**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

210 **CWP-6393-2017**
Date of decision: 20.01.2023

SHASHI TOTEJA ...Petitioner(s)

Versus

PERMANENT LOK ADALAT AND ANR ...Respondent(s)

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

Present: Ms. Sushma Verma, Advocate
for the petitioner.

Mr. R.D. Gupta, Advocate
for respondents No. 2 & 3.

VINOD S. BHARDWAJ , J (Oral)

The present petition raises a challenge to the award dated 26.03.2015(Annexure P-8) passed by the Permanent Lok Adalat, Public Utility Services, Gurgaon to the extent whereby the Permanent Lok Adalat has awarded interest to the petitioner w.e.f. 14.11.2011 till the date of actual payments.

Briefly summarized, the facts of the present case are that the petitioner- applicant became a member of the respondent no.2-society on 10.08.1995 after depositing a membership fee of Rs.1,93,750/- through cheque No. 427681 drawn on Punjab National Bank, Shahdara, Delhi for allotment of a plot No.1585 measuring 250 square yards. Membership No. 7443 (wrongly mentioned as 7442 in the impugned award) was allotted to the petitioner and a share certificate of Rs. 100 was issued to her.

Eventually, plot No. 1585 measuring 250 sq. yards was stated to have been allotted to the petitioner-applicant, however, possession of plot was ever handed over.

The petitioner-applicant contends that the managing committee of the society had been put under suspension and that management had been handed over to the Board of Administrators. Claims from the members were invited whereupon the petitioner submitted her claim seeking delivery of possession of the plot and for execution and registration of deed of conveyance in relation to plot No. 1585 (supra).

The needful having not been done, an application under Section 22(C) of the Legal Services Authority Act, 1987 was preferred before the Permanent Lok Adalat (Public Utility Services) Gurgaon.

The respondent-society filed its reply and stated that the claim in question could not be entertained by the Permanent Lok Adalat as it has been barred under Section 128 of the Haryana Co-operative Societies, Act, 1984.

No other dispute on the merits of the deposit of the amount, membership of the petitioner etc. were, however, raised. Efforts of conciliation were made by the Permanent Lok Adalat (Public Utility Services) and since the said efforts failed to arrive at an amicable resolution, adjudication was undertaken in terms of Section 22 (C) (8) of the Legal Services Authorities Act, 1987.

Upon consideration of the rival submissions advanced by the parties, the Permanent Lok Adalat (Public Utility Services) Gurgaon allowed the said application and directed the respondent-society to refund the amount of Rs.1,93,750/- deposited by the petitioner-applicant towards purchase of the plot against her membership No. 7443 along with interest @ 9 % p.a. from the date of filling of the application before the Permanent Lok Adalat (Public Utility Services) Gurugram i.e. 14.11.2011 till the date of actual disbursement.

Aggrieved thereof, the present petition has been preferred.

Learned counsel appearing on behalf of the petitioner contends that the Permanent Lok Adalat made an error in awarding interest w.e.f. 14.11.2011 till the date of actual disbursement and interest ought to have been awarded with effect from the date when the applicant-petitioner deposited the above said amount with the respondents i.e. 10.08.1995.

She submits that the petitioner has been subjected to much harassment and that money has remained blocked for no reason.

Learned counsel appearing on behalf of the respondent-society however submits that there is no error in the order passed by the Permanent Lok Adalat (Public Utility Services) to the extent whereby the interest for the period prior to submission of application seeking refund has not been awarded since Rule 18 (2) of the Haryana Cooperative Societies Rules, 1989 prohibits awarding of interest to a member seeking refund of his membership fee. Relevant provisions of the Haryana Co-operative Societies Rules, 1989 are extracted as under:

> ***18. Withdrawal from membership.*** *Section 131(2)(xx).- (1) In a co-operative society with unlimited liability, a member who is not indebted to a co- operative society and is not a surety for unpaid debt, may withdraw from the co-operative society after giving such notice to the Secretary of the Society as may be laid down in the bye-laws of the Co-operative Society.*
>
> *(2) <u>In a co-operative society with unlimited liability, a member, who withdraws from the society ceases to be its member, shall be entitled to repayment without interest of any money paid by him or his predecessor in interest towards the purchase of shares after such period as may be laid down in the bye-laws.</u>*

