

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 18098 OF 2024

**1. Vijay Shankar Patil, since deceased
through Legal Heirs**

1a. Priyanka Vijay Patil

1b. Mukesh Vijay Patil

1c. Yogesh Vijay Patil

**2. Dilip S. Kotharkar, since deceased
through Legal Heirs**

2a. Deepali Dilip Kotharkar

2b. Harshikesh Dilip Kotharkar

2c. Gautami Dilip Kotharkar

....Petitioners

: Versus :

UCO Bank, through its Divisional
Manager

....Respondent

Mr. Ashok T. Gade *with Ms. Riya John, for the Petitioners.*

Mr. Ashok D. Shetty, *with Mr. Swapnil P. Kamble, Ms. Rita K. Joshi, Mr. Rahul P. Shetty and Mr. Shashikant D. Patil, for Respondent.*

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : 19 March 2025.

Judgment Pronounced on : 25 March 2025.

JUDGMENT :

1) Petitioners have filed this petition challenging the judgment and order dated 29 August 2024 passed by the Presiding Officer, Central Government Industrial Tribunal-II, Mumbai to the

extent of denial of interest on the legal dues payable towards implementation of the Award dated 16 September 1999.

2) Two workmen-Vijay Shankar Patil and Dilip S. Kotharkar were working with the Respondent-Bank and were terminated from service. At their instance, Reference CGIT No.2/13 of 1999 relating to their demand for reinstatement was registered with Central Government Industrial Tribunal-II, Mumbai (CGIT). The Reference was answered by the CGIT in favour of the workmen by setting aside their termination and directing their reinstatement with full backwages w.e.f. 29 May 1997 alongwith continuity of service. The Bank filed Writ Petition No.4510/2000 in this Court challenging the Award dated 16 September 1999. The Petition came to be dismissed by the order of the learned Single Judge dated 30 August 2000. The Bank filed Letters Patent Appeal challenging the order of the learned Single Judge dated 30 August 2000, which was registered as LPA No.37/2013. The Appeal Court dismissed the Appeal by judgment and order dated 10 June 2014. It appears that simultaneously, the workmen had filed Writ Petition No. 8402 of 2012 seeking implementation of the Award dated 16 September 1999. By separate order passed on 10 June 2014, the Division Bench disposed of the said Petition reserving liberty for the workmen to exercise appropriate remedy for enforcement of Award before the CGIT.

3) The two workmen accordingly filed Application No.2/06 of 2014 before the CGIT under the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947 (**I. D. Act**) seeking recovery of amount of Rs.27,55,500/-. The Application was resisted by the Respondent-Bank by filing Written Statement. The Bank contended that it had offered amount of Rs.1,99,280/- by demand draft dated 23 December 2014 which was returned by the workmen. That Shri. Vijay Patil never

reported for duties and Shri. D.S. Kotharkar reported for duties as daily wagger in July 2010 and continued to work till August 2015 after which he abandoned the service.

4) It appears that during pendency of the Application, the dues payable in respect of the two workmen were amended and scaled down to Rs.8,58,825/- each. The CGIT has partly allowed the application by directing that the amount of Rs.8,58,825/- be paid to the legal heirs of late, Dilip Kotharkar within a period of 2 months, failing which the said amounts would carry interest at the rate of 6% from the date of the order till realisation. The CGIT has however rejected the prayer for payment of 9% interest on the amount from the date of the Award. The legal heirs of the two workmen are aggrieved by the impugned order of the CGIT to the limited extent of denial of interest on the amount of wages and has accordingly filed the present petitions.

5) Mr. Gade, the learned counsel appearing for the Petitioners would submit that the award for reinstatement and backwages was passed on 16 September 1999 and the same was not implemented by the Respondent-Bank for a considerable period of time. That the Award has been upheld both by the learned Single Judge as well as by the Division Bench of this Court. Since the Award is upheld, the Petitioners must necessarily be paid interest on the amounts arising out of implementation of the Award. That Petitioners are not seeking interest in respect of the period prior to 16 September 1999. However, what becomes payable from 16 September 1999 and what is actually paid after the impugned order dated 29 August 2024 must necessarily carry interest.

