffs are held entitled to recovery of damages of Rs.8,00,000/- from the Defendant along with *pendente lite* interest at 12% simple interest per annum from the date of filing of the suit till the date of payment of compensation. Due to the conduct of DDA, it is directed that the Plaintiffs shall also be paid costs of Rs.1,00,000/- by the DDA.

28. The appeals are allowed in the above terms. Payment as per the decree be made within 10 weeks. Decree sheet be drawn accordingly.

PRATHIBA M. SINGH
JUDGE

APRIL 13, 2018/uj

