

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.281 of 2015

1. The State Of Bihar through the Collector Darbhanga
2. The Commissioner- cum-Secretary, Department of Irrigation, Sichai Bhawan, Patna.
3. Engineer-in-Chief (North) Department of Irrigation Government of Bihar, Sichai Bhawan, Patna.
4. Chief Engineer, Flood Control Wing, Samastipur.
5. Superintending Engineer, Flood Control Circle, Darbhanga at Laheriasarai
6. Executive Engineer, Flood Control Division at Laheriasarai, District- Darbhanga.

... .. Appellant/s

Versus

1. M/s Ram Lagan and Company through its Managing Partner Sri Ram Lagan Choudhary, son of Late Tej Narayan Choudhary, resident of Village- Paghari, Police Station- Baheri, District- Darbhanga.
2. Ram Lagan Choudhary, son of Late Tej Narayan Choudhary, resident of Village- Pagnari, Police Station- Baheri, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. K.P. Gupta, GP 10 with Mr. Virendra Kuar, AC to GP 10
For the Respondent/s	:	Mr. Bimal Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

12 15-07-2024 This Second Appeal has been filed by the appellants/defendants against the judgment and decree dated 17.02.2014 passed by learned Adhoc Additional District Judge- 4, Darbhanga in Money Appeal No. 1 of 2007, whereby judgment and decree dated 22.01.2007 passed by the learned Sub Judge, 1st, Darbhanga in Money Suit No. 5 of 1996 has been affirmed.

2. The respondents/plaintiffs filed a money suit



seeking relief for passing a decree for realization of Rs. 1,54,884.20 paise as interest against the delayed payment of principal amount Rs. 1,38,746/- and Rs. 12,634 towards cost of litigation on civil writ proceeding (C.W.J.C.) and contempt proceeding (M.J.C.) as detailed in Schedule-1 of the plaint.

3. Case of the plaintiffs is that in the year 1987-88, the plaintiffs were awarded the work of restoration and strengthening of Sormarhat to Karaichin embankment from chain 2001 to 2096 and an agreement thereof in prescribed form was duly executed by plaintiff no. 2 and defendant no. 6 on behalf of defendant no. 1 and the work under the agreement was to commence on 16.03.1988 and was to be completed by 16.06.1988. Thereafter the plaintiffs completed the work according to the desired specification to the satisfaction of the defendants with the prescribed time, but the defendants with malafide intention and in collusion with each other did not make payment of the amount due against the work done by the plaintiffs and the plaintiffs had to run from pillar to post for obtaining the payment so due. After exhaustive efforts of the plaintiffs, a cheque of Rs. 1,38,746/- was issued by the Executive Engineer i.e. defendants no. 6 on 14.03.1990 which was payable to the plaintiff no. 1 and to be withdrawn at State



Bank Of India, Darbhanga. It is further case of the plaintiffs that after issuing the said cheque, the defendants put restriction on to the treasury not to encash cheque issued by them. Thereafter the plaintiffs were constrained to file Writ application bearing C.W.J.C. No. 6000 of 1992 before the High Court of Judicature at Patna, and the Hon'ble High Court on 09.07.1993 directed the defendants for payment of aforesaid amount along with the return of the security amount within three months. Even after expiry of the period fixed by the Hon'ble Court, the defendants did not pay the aforesaid amount and lastly the plaintiffs filed contempt petition bearing M.J.C. No. 1967 of 1993 before the High Court of Judicature at Patna. After hearing the parties, the Hon'ble Court directed the defendants to pay the amount within a week and in compliance thereof, the defendants issued a cheque and a draft dated 09.07.1994 of the aforesaid amount.

4. It is the further case of the plaintiffs that while disposing the contempt petition on 12.09.1994, the Hon'ble High Court left the question open to the plaintiffs to take appropriate proceedings for recovery of the interest amount on account of delayed payment, which consumed 4 years and 4 months. The plaintiffs sustained a loss of Rs. 1,54,844.02 on the principal amount and security amount @ 15 per cent per annum



apart from other amount incurred in the litigation. After the order of the Hon'ble High Court, the plaintiffs sent notice on 05.10.1994 through registered cover to the defendants praying therein that interest amount be paid but the defendants did not pay any heed and hence the suit.

5. On the other hand, the State of Bihar has contested the suit and filed their written statement praying therein to dismiss the suit mainly on the ground that whatever the amount was due with the State of Bihar, that amount has already been paid to the plaintiffs and hence, the question of payment of interest does not arise.

6. Learned trial court, after hearing the parties and considering the evidence of the parties and materials on records, has held that the amount of Rs. 1,38,746/- was not paid or encashed immediately after the issuance of cheque as the defendants stopped the payment of the cheque. The cheque was issued on 14.03.1990, but the plaintiffs could be able to get the said amount only on 09.07.1994, i.e. after expiry of four years and odd and that too, after filing of writ petition. It is further held that the defendant/State of Bihar has adopted callous attitude in not paying the said amount to the plaintiffs and has compelled the plaintiffs to file the writ petition which caused



additional burden to him and imposed penal interest upon the defendants @ 15 per cent amount on the total amount of Rs. 1,38,746/- and denied the interest on cost incurred by the plaintiffs in filing writ application. Learned court has further held that the plaintiff is entitled to recovery the interest upon the total interest on Rs. 1,38,746/- from 10.07.1994 to 25.11.1996, i.e. the date of filing of the suit *vide* judgment and decree dated 22.01.2007.