(3) No member of a co-operative society with limited liability shall ordinarily be permitted to seek withdrawal or refund of his shares :

Provided that where the society has created a share transfer fund out of its earned profits, its managing committee shall, keeping in view the overall interest of the society, allow withdrawal of shares:

Provided further that such withdrawal of shares at any time shall not exceed five per cent of the aggregate paid up share capital of the society, excluding Government contributions, as it stood on the 31st March of the preceding year.

(4) Irrespective of the nature of liability of a Co-operative Society the share capital subscribed by the State Government in a Co-operative Society or by a Central or Apex Co-operative Financing Institution will be refunded in such manner and during such period as may be determined by the Registrar from time to time.

(5) A central or Apex Society having individual members, shall refund the shares of all the individual members.

It is, thus, submitted that in view of the specific impediment/prohibition contained in the statutory rules, award of interest on seeking refund could not have been granted for a period prior to the institution of claim before the Permanent Lok Adalat.

I have heard learned counsel appearing on behalf of the parties and have gone through the record.

The factual aspect has remained uncontroverted and the dispute in this case is only as regards to whether members are entitled to claim interest despite prohibition in the statutory rules.

The award of interest is governed under the Interest Act 1978 and/or Section 34 of the CPC. Section 3(3) (a) (ii) of the Interest Act, 1978 prohibits the awarding of interest where there is an express impediment/prohibition contained in the contract and/or the statute. The provision of law being absolute and the statutory rules stipulating refunds to be made without interest, the petitioner would thus not be entitled to claim interest on the refund of the principal amount from the date of its deposit.

It has, however, been held by this Court in the judgment of ***Balwant Kaur Vs. L.I.C of India*** in ***RSA No.3494 of 1998*** decided on ***10.09.2004*** that the impediment against refund is applicable only as long as the person approaches the Court not for the pendente-lite and post decree interest.

Once, the person approaches the Court and/or takes recourse to seeking the refund, the discretionary jurisdiction of the Court comes into play and interest for such period can be awarded. The relevant extract of the judgment is reproduced hereinafter.

> *"The relevant provisions of Section 3 of the Act 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.-*
>
> *(a) if the proceeding 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) xx xx xx xx

(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) and (c) xx xx xx xx"

"5. ***Section 34 of the Code of Civil Procedure, 1908 to apply.-*** *Nothing in this Act shall affect the provisions of Section 34 of the Code of Civil Procedure, 1908."*

Code of Civil Procedure, 1908

Section 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 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 Courts 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 I and II xx

(2) xx xx xx xx xx "

7. A perusal of the provisions of Section 3(1)of the Act shows that the Court in its discretion and within the parameters laid down under sub-section (1) of Section 3of the Act grant interest if the proceedings relate to a debt payable by virtue of a written in- strument at a certain time, then, from the date when the debt is payable to the date of institution of the suit or 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 from the date of notice to the date of institution of the proceedings. In terms of sub-section (I) of Section 3of the Act, interest is payable from the date on which the debt is payable by virtue of a written statement till the date of institution of the proceedings. Thus, it is apparent that under sub-section (1) of Section 3of the Act, the interest contemplated is of a pre-suit stage. Section 5of the Act clarifies the scope of the Interest Act when it is stipulated that the provisions of theInterest Act shall not affect the provisions of Section 34 of the Code of Civil Procedure, 1908.

