

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

CS/158/2018

P C Chanda & Company Private Limited
Vs.
Bharat Chemicals & Paints

Mr. Ratul Das

Mr. Shiv Ratan Kakrania

Mr. Tanuj Kakrania

Mr. Karanjeet Sharma

...For the plaintiff.

Mr. Arik Banerjee

Mr. Shaunak Ghosh

Mr. Sourav Mondal

...For the defendant.

Heard on : 20.01.2023

Judgment on : 31.01.2023

Krishna Rao, J.:

The plaintiff has filed the instant suit praying for a decree for a sum of Rs. 14,69,095/- along with pendente lite interest and interest on judgment @ 24 % per annum. After receipt of Writ of Summons, the defendant had entered appearance and filed written statement. After filing of the written statement, the plaintiff had filed a general application being GA 5 of 2021 praying for a decree on admission for a sum of Rs. 9,09,136/-. The application filed by the plaintiff was duly contested by the defendant and accordingly this Court had disposed of the said application on 24.03.2021 by passing following order :

“In the facts of the present case, the defendant issued a cheque for a sum of Rs.9,09,136/- in favour of the plaintiff. The cheque was dishonoured upon presentation. The reason for dishonour is fund insufficient. There is no material on record to establish that the defendant stopped payment of the cheque for the ground as alleged today.

In such circumstances, since the cheque was dishonoured for fund insufficient, the defence sought to raise by the defendant is moonshine.

Consequently, there will be a decree for a sum of Rs.9,09,136/- in favour of the plaintiff and as against the defendant.

The plaintiff will be entitled to interest at the rate of 8% per annum on and from July 1, 2017 till realization. The balance claim of the plaintiff along with the claim for interest for any other period are relegated to the suit.

IA No. GA/5/2021 in CS/158/2018 is disposed of accordingly. The decree be drawn up expeditiously.”

The defendant had preferred an appeal against the order dt. 24.03.2021 being APD No. 4 of 2021. The appeal preferred by the defendant

was dismissed for default on 10.11.2022 and in the said order, it is also clarified that “Interim order, if thereby any stand vacated”.

In the order dated 24.03.2021 while disposing of the application filed by the plaintiff being GA 5 of 2021, this Court had directed that the balance claim of the plaintiff along with claim for interest for any other period are relegated to the suit. In terms of the order dated 24.03.2021, the plaintiff had proceeded the case further and accordingly on 11.07.2022, this Court directed the parties to complete the discovery and inspection of the documents within four (4) weeks and accordingly the matter was adjourned till 22.08.2022. On 22.08.2022 though the Counsel for the plaintiff was present but none appears on behalf of the defendant and the defendant has also not offered for inspection of documents and also not come forward for inspection of documents of the plaintiff and accordingly for the interest of justice again the case was adjourned till 07.09.2022. On 19.09.2022, the matter was again placed before this Court but none appears on behalf of the defendant and the defendant had also not carried out inspection and discovery of the documents and thus finding no other alternative fix the case for witness action. On 27.09.2022, the plaintiff has examined the witness and during his examination, three documents were exhibited but none appears on behalf of the defendant and accordingly the evidence of the plaintiff was closed and the case was fixed for argument. On 09.01.2022, when the matter was taken up for argument, the Counsel for the defendant had appeared and submits that the defendants have taken appropriate steps for recalling of the order dt. 19.09.2022 and had prayed for time. For the

interest of justice, the case was adjourned till 16.11.2022. On 16.11.2022, the defendant has filed two application being GA 6 of 2022 and GA 7 of 2022 for recalling of the order dt. 19.09.2022 and 27.09.2022 and accordingly the Counsel for the plaintiff pray for time to file their affidavit in opposition against the said applications. The case was adjourned till 20.12.2022. On 20.12.2022, the plaintiff has filed affidavit in opposition in connection with both applications but none appeared on behalf of the defendant but for the interest of justice, the defendants were given liberty to file reply to the affidavit in opposition filed by the plaintiff and fixed the matter on 04.01.2023. On 04.01.2023 none appears on behalf of either of the parties and the case was adjourned on 13.01.2023. On 13.01.2023, the Counsel for the respective parties have appeared and the Counsel for the defendant submits that the defendant is ready to settle the matter by paying the interest but required sometime and as per the submission made by the Counsel for the defendant, the case was adjourned till 20.01.2023. On 20.01.2023, though the Learned Counsel for the respective parties have appeared but neither the defendant has paid the interest amount nor had filed the reply or pressed for hearing of the interlocutory application filed by the defendant and accordingly the suit was taken up for hearing for final argument was concluded.

