

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1446/2019

Raju S/o Manohar Masram,
Aged 48 years, Occupation Nil,
R/o C/o House No.630, A-20,
Satyanagari, Near Mata Mandir,
Kachipura, Ramdaspath,
Nagpur – 440010.

.... **PETITIONER**

// **VERSUS** //

M/s. Sadiq and Co.,
Engineers & Builders Construction Pvt. Ltd.,
Through its Partner Shabbir Vali,
6, Mount Road Extension, Sadar,
Nagpur – 440001.

.... **RESPONDENT**

Shri A.B.Mahajan, advocate for the petitioner.
Shri D.M. Kakani, advocate for the respondent.

CORAM : Z.A.HAQ, J.
DATED : 04th September, 2019

ORAL JUDGMENT :

1] Heard.

2] **RULE.** Rule made returnable forthwith.

3] In I.D.A. Case No. 72/2001 filed by the petitioner (employee),
an award was passed on 11th November, 2011 in the following terms :

“(1) Employee-Party No.2 is entitled to 30% back wages for the period from 12.02.2001 till 17.09.2007.

(2) Modified award be sent to the Additional Commissioner of Labour Nagpur for its necessary publication.

(3) Award dated 09.06.2006 is accordingly modified.”

4] This award was challenged by the employee before this Court, in writ petition which was dismissed. The respondent(employer) failed to pay the amount as per the above referred award for a considerable time and therefore the petitioner(employee) issued notice dated 28th February, 2015 through his advocate calling upon the respondent(employer) to pay the amount as per the award. It is not in dispute that after receiving the notice, the respondent(employer) paid the amount of 30% backwages as directed by the award dated 11th November, 2011. The petitioner(employee) had received demand draft for the amount of backwages on 06th May, 2015.

5] The petitioner(employee) then filed an application under Section 33C (2) of the Industrial Disputes Act, 1947 claiming interest on the amount receivable by him as per the award dated 11th November, 2011. The petitioner(employee) claimed interest for the period from 11th November, 2011 till 06th May, 2015. This application is dismissed by the Labour Court on the ground that the claim for interest cannot be adjudicated in the proceedings under Section 33C (2) of Industrial Disputes Act, 1947.

6] The issue is covered by the judgment delivered by this Court in the case of Prabhavati Ramgarib B. vs. Divisional Railway Manager, Western Railway Manager, Mumbai, reported in 2010(4) Mh.L.J. at page No.691.

The relevant paragraphs are Nos. 17 to 21 as follows :

“17. A decree in a civil suit must be executed under the provisions of Order XXI of the Code of Civil Procedure. In a civil suit if the decree does not provide for interest, the executing Court cannot grant interest as the provisions of Order XXI of the Civil Procedure Code do not entitle the executing Court to confer any benefit upon the decree-holder, other than that stated in the decree itself.

18. That the Executing Court cannot grant interest in execution of a decree under Order XXI of The Civil Procedure Code, 1908, however, does not bar a separate, independent action for interest for the delay in payment of the decretal amount. The delay in payment of the decretal amount furnishes an independent cause of action for payment of interest on account of such delay. A Plaintiff/Claimant is not bound to presume or proceed in the first action on the basis that even if it is decreed/allowed, the judgment debtor will not honour the order by refusing to make payment thereunder or even by delaying the payment thereof.

19. It is indeed true that more often than not, interest is claimed in the first action itself not merely for the period upto the date of the filing of the action and pendente lite, but also for future interest and that the Court or Tribunal has the power to grant the same. That such a claim for future interest is the normal practice at least in civil suits is

well established. The same, however, does not preclude a party from claiming interest by a separate action for the delay in payment of the amount adjudicated, ordered or decreed to be paid.

20. An action only for interest is not unusual. Indeed, section 3 of the Interest Act, 1978, expressly recognizes such an action. Section 3 reads as under : “3. Power of Court to allow interest. - (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, - The words “...or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made” refers to actions only for interest on a debt or damages even where the same have been paid.

21. This line of reasoning would apply equally to an application under section 33-C(2) of the Industrial Disputes Act as it would to any other action.

7] In another judgment delivered in Writ Petition No. 1893/2019, (Patur Municipal Council vs. Sayyad Asgheruddin Sayyad & anr.,) on 07th March, 2019, relying on the above referred judgment given in the case of Prabhavati Ramgarib B. (supra), this Court has worked out the equities exercising jurisdiction under Article 226 of the Constitution of India and

finding that the employee was deprived of the legitimate claim without any justification, directed the employer to pay interest on the amount receivable by the employee.

Following the above referred judgments, it is held that the petitioner(employee) is entitled for interest on the amount receivable by him for the unjustified delay on the part of the employer in paying the amount.

8] Learned advocate for the respondent(employer) has pointed out from the reply which was filed on behalf of the employer before Labour Court that according to the employer, attempt was made to contact the employee to pay the amount, however, he had changed the address and when the employer had received the notice dated 28th February 2015, the amount was immediately paid to the employee by sending demand draft on the address shown in the notice. It is submitted that in view of the above facts, the employer cannot be held liable to pay interest. The submission cannot be accepted. The contention of the employer in paragraph no.3 of the reply is as vague as possible. Except for making general statement that the employer attempted to contact the employee on his address i.e. 156 Ramdaspath, Nagpur, nowhere it is stated that the demand draft/cheque for the amount receivable by the employee was sent on that address. The employer could have sought permission of the Labour Court and could have deposited the amount before Labour Court.

9] In the above facts, the following order is passed :

Order.

- i) The impugned order is set aside.
- ii) It is held that the petitioner(employee) is entitled for interest on the amount of Rs.73,760/- @ 9% per annum, the interest being chargeable from 11th November, 2011 till 06th May, 2015.
- iii) The respondent(employer) shall pay this amount to the petitioner(employee) within one month by demand draft.

If there is any difficulty in paying the amount to the petitioner(employee), the respondent(employer) shall deposit the amount of interest before 2nd Labour Court, Nagpur till 11th October, 2019.

If the respondent(employer) fails to comply with directions, the respondent(employer) will be liable to pay additional amount of Rs.20,000/- to the petitioner(employee).

Rule is made absolute in the above terms.

JUDGE