8. Section 34 of the Code of Civil Procedure, 1908 (hereinafter to be referred as "the Code") deals with the grant of interest at such rate as the court deems reasonable to be paid (i) on the principal sum adjudged from the date of the suit to the decree of decree; (ii) in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit; and (iii) with further interest at such rate not exceeding six per cent per annum on such principal *sum from the date of decree to the date of payment with a proviso 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.*

9. Para No. 108 of Halsbury's Laws of England, Volume 32 (Fourth Edition) reads as under:-

> *"108.* ***When interest is payable at common law.-*** *At common law interest is payable (1) where there is an express agreement to pay interest; (2) where an agreement to pay interest can be implied from the course of dealing between the parties or from the nature of the transaction or a custom or usage of the trade or profession concerned; (3) in certain cases by way of damages for breach of a contract (other than a contract merely to pay money) where the contract, if performed, would to the knowledge of the parties have entitled the plaintiff to receive interest.*
>
> *Except in the cases mentioned, debts do not carry interest at common law."*

10. In ***Vithal Dass's case (****supra), it was found that interest may be awarded for the period prior to the date of the institution of the suit if there is an agreement for the payment of interest at fixed rate or if interest is payable by the usage of trade having the force of law, or under the provisions of any substantive law. It was held as under:-*

> *"It is well settled that interest may be awarded for the period prior to the date of the institution of the suit if there is an agreement for the payment of interest at fixed rate or if interest is payable by the usage of trade having the force of law, or under the provisions of any substantive law as for instance S.80 of Negotiable Instruments Act or S.23 of the Trusts Act..."*

11. In ***G.C. Roy's case*** *(supra), Constitution Bench of Supreme Court has dealt with the principles of grant of interest where the agreement is silent as to award of interest. The following principles were laid down:-*

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of S.34 C.P.C. and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) xx xx xx

(iii) xx xx xx

(iv) xx xx xx

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been inferred.

12. Still further, provisions of Section 34 of the Code came to be interpreted by the Constitution Bench of Supreme Court in ***Central Bank of India's case*** *(supra). The Court held to the following effect:-*

"Mulla on the Code of Civil Procedure (1995 Edition) sets out three divisions of interest as dealt in Section 34 of CPC. The division is according to the period for which interest is allowed by the Court, namely - (1) interest accrued due prior to the institution of the suit on the principal sum adjudged; (2) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, at such

> *rate as the Court deems reasonable; (3) further interest on the principal sum adjudged, from the date of the decree to the date of the payment or to such earlier date as the Court thinks fit, at the rate not exceeding 6 per cent per annum. Popularly the three interests are called pre-suit interest, interest pendente lite and interest post decree or future interest. Interest for the period anterior to institution of suit is not a matter of procedure; interest pendente lite is not a matter of substantive law."*

13. Still further, it has been held that pre-suit interest can be sub-divided into two sub-heads; (1) where there is a stipulation for the payment of interest at a fixed rate; and (ii) where there is no such stipulation. If there is a stipulation for the rate of interest, the Court must allow that rate up to the date of the suit subject to three exceptions, firstly any provision of law applicable to money lending transactions, or usury laws or any other debt law governing the parties and having an overriding effect on any stipulation for payment of interest voluntarily entered into between the parties; (ii) if the rate is penal, the Court must award at such rate as it deems reasonable; and (iii) if the rate is not penal, the Court may reduce if the interest is excessive and the transaction was substantially unfair. However, if there is no express stipulation for payment of interest, the plaintiff is not entitled to interest except on proof of mercantile usage, statutory right of interest or an implied agreement. In the present case, there is an express agreement of no payment of interest. Therefore, the plaintiff is not entitled to pre-suit interest under the substantive law as contained in Interest Act, 1978. In the aforesaid judgment it has been further held that interest from the date of the suit to date of decree is in the discretion of the Court. Similarly, interest from the date of decree to the date of payment or any other earlier date is again in the discretion of the Court to award or not to award or also the rate at which to award. Still further, it has been held that once a suit is filed in the Court, so far as Section 34 of the Code is concerned, *the relationship of the parties ceases to be governed by contract between the parties and comes to be governed by Section 34 of the Code. It was held to the following effect-*

> *"46......True it is that once a suit is filed in the Court, so far as Section 34 of the Civil Procedure Code is concerned, the relationship of parties ceases to be governed by contract between the parties and comes to be governed by Section 34 of the Civil Procedure Code.*

14. The Supreme Court concluded in one of the principles laid down in the aforesaid judgment to the following effect:-

> *"Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC dehors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner."*

15. In view of the judgments referred to above, it can be safely concluded that in terms of express prohibition of interest in terms of the policy, the plaintiff is not entitled to interest from the date of death of the policy holder till institution of the suit as presuit interest is a matter of substantiative law. In substantive law, the plaintiff is not entitled to interest in terms of Section 3(3)(ii)of the Interest Act, 1978. Thus, in respect of first substantive question of law it is held that the plaintiff is not entitled to interest for the period prior to the filing of the suit.