6) Mr. Gade would submit that the CGIT has erred in holding that the award of interest would amount to creation of new right

beyond the Award. He would rely upon judgment of this Court in Mrs. Prabhavati Ramgarib B. Versus. Divisional Railway Manager, Western Railway Manager¹ in support of his contention that the Labour Court has power of awarding interest while deciding the application under Section 33-C(2) of the I.D. Act. He would submit that the view taken by this Court in *Prabhavati Ramgarib B.* (supra) has been approved by the Hon'ble Supreme Court in its judgment in Dushyant N. Dalal and Another Versus. Securities and Exchange Board of India². He would also rely upon judgment of this Court in Lintas India Pvt. Ltd. Versus. Bharatiya Kamgar Sena Praphulban Soc. and Ors.³, Mr. Prabhakar Kisan Magar Versus. The Divisional Railway Manager, Western Railway, Mumbai Central, Mumbai⁴ and Swan Mills Limited and another Versus. Sakharam Dhondu Panchal and others⁵. Mr. Gade would accordingly pray for setting aside the impugned order of CGIT to the extent of denial of interest and would pray for award of interest at the rate of 9% p.a. on amounts arising out of implementation of the Award dated 16 September 1999 till the actual date of payment.

7) The petition is opposed by Mr. Shetty, the learned counsel appearing for the Respondent-Bank. He would submit that jurisdiction of industrial adjudicator under the provisions of Section 33-C(2) of the I. D. Act is in an extremely narrow compass. That in exercise of that jurisdiction, it is beyond the competence of CGIT to add anything to the Award already made. He would submit that law in this regard is well settled in several judgments and would accordingly rely upon following judgments :

¹ 2010 (4) Mh.L.J. 691

² (2017) 9 SCC 660

³ Writ Petition No. 2522/2021 decided on 23 March 2023

⁴ Writ Petition No. 8129/2009 decided on 18 April 2022

⁵ (2005) 1 LLJ 990

- (i) *Municipal Corporation of Delhi Versus. Ganesh Razak & Anr.*⁶
- (ii) *State Bank of India Versus. Ram Chandra Dubey & Ors.*⁷
- (iii) *The Central Bank of India Ltd. Versus. P.S. Rajagopalan.*⁸
- (iv) *Bombay Gas Co. Ltd. Versus. Gopal Bhiva & Ors.*⁹
- (v) *State Bank of Bikaner and Jaipur Versus. Khandelwal (R.L.)*¹⁰
- (vi) *Central Inland Water Transport Corporation Ltd. Versus. The Workmen & Anr.*¹¹
- (vii) *Mining Engineer East India Coal Co. Ltd. Versus. Rameswar & Ors.*¹²

8) Without prejudice, Mr. Shetty would submit that immediately after the order of the Division Bench dated 10 June 2014, the Bank had called upon both the workers to collect Demand Drafts of Rs.1,99,280/- and to report for duties. However, by letter dated 10 January 2015, the workmen returned the draft on the pretext that the amount was not as per the Award. That the workman-Vijay Patil did not report for duty till his death, whereas the workman-D.S. Kotharkar reported for duties as daily wage worker in July 2010 and continued to work till August 2015 and drew wages of Rs.3,35,800/-. That therefore on facts, Petitioners are not entitled to the relief of payment of interest. He would accordingly pray for dismissal of the petition.

9) Rival contentions of the parties now fall for my consideration.

