In the High Court of Punjab and Haryana at Chandigarh

RSA-3121-2017 (O&M)
Date of Decision: 23.1.2020

Punjab State and others
---Appellants
versus

M/s G.H. Associates
---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Ambika Luthra, Sr. DAG, Punjab
for the appellants
Mr.Rahul Rampal, Advocate,
for the respondent

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Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for recovery filed by the respondent in respect of execution of work allotted to him, was decreed by the trial court to the following effect:-

> "...............suit of plaintiff succeeds and is ordered to be decreed with cost to the effect that the plaintiff is entitled to the recovery of an amount of Rs.1,20,659/- along with interest @ 9% per annum pendente lite, i.e. from the date of institution of the present suit till the date of decree, if the payment is made within 6 months from the date of decree. However, if the payment is not made within 6 months, the rate of interest will be 11% per annum. The future interest will be @ 6% per annum till actual realization....."

The appeal preferred by unsuccessful defendants (appellants herein) was dismissed by the District Judge, Amritsar.

The sole submission made by counsel for the appellants is that in notice inviting tender, there was no provision for payment of interest on delayed payment, therefore, the courts have wrongly allowed pendente lite and future interest.

Counsel representing the respondent, on the contrary, has supported pendente lite and post decree interest. In support of his contention, he has relied upon judgment of this Court **Balwant Kaur vs. Life Insurance Corporation of India 2005(1) RCR (Civil) 36.**

I have heard counsel for the parties and perused the paper book particularly the judgments impugned.

Counsel for the respondent has not disputed that in the notice inviting tender, there was no provision for payment of interest on delayed payments. Even the courts have not allowed interest of pre-adjudication stage. The interest has been allowed pendente lite and future. In **Balwant Kaur's case (supra),** this court formulated following substantial questions of law:-

1. Whether pre-suit interest can be awarded to the plaintiff even though there is a prohibition of payment of interest in terms of the policy?
2. Whether the plaintiff is entitled to interest after the filing of the suit and future interest from the date of decree?

On detailed consideration of the provisions of Section 34 of the Code of Civil Procedure, 1908 (in short "the Code") and various judgments on the issue, it was held in para 13, quoted thus:-

"However, once the suit is filed, award of interest pendente lite and post-decree is discretionary with the Court and is governed by Section 34 of the Code de hors the contract between the parties. Therefore, the stipulation that no interest would be payable under the terms of the policy would cease to have effect after the filing of the suit and the plaintiff would be entitled to interest in terms of Section 34 of the Code."

Section 34 of the Code, reads as follows:-

"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 nationalized banks in relation to commercial transactions."

Perusal of aforesaid extract makes it evident that where decree is for payment of money, the court has been left at discretion to order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of suit to the date of decree with further interest at such rate not exceeding 6% per annum as the court deems reasonable on such principal sum from the date of decree to the date of payment or to such earlier date as the court thinks fit. As such, the court is empowered to grant interest at a reasonable rate from the date of suit to the date of decree but post decree interest can not be at a rate higher than 6% per annum.

In the case at hand, the trial court allowed pendente lite interest @ 9% per annum but in case the principal amount is not paid within six months from the date of decree, the rate would be at 11% per annum. The penalty clause with regard to rate of interest can not be allowed to sustain and accordingly set aside. As a natural corollary, interest @ 9% per annum on principal amount of Rs. 1,20,659/- would be payable from the date of institution of suit till date of decree. However, future interest @ 6% per annum shall be payable from the date of decree till realization on principal amount. In view of the above, judgments passed by the courts are modified accordingly.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

23.1.2020
PARAMJIT Whether speaking/reasoned : Yes
Whether reportable : Yes/No