16. 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 dehors 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.

17. It is needless to say that the rights of the parties are adjudicated with reference to the date on which lis is commenced. Therefore, to compensate the delay in final adjudication, the Court is empowered to grant interest in terms of Section 34 of the Code for the period lis remained pending before the Court and for the period after the decree to enable the judgment debtor to make payment. Thus, the plaintiff is required to be compensated for the period spent in litigation as well.

18. Single Bench judgment of this Court in Hindustan Lever Limited's case (supra) is to the same effect wherein interest was claimed on damages on account of death in a railway accident. It was held to the following effect:-

> *"There can be three periods for which in the case of a decree for payment of money, interest may be allowed. The first period is the one which is prior to the date of the suit. The payment of interest for that period is a matter of substantive law and contractual liability and is outside the scope of Section 34 Civil Procedure Code. According to Rutlanji Ranji's case, A.I.R. 1938 P.C. 67 (supra) and Vithal Dass v. Rup Chand, A.I.R. 1967 S.C. 188, interest can be awarded for that period (1) when there is an agreement for payment of the same, or (2) when it is payable by the usage of trade having the force of law, or (3) when the payment of the same is contemplated by the provision of any substantive law, or (4) under theInterest Act. It may also sometimes be awarded under the rule of equity. The second period is the one which*

> *intervenes the date of suit and the date of decree. The Court granting the money decree has discretion to allow interest pendente lite i.e. for the second period upto the limit of contractual rate. The third period is from the date of decree to the date of payment. For the said period, the Court granting the decree has discretion to allow interest, commonly known as future interest, on the amount adjudged, subject to the limit of 6 per cent, per annum, as it deems reasonable.Section 34, Civil Procedure Code, provides that the Court, may, while awarding decree for payment of money, direct the payment of interest at such rate, as it deems reasonable, to be paid on the principal amount for any period prior to the institution of the suit, with future interest on such principal snai at a rate not exceeding 6 per cent per annum."*

19. The principles laid down in the said judgment are the one which have been culled down by "the Supreme Court in the later judgments.

20. In Smt. Shunt a Trivedi's case (supra) relied upon by learned counsel for the respondents, interest has been declined in view of the provisions of Section 3(3)(ii)of the Interest Act, 1978. However, no argument has been raised in the said case that the claim of interest after the filing of the suit would be governed by the provision of Section 34 of the Code and not by contract. Therefore, to that extent. I am unable to subscribe to the view that the plaintiff is not entitled to interest after the filing of suit as well The Court has not dealt with the argument now raised by the appellant that she would be entitled to interest under Section 34 of the Code. In Sulochani Devi's case (supra), learned counsel for the plaintiff has forgone the claim of interest and, therefore, the said judgment is not applicable to the facts of the present case.

Taking into consideration the factual aspect noticed above and also the judgment of this Court in the matter of ***"Balwant Kaur Vs. L.I.C. of India"*** (supra), I find that the Permanent Lok Adalat has already awarded the interest to the applicant-petitioner for the period after the petitioner had approached for seeking refund and any interest prior to the said period cannot be awarded in view of the express prohibition contained in the statutory rules.

Finding no illegality, impropriety, perversity or misappreciation of evidence or law by the Court, I find no reason to interfere with the award already passed. The same is accordingly affirmed.

Taking into consideration that the award in question was passed in the year 2015 and the fact that 8 years have elapsed since the passing of the said award, the respondent-society is directed to deposit the awarded amount with the Executing Court, Gurugram within a period of 8 weeks from today, if not already deposited. The petition is accordingly disposed of.

20.01.2023 **(VINOD S. BHARDWAJ)**
joyti **JUDGE**

Whether reasoned/speaking? Yes
Whether reportable? No