⁶ 1995 I CLR S.C. 171

⁷ 2000 II LLJ 1660

⁸ [1964] 3 S.C.R. 140

⁹ [1963] 3 S.C.R. 709

¹⁰ 1967 SCC Online SC 373

¹¹ [1975] 1 S.C.R. 153

¹² [1968] 1 S.C.R. 140

10) The main issue that arises for consideration is whether CGIT has the jurisdiction to award interest on amount arising out of implementation of the Award dated 16 September 1999. It is an admitted position that though the Award dated 16 September 1999 was not stayed by any higher Court, the same was not implemented by the Respondent-Bank till the Appeal got dismissed on 10 June 2014. It is the case of the Respondent-Bank that on 6 January 2015, they issued letters to both the workmen to collect amounts of Rs.1,99,280/- and also called them upon to report for duties. It is Bank's claim that the worker-Vijay Patil never reported for duty. However, though the letter calling upon the workmen to report for duties was allegedly issued on 6 January 2015, the Bank pleaded in its Written Statement that the worker Dilip S. Kotharkar had reported for duties as daily wager in July 2010 and continued to work as such till August 2015 and drew wages of Rs.3,35,800/-. This shows that during pendency of the Appeal before the Division Bench, Shri. Kotharkar was permitted to report for duties and that he actually worked from 2010 till 2015. In the Written Statement, the Respondent-Bank claimed that the total amount due to Shri. Vijay Patil from 29 May 1997 to 10 June 2014 was Rs.1,99,280/-, whereas, the amount due to Shri. Kotharkar from 29 May 1997 to 7 August 2010 was Rs. 1,58,000/-. Despite this, it is their claim that both the workers were offered amount of Rs.1,99,280/- which was declined by them.

11) It appears that the workers initially claimed higher amounts of Rs.27,55,500/-. However, during the course of pendency of proceedings before the CGIT, the claim was amended by restricting the same to Rs. 8,58,825/- in respect of each of the workmen. The CGIT has accordingly upheld the claim of Rs.8,58,825/- in respect of the workman-Shri. Vijay Patil, whereas, it has deducted the wages drawn by Shri. D.S. Kotharkar after July 2010 and has sanctioned his claim at

Rs.5,53,162/-. The claim for interest is however denied by the CGIT by recording following reasons :

As regards the Interest, it is contended on behalf of the opponent that, the deceased applicants are not entitled for Interest. In my opinion also Tribunal cannot create a new right of parties beyond the award. In the decision of **A. F. R. Neutral Citation No.20/24** relied by the opponent, it has been held that, the Labour Court completely mislead in granting Interest as it was beyond the competence and scheme of Sec. 33 (C) 2 of ID Act therefore the heirs of the deceased applicants are not entitled for Interest from the date of award as claimed. In short, the Legal heirs of the deceased applicants are entitled for the amount of Rs. 8,58,825/- and Rs. 5,53,162/-respectively, hence, I answer this point in the affirmative.

12) The CGIT has relied on judgment of the Allahabad High Court in *Executive Engineer Electricity Transmission Division Versus. Mahesh Chandra & Anr*¹³. It is held in para-18 of the said judgment as under :

18. Thus, in view of the above, I find that Labour Court was completely misled in granting interest @ 18% for the delayed payment. It was beyond the competence of Labour Court to have awarded interest, as under the scheme of Section 33C(2) granting of interest does not find any place.

13) Thus, the learned Single Judge of the Allahabad High Court appears to have taken a view that it is impermissible for the Labour Court to grant interest on delayed payment in exercise of jurisdiction under Section 33-C(2) of the I.D. Act.

14) However, the issue of jurisdiction of Labour Court to award interest in exercise of jurisdiction under Section 33-C(2) arose before this Court in *Prabhavati Ramgarib B.* (supra). In para-4 of the

¹³ 2024 SCC OnLine All 1214

judgment, the Coordinate Bench of this Court formulated the issue for consideration as under :

4. Mr. Patil's fifth defence raises a question of law of some importance. The question of law that arises is whether the Labour Court has power under section 33-C(2) to order an employer to pay the employee interest for the period between the date of an order of a Court or Tribunal or authority for payment and the date of payment.

I have answered the question in the affirmative upholding the claim for interest in such cases on four grounds - under sections 3(1)(a) and (b) and 4 of the Interest Act, 1978, and in exercise of powers under Article 226 of the Constitution of India. A view to the contrary would lead to a total miscarriage of justice and disastrous consequences not merely in this matter but for bona-fide and innocent employees in general. It would put a premium on an employer disregarding orders of Courts, Tribunals and other authorities. Worse still, it would encourage an employer to refuse payments under such orders for as long as possible, rendering them virtually meaningless.