Now, the plaintiff has claimed interest on Rs. 9,09,136/- @ 24 % per annum in terms of the condition of invoices. Counsel for the plaintiff submits that during the evidence of witness, invoices were exhibited being Exhibit 2 collectively and in the said invoices, it is categorically mentioned

that “Interest @ 24% per annum will be charged if not paid within 15 days from the date of receipt of the bill”.

Counsel for the plaintiff submits that as the defendant failed to pay amount of the bill within 15 days and as such the plaintiff is entitled to get interest @ 24% per annum.

Counsel for the defendants submits that while passing the order dated 24.03.2021 in GA 5 of 2021, this Court had awarded interest @ 8% per annum with effect from 01.07.2017 till realization and as such the plaintiff is not entitled to get any further interest. Counsel for the defendants submits that the plaintiff has already got a decree with respect of the principal amount as well as interest and as such no further interest can be granted to the plaintiff.

Counsel for the plaintiff in support of his claim has relied upon the judgment reported in **(1988) 1 SCC 418 (Executive Engineer (Irrigation) Balimela & Ors. -vs- Abhaduta Jena & Ors.)** and submits that the Court can allow interest in the class of cases specified in Section 4(2) from the dates stipulated to the dates stipulated in the provision and Section 5 provides that nothing in the Act shall affect the provisions of Section 34 of the Code of Civil Procedure, 1908.

Considered the submissions made by the parties and materials on record.

Though the defendant had filed written statement but the defendant has neither come forward to cross examine the witness nor have adduced

any witness. Initially this Court had already granted decree on admission with respect of the principal amount along with interest @ 8% per annum from 01.07/2017 till realization.

As per submissions of the plaintiff after the order dated 24.03.2021, the plaintiff had already initiated execution proceeding but till date the defendant has not paid either the principal amount or the interest as decreed by this Court. The main contention of the plaintiff is that in terms of invoices there was a contract between the parties with respect of the interest which clearly provides that in case, the defendant failed to pay the amount within 15 days from the bill date, the defendant is liable to pay interest @ 24% per annum. This Court while passing the order dated 24.03.2021 has awarded interest @ 8% and relegated the further claim for trial. As per Exhibit 3 i.e. Legal Notice sent by the plaintiff to the defendant dt. 04.08.2017 wherein the defendant has claimed interest @ 18% per annum. The Judgment relied upon by the plaintiff in connection with Interest Act and the said case pertains to the arbitration proceeding. In the said case, the Hon'ble Supreme Court has defined Sections 3, 4 & 5 of the Interest Act. There is no doubt if the parties have agreed for the interest in a contract, the parties are entitled to get interest in terms of the contract. In the instance case, the plaintiff has relied upon the invoices and claiming interest @ 24% per annum and on the other hand, the plaintiff has claimed interest @ 18 % per annum through Exhibit 2 from the defendant. While passing orders on admission dt. 24.05.2021, this Court has awarded interest @ 8% from 01.07.2017 till realization. In the case reported in **(2014) 11 SCC (Tamil**

Nadu Generation & Distribution Corporation Limited –v- PPN Power Generating Company Private Limited) paragraph 73 reads as follows : -

“73. With regard to the issue raised about the interest on late payment, APTEL has considered the entire matter and come to the conclusion that interest is payable on compound rate basis in terms of Article 10.6 of the PPA. In coming to the aforesaid conclusion, APTEL has relied on a judgment of this Court in Central Bank of India v. Ravindra [(2002) 1 SCC 367] . In this judgment it has been held as follows: (SCC p. 394, para 37)

“37. ... The essence of interest in the opinion of Lord Wright, in Riches v. Westminster Bank Ltd. [1947 AC 390 : (1947) 1 All ER 469 (HL)] (AC at p. 400 : All ER at p. 472E-F) is that:

‘... it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation;’

the money due to the creditor was not paid, or, in other words,

‘was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute’.

A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in CIT v. Sham Lal Narula [AIR 1963 P&H 411] thus articulated the concept of interest: (AIR p. 414, para 8)

‘8. The words “interest” and “compensation” are sometimes used interchangeably and on other occasions they have distinct connotation. “Interest” in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, “interest” is understood to mean the amount which one has contracted to pay for use of borrowed money. ...

In whatever category “interest” in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable.”

In view of the above, this Court finds that already a decree with respect of Rs. 9,09,136/- is passed along with interest @ 8% per annum

from 01.07.2017 till realization of the said amount. The defendant failed to pay the principal amount and the interest till date. Though in the invoice, there is clause that if the defendant failed to pay bill amount within 15 days from date, the defendant is liable to pay @ 24% interest per annum but in the notice i.e. Exhibit 2, the plaintiff has claimed only 18 % interest per annum and thus this Court is of the view that the defendant is liable to pay further interest on a sum of Rs. 9,09,136/- @ 10% per annum from 01.07.2018 till realization of the said amount.

CS 158 of 2018 is **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)