7. Being aggrieved and dissatisfied with judgment and decree dated 22.01.2007 passed in Money Suit No. 5 of 1996 by the Sub Judge-1, Darbhanga, the defendants filed Money Appeal No. 1 of 2007. However the plaintiffs/respondents have also assailed the impugned judgment and decree by filing cross appeal on the ground that the learned court below erred in not allowing interest on three security amount and interest on its accumulated amount covered under serial no. 2 and 4 of the plaint. It was further submitted that learned court below committed error in not allowing the principal amount of the litigation cost on proceeding under the writ application as well as contempt application together with interest covered under serial no. 5 to 8 of Schedule-1 of the plaint together with pendente lite interest @ 18 per cent per annum throughout.



8. Learned appellate court after considering the submissions of the parties and materials on record, held that the learned trial court while decreeing the suit has observed that the plaintiff is entitled to recover interest from the defendants on the principal amount of Rs. 1,38,746/- @ 15 per cent per annum and plaintiffs are further entitled to recover the interest upon the total interest on Rs. 1,38,746/- from 10.07.1994 to 25.11.1996 i.e from the date of filing of the suit, but learned Sub Judge did not give finding with regard to Schedule-1 of serial no. 2 and serial no. 4 to 8 of the plaint. Learned appellate court further held that the learned trial court has failed to consider with regard to the reliefs as sought for by the plaintiffs in serial no. 2 and 4 to 8 and did not give finding over it. In such view of the matter, the cross appeal brought by the plaintiffs/respondents was allowed, and plaintiffs/respondents are entitled to relief with respect to serial no. 2 and 4 to 8 of Schedule-1 of the plaint together with pendente lite interest @ 18 per cent per annum throughout. Consequently, the cross appeal was allowed and the appeal of the defendants was dismissed by affirming the judgment and decree of the trial court.

9. The instant appeal has been filed by the defendants /appellants against the above judgment of affirmance



as stated above. The defendants/appellants challenged the judgment of affirmance mainly on the question of interest. It is vehemently submitted that that plaintiffs/respondents has claimed interest @ 12 per cent per annum but the learned trial court and the learned appellate court allowed the interest @ 15 per cent and 18 per cent respectively which is against the claim of the plaintiffs/respondents. It is further submitted that in absence of any terms under the contract, the interest on delayed payment of principal amount and on security deposit at the rate of 18 per cent per annum as pendente lite interest is contrary to the provision under Section 34 of the Code of Civil Procedure, which the court below has wrongly granted.

10. On analyzing of the impugned judgments and decree as well as materials on records, it is apparent that the learned trial court after considering the admitted facts is that the plaintiffs got amount only on 09.07.1994 after delay of about four years and that too, after filing of the writ application before this Court. Despite the order of this Court in writ application, the defendants did not pay the principal amount within fixed period and due to unethical attitude of the appellants, the trial court imposed penal interest @ 15 per cent per annum on the total amount of Rs. 1,38,746/-, and on cross appeal, the learned



lower appellate court allowed the cross appeal. Consequently, relief in serial no. 2 and 4 to 8 of the Schedule-1 of the plaint together with pendente lite interest @ 18 per cent per annum throughout has been granted.

11. The question of interest has been settled in the case of ***Aditya Mass Communication (P) Ltd. Vs. A.P.S.R.T.C.*** reported in ***(2003) 11 SCC 17***, wherein the apex court has held that:-

“The quantum of interest a court may allow in a given case is governed by the facts of the case and not by any precedent law unless, of course, limited by a statute. If a court comes to the conclusion on a given set of facts that a party has been wrongly denied the use of its own money, it is the duty of the court to see that the said party is appropriately compensated.”

12. In view of the aforesaid decision and settled principle of law, the question of awarding interest or penal interest or pendente lite interest or post-decree interest is the discretion of the court, rate of interest depends upon the nature of the suit and conduct of the parties. In the present case the defendants violated the order of this Court and withheld the admitted amount.

13. In view of the above discussion, in my opinion,



the defendants/appellants wrongfully detained the money of the plaintiffs. Despite the order dated 09.07.1993 of this Court, the defendants did not pay the amount Rs. 1,38,746/- along with security amount within three months from the date of the order. The said amount was paid only when the plaintiffs filed a contempt petition before this Court on 14.12.1993 and after hearing the parties, this Court on 30.06.1994 directed the defendants to pay amount within a week. In compliance of the order dated 30.06.1994 passed in M.J.C. No. 1967 of 1993, the defendants issued a cheque and draft on 09.07.1994 of the amount i.e. Rs. 1,38,746/- only. While disposing the contempt petition, this Court vide order dated 12.09.1994 had given liberty to the plaintiffs to file an appropriate proceeding before the competent court for recovery of interest.

14. In view of the preceding analysis, the learned courts below has rightly passed the penal interest @ 15 per cent per annum with respect to principal amount of Rs. 1,38,746/- as well as reliefs claimed at serial no. 2 and 4 to 8 of Schedule-1 of the plaint together with pendente lite interest @ 18 per cent throughout taking into consideration the conduct of the defendants/appellants who wrongly withheld the money even after passing of the order by this Court in C.W.J.C. No. 6000 of



1992, and as such, there is no requirement to interfere with judgment and decree of the courts below.

15. Having regard to the facts and circumstances as well as materials on records, it is quite apparent that the judgment and decree of the courts below are covered by the findings of the fact and no question of law much less substantial question of law arises for consideration in the instant Second Appeal, which is accordingly dismissed at this Stage of hearing under Order 41 Rule 11 of the Code of Civil Procedure.

16. Pending all interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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