15) The reasonings adopted by this Court while upholding the claim for interest for the period between the date of order of a Court till the date of payment are as under :

24. Mr. Shaikh also relied upon the judgment of a learned single Judge of this Court in *Swan Mills Ltd. v. Sakharam Dhondu Panchal*, 2004 (12) LJSoft 56 : 2004 (III) CLR 870 where it was held:—

“12. The next issue is awarding of interest. In the instant case, no interest has been awarded on the amount of wages awarded. What the Labour Court has done is merely to award interest subsequent to the orders in the event, the employer fails to pay the amount determined. It is therefore, not a case of awarding interest but merely awarding an interest on the amount awarded on failure to pay the amount already quantified. The learned counsel has placed reliance in the judgment of *Payal Electronics v. Arun Vasant Pawar*, 2002 (III) CLR 328 to contend that the Labour Court has no jurisdiction and power to grant any interest on the determined amount as due from the employer. In that case, interest at the rate of 15% p.a. was ordered to be paid on unpaid overtime wages. The learned Single Judge of this Court proceeded to hold that there was no existing right to get the interest on the amount of dues and as the Executing Court, the labour Court cannot add anything more than the amount of money due. There can be no dispute with the proposition in the said judgment. As an Executing Court what the Court can do is to execute the awards/order and not grant anything beyond the said order. *In the instant case also no interest has been awarded on the unpaid amount. It is only on failure to pay the amount that interest has been awarded from a*

future date. Though the principles of section 34 of the Civil Procedure Code cannot be said to be conferred on the Labour Court, still it will be open to a Civil Court and the Labour Court is a Civil Court to award the interest on the amount already computed and not paid from the date of this order in terms of section 34 of Civil Procedure Code. That is what the Labour Court has done. It therefore, cannot be said that the same is without jurisdiction. That contention must therefore, be rejected."

(emphasis supplied)

25. The judgment is binding on me. I am, in any event, in respectful agreement with the judgment for the reasons I have stated earlier insofar as it relates to the maintainability of a claim for future interest. In the case before me also, the interest claimed is not on the amounts unpaid upto the date of the order of the Labour Court dated 30th September, 1992, but in respect of the amounts awarded from a future date. Future interest could always have been granted when the order dated 30th September, 1992, was passed. For the reasons stated earlier, there is nothing that prevented the petitioner from claiming it by a separate application. The petitioner was not bound to presume that the respondent would not honour an order of a competent Court. Indeed the petitioner, like any other citizen, is justified in assuming that orders would be obeyed.

26. I am in respectful agreement with the conclusion of the Division Bench of the Punjab and Haryana High Court and of the learned Single Judge of this Court. I would, however, furnish my reasons for the same.

27. The claim for interest is, as I said earlier, maintainable under subclauses (a) and (b) of sub-section (1) of section 3 and under section 4 of the Interest Act, 1978. A Court in exercise of powers under Article 226 can also grant interest in a case such as this. Section 3(1) of the Interest Act, 1978 is 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 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."

28. Firstly, the Interest Act, 1978 is applicable to a Labour Court and an Industrial Tribunal under the ID Act.

(A) Section 3 of the Interest Act refers to the powers of “the Court”. Section 2(a) of this Act defines “Court” to include a Tribunal and an Arbitrator. The ambit of the term “Court” in the Interest Act is, therefore, wide. There is no warrant for excluding a Labour Court from the ambit of that expression in the Interest Act. Thus, a Labour Court is entitled to exercise power by awarding interest under the Interest Act.

(B) Secondly, the application in this case was a proceeding in which a claim for interest in respect of a debt already paid was made. The amount directed to be paid by the order dated 30th September, 1992, was a debt. Section 2(c) defines a debt thus:—

“debt” means any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt;”. The claim for interest in this case was not in respect of a judgment debt.

