

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

106

CWP-4561-2020  
Date of Decision:12.09.2022

Chander Singh .....Petitioner

Versus

State of Haryana and others .....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. R.P. Dangi, Advocate, for the petitioner.

Mr. Vivek Chauhan, A.A.G., Haryana.

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VINOD S. BHARDWAJ , J.(Oral)

Prayer in the instant civil writ petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of mandamus directing the respondents to release the payment to the petitioner for the work executed by him against the work orders issued and bills issued by the respondents along with GST and 18% interest.

It is specifically stated that respondent No.3 had issued work orders for execution of maintenance and providing works related to various Rural Water Supply Schemes by the Executive Engineer, Public Health Engineering Division No.1, Rohtak. The said works were duly executed to the complete satisfaction of the respondents. He contends that despite due execution of the work, the due payment was not released. The details of the pending bills of maintenance works have been tabulated as under:-

| Sr.No. | Division | Water Supply Scheme | Bill No. | Dated | Token No. | Amount |
|--------|----------|---------------------|----------|-------|-----------|--------|
|        |          |                     |          |       |           |        |

|     |             |                        |      |            |      |           |
|-----|-------------|------------------------|------|------------|------|-----------|
| 1.  | No.1 Rohtak | Baland 2 <sup>nd</sup> | 4492 | 03.10.2015 | 4492 | 18352.00  |
| 2.  | --do--      | Simli                  | 4493 | 30.03.2015 | 4493 | 18258.00  |
| 3.  | --do--      | Simli                  | 4490 | 23.11.2015 | 4490 | 18074.00  |
| 4.  | --do--      | Ritoli                 | 4491 | 23.11.2015 | 4491 | 17835.00  |
| 5.  | --do--      | Ritoli                 | 4496 | 23.11.2015 | 4496 | 18488.00  |
| 6.  | --do--      | Singhpura Khurd        | 4497 | 23.11.2015 | 4497 | 18430.00  |
| 7.  | --do--      | Baland 1 <sup>st</sup> | 4498 | 23.11.2015 | 4498 | 18475.00  |
| 8.  | --do--      | Maina                  | 4488 | 17.12.2015 | 4488 | 26401.00  |
| 9.  | --do--      | Baland 2 <sup>nd</sup> | 4518 | 28.01.2016 | 4518 | 45026.00  |
| 10. | --do--      | Baland                 | 4494 | 28.01.2016 | 4494 | 45049.00  |
| 11. | --do--      | Maina                  | 4495 | 28.01.2016 | 4495 | 18056.00  |
|     |             | Total amount           |      |            |      | 262444.00 |

The petitioner served legal notice to the respondents on 21.11.2019 for release of the pending bills along with interest, however, when the same was not released, the petition before this Court was filed. Upon instructions, a written statement by the Executive Engineer, Public Health Engineering Division No.1, Rohtak was filed on behalf of respondent Nos.1 to 3 wherein it was stated that the due payment has already been released, although after much delay, however, there was no provision in the work orders for payment of interest on delayed payment. It is thus stated that on account of absence of any clause stipulating payment of interest, the same is not payable.

The aforesaid position not being disputed, the fact remains that the provisions of the Interest Act, 1978 come into operation by the enactment legislated by the Union Parliament. The interest in terms of Section 3 of the Act becomes payable where a person is entitled to an amount, however, such amount has been wrongly withheld or retained by the respondents-debtor. The exception contained against award of interest is

only where there is express prohibition contained in the contract amongst the parties. Absence of any clause stipulating payment of interest cannot be construed as a prohibition in the contract against award of interest. The aforesaid Act tends to balance the equities so that the creditor can be compensated for the illegal withholding of the amount by the debtor and capitalizing the same for his own use without assigning any probable cause. The rate of interest which may be awarded by the Court is duly contemplated under Section 3 of the Interest Act, 1978.

It would thus be essential to examine the provisions of the Interest Act, 1978. Section 3 of the Interest Act, 1978 reads as:

**“Section 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,—*

*(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;*

*(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:*

*Provided that where the amount of the debt*

*or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.*

*(2) Where, in any such proceedings as are mentioned in sub-section (1),—*

*(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and*

*(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.*

*(3) Nothing in this section,—*

*(a) shall apply in relation to—*

*(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or*

*(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;*

*(b) shall affect—*

*(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881*

*(26 of 1881); or*

*(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);*

*(c) shall empower the court to award interest upon interest.”*

Debt has been defined under Section 2(c) of the Interest Act, 1978 to mean any liability for an ascertained sum of money, excluding a judgment debt. Sub-Section 3 of Section 3 exempts the provision of the Section where the agreement contemplates interest as a matter of right or where interest is debarred by virtue of an express agreement. In other cases, the interest is payable.

The statutory provision empowers award of interest as a restitution measure once a Court comes to a conclusion that an ascertained debt has been wrongly retained by the debtor. Court of law has to balance the equity and needs to suitably indemnify the victim. It would be necessary to refer to some precedents.

The Hon'ble Supreme Court in the matter of **Thazhathe Purayil Sarabi Vs. Union of India** reported as **(2009) 7 SCC 372** has held as under:

*“Interest is basically a compensation payable on account of denial of the right to utilize the money due, during the period in which the same could have been made available to the claimant and which has been, in fact, utilized by person withholding the same.”*

The Hon'ble Supreme Court in the matter of **Union of India Vs. Tata Chemicals Ltd.** reported as **(2014) 6 SCC 335** has further observed

as under:

*“Interest is a kind of compensation for use and retention of money curtailed or retained without right.”*

The Hon’ble Supreme Court in the matter of **Manalal Prabhudayal Vs. Oriental Insurance Company** reported as **(2009) 17 SCC 296** has also held as under:

*“Grant of interest and rate of interest is not to be ordinarily interfered with unless exercise of discretion is ex-facie bad in law.”*

The Hon’ble Supreme Court thus has held about accrual of right in favour of the deprived and it is not just a concession. The debtor having retained the amount and drawn benefit thereof, he ought not to capitalize on his wrongful acts. It further holds that grant of interest should not be ordinarily interfered with unless such discretion is bad in law.

Learned counsel appearing on behalf of the State of Haryana has not been able to refer to any provision which shows that there is an express prohibition contained in the work orders against award of interest or that the provisions of the statute would not be applicable on the work orders.

In view of the above, the present petition is disposed of with a direction to respondent No.3 to pay interest @ 6% per annum on the delayed payment against the bills to the petitioner from the date of filing of the legal notice till its actual realization. The needful shall be done within a period of six weeks from the date of receipt of a certified copy of this order.

**September 12, 2022**  
**seema**

**(VINOD S. BHARDWAJ)**  
**JUDGE**

Whether speaking/reasoned: Yes/No  
Whether Reportable: Yes/No