29. I have come to the conclusion that the petitioner is entitled to interest from 30th December, 1992 itself in view of the provisions of section 3(1)(a). The order dated 30th September, 1992, falls within the ambit of the expression “written instrument” in section 3(1)(a) of the Interest Act. There is neither any warrant nor justification for limiting the scope of this expression. In *Savitribai v. A. Radhakishan*, AIR 1948 Nagpur 49, a Division Bench held that a decree is an instrument within the meaning of the Interest Act, 1839. Paragraph 5 of the judgment reads as under:

“5. The only question which arises here and which did not arise in the other cases relates to the plaintiff's claim for interest. It is relevant to note that interest was decreed in the previous suits which the plaintiff was forced to file. It is said that this operates as res judicata, but we need not proceed on that ground because we agree with 15 Luck. 537, that the Interest Act of 1839 applies. As the learned Judges said there: “The claim in the present case is for a certain sum payable at a certain time that is monthly allowance of quzera impliedly payable at some time in every month for that month,” and again,

“In our opinion a monthly maintenance or allowance payable under a compromise in a suit comes within the scope of this provision.”

It was argued that a decree is not an “instrument” within the meaning of the Act. We find, however, that the word “instrument” is used in various senses, in some it includes a decree, in others it does not. Thus, section 17(1)(b), Registration Act makes non testamentary “instruments” of the type set out there compulsorily registerable. Sub-section (2) exempts a number of documents, deeds and so forth from the scope of section 17(1)(b), among them certain decrees in sub-cl. (v). There would have been no need to exclude this decrees if the word “instrument” did not cover a decree. It is to be observed that certain compromise decrees are not exempted. Therefore, they are “instruments” for the purpose of the Registration Act. We see no reason why we should limit the use of the word in the Interest Act. Accordingly, we hold that the term is wide enough to cover a decree.”

30. I am in respectful agreement with the judgment. On a parity of reasoning I would apply the ratio of the judgment to all orders of Courts, Tribunals or other authorities, including a Labour Court exercising powers under section 33-C(2).

31. To the illustration furnished by the Nagpur High Court, I would only add the provisions of the Bombay Stamp Act.

(A) Under section 3 of the Bombay Stamp Act, every instrument mentioned in Schedule I, except those specified therein shall be chargeable with duty of the amount indicated in Schedule I. Article 25 of Schedule I refers to a conveyance other than a transfer charged or exempted under Article 59. Clause (da) of Article 25 relates *inter alia*, to the order of a High Court in respect of the amalgamation or reconstruction of companies under section 394 of the Companies Act 1956. Thus, an order of a Court has been considered by the Legislature to be an instrument.

(B) Article 60 Schedule I is as under:—

“60. TRANSFER OF LEASE by way of assignment and not by way of under lease or by way of decree or final order passed by any Civil Court or any Revenue Officer.”

Here again, a decree passed by a Civil Court or even an order of a Revenue Officer has been considered by the Legislature to be an instrument. This is so, both by considering such instruments as being liable to stamp duty as also excluding them from the necessity of being stamped.

32. In the circumstances, the term “instrument” in section 3(1)(a) of the Interest Act is wide enough to include a decision by the Labour Court under section 33-C(2). Accordingly, interest would be payable on the said sum from 30th December, 1992 till payment and/or realisation. There is no dispute regarding the computation.

33. Even assuming that the order dated 30th September, 1992 is not a written instrument and the petitioner is therefore not entitled to payment of interest under section 3(1)(a), she would be entitled to the same under section 3(1)(b).

By the order dated 30th September, 1992 the Labour Court upheld the petitioner's deceased husband's claim and directed the payment thereof within three months i.e. on or before 30th December, 1992. The respondent failed to do so. By a letter dated 26th February, 1996, the petitioner's advocate called upon the respondent to pay the amount pursuant to the order dated 30th September, 1992 with interest at 12 per cent per annum. The petitioner would, therefore, be entitled to interest under section 3(1)(b) if section 3(1)(a) did not apply. Thus, the petitioner would, in any event, be entitled to interest, at least from 26th February, 1996 under section 3(1)(b).

However, as I have held earlier, the petitioner is entitled to interest under section 3(1)(a).

34. The petitioner's claim is also sustainable under section 4 of the Interest Act which reads thus:—

4. Interest payable under certain enactments. — (1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law.

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the Court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the Court may consider reasonable, unless the Court is satisfied that there are special reasons why interest should not be allowed, namely:—

(a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud, from the date of the cause of action;

(d) where the claim is for dower or maintenance, from the date of the cause of action.

35. The petitioner's claim for interest would fall within the ambit of the words "or other rule of law" in section 4(1). The other rule of law being on grounds of equity. Even under the Interest Act, 1839, interest was payable under the proviso to section 1 which reads: "Provided that interest shall be payable in all cases in which it is now payable by law." Interest was payable by law under that Act in equity. This was recognized in a series of judgments. For instance in *Trojan and Co. v. Nagappa Chettiar*, (1953) 1 SCC 456 : 1953 SCR 789. The Supreme Court, in paragraph 23 observed that it was well settled that interest is allowed by a Court of equity in the case of money obtained or retained by fraud. Interest was, therefore, awarded in equity.

36. The position is not different under the Interest Act, 1978. The words, in section 4(1) "or other rule of law" would include interest payable in equity. In fact, interest has been awarded by our Courts in equity as well as on principles analogous to section 34 of the Code of Civil Procedure on the basis that section 34 is based upon principles of justice, equity and good conscience.

37. It is important to note that there is no legal provision or any other rule of law that prohibits the grant of interest for the period during which a debtor fails to comply with an order of payment passed by a Court, Tribunal or any other competent authority. This enables, therefore, the application of the common law principles relating to equity.

48. I have also held in the petitioner's favour on the basis of a judgment of a Division Bench of this Court in the case of *Dilip T. Khandar v. State of Maharashtra*, 2006 (2) Mh.L.J. 781 : 2006 (2) LJSoft 12 : 2006 (1) Bom.C.R. 721.

In that case, the complaints filed by the workmen under the MRTU and PULP Act were allowed and recovery certificates were issued by the Industrial Court for recovery of salary and other reliefs. The Collector granted the employer instalments and did not recover

interest. It was contended on behalf of the respondents that the Labour Court/Industrial Court had not directed payment of interest and hence there was no clause relating to payment of interest in the recovery certificates. The Division Bench referred to section 50 of the MRTU and PULP Act and expressly observed that the provisions thereof were similar to section 33-C of the ID Act. Section 50 of the MRTU and PULP Act also provides that where money is due to an employee from an employer in the circumstances mentioned therein, the Court shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the manner as an arrear of land revenue. The Division Bench rejected the contention that merely because the Labour Court/Industrial Court had not directed payment of interest and the recovery certificate also did not refer to interest, no interest was payable. The judgment was also based on section 33-C(1) read with section 267 of the Maharashtra Land Revenue Code.

16) In *Prabhavati Ramgarib B.*, this Court has relied upon judgment of Coordinate Bench in *Swan Mills Limited* (supra), para-12 whereof has already been reproduced in the judgment of *Prabhavati Ramgarib B.*

17) It appears that while deciding an unrelated issue of interest on unpaid amount of penalty arising out of Securities and Exchange Board of India Act, 1992 and Income Tax Act, 1961, the Apex Court has considered the judgment of this Court in *Prabhavati Ramgarib B.* and has agreed with the view taken therein. In paras-31 and 32 of the judgment in *Dushyant Dalal*, the Apex Court has held as under :

31. We find that a learned Single Judge of the Bombay High Court has, in *Prabhavati Ramgarib B. v. Divl. Railway Manager* [*Prabhavati Ramgarib B. v. Divl. Railway Manager*, 2010 SCC OnLine Bom 171 : (2010) 4 Mah LJ 691] , specifically held as follows: (SCC OnLine Bom paras 35-36 : Mah LJ pp. 702-03, paras 35-36)

“35. The petitioner's claim for interest would fall within the ambit of the words “or other rule of law” in Section 4(1). The other rule of law being on grounds of equity. Even under the Interest Act, 1839, interest was payable under the proviso to Section 1 which reads:

‘Provided that interest shall be payable in all cases in which it is now payable by law.’

Interest was payable by law under that Act in equity. This was recognised in a series of judgments. For instance in *Trojan and Co. v. Nagappa Chettiar* [*Trojan and Co. v. Nagappa Chettiar*, (1953) 1 SCC

456 : 1953 SCR 789 : AIR 1953 SC 235] , the Supreme Court, in para 23, observed that it was well settled that interest is allowed by a court of equity in the case of money obtained or retained by fraud. Interest was, therefore, awarded in equity.

36. The position is not different under the Interest Act, 1978. The words, in Section 4(1) "or other rule of law" would include interest payable in equity. In fact, interest has been awarded by our courts in equity as well as on principles analogous to Section 34 of the Code of Civil Procedure on the basis that Section 34 is based upon principles of justice, equity and good conscience."

32. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity.

(emphasis added)

18) Thus, Coordinate Benches of this Court have held in *Swan Mills Limited* and in *Prabhavati Ramgarib B.* that interest on delayed payment can be awarded in exercise of jurisdiction under Section 33-C(2) of the I.D. Act. The judgment in *Prabhavati Ramgarib B.* has been followed by another Coordinate Bench in *Prabhakar Kisan Magar* (supra) in which it is held in paras 16 and 17 as under :

16. Be that as it may, the issue is no more res integra and the controversy in the present proceedings is squarely covered by the decision of this Court in *Prabhavati Ramgarib's* case (supra) as rightly contended by Mr.Salvi. In such case, in an identical controversy, learned Single Judge of this Court considering the defence as advanced on behalf of the respondent, negated the findings of the Industrial Court while holding that the petitioner therein (*Prabhavati*) was entitled to claim interest on such delayed payment as claimed by *Prabhavati* before the Industrial Court in her application which was rejected by the Industrial Court. The petitioners' claim before the Industrial Court was exactly similar to the one as made in *Prabhavati's* case. The relevant paragraphs in the said decision are required to be noted which read thus:-

xxx

xxx

xxx

17. I am in complete agreement with the above reasoning and conclusion of the learned Single Judge of this Court in *Prabhavati Ramgarib's* case. In my opinion, it is clear that the judgment of this Court in *Prabhavati Ramgarib's* case squarely covers the issues as arising in the present writ petitions.

19) Division Bench of Delhi High Court in *Bhim Singh Bajeli Versus. P. O. Central Government Industrial Tribunal*¹⁴ has considered the judgment of this Court in *Prabhavati Ramgarib B.* and had held that if not under Section 33-C(2), but under Article 226 the High Court can award interest on delayed amount arising out of implementation of Award. The Division Bench held as under :

7. As previously mentioned, even though the structure of Section 33C(2) does not confer jurisdiction to the Labour Court to grant interest, in the facts and circumstances of the case, the fact remains that the employee had approached this Court under Article 226 of the Constitution of India, complaining that his rights had been defeated by non-implementation of substantive award and subsequent award. At least in these proceedings, it was open for this Court to have directed payment of interest even if it were of the opinion that the Tribunal did not possess the primary jurisdiction to do so. Although the management has relied upon the decision of this Court in Central Government Industrial Tribunal (supra), at the same time, the Court is mindful of certain other decisions of the Bombay High Court in *Mrs. Prabhavati Ramgarib B. vs. Divisional Railway Manager, Western Railway Manager* 2010 (5) SLR 683 (W.P.(C) 5529/2009) and of the Punjab and Haryana High Court in *State of Haryana v. Hisam Singh & Anr.* 1999 (2) LLJ 335, where the Court relied on a larger equitable principle, as well as the public interest underlying Section 3 of the Interest Act and drawing analogy from Section 34 of the Civil Procedure Code (CPC), and upheld the jurisdiction of the authority under Section 33C(2), to award interest, having regard to the circumstances.

(emphasis added)

20) In *M. M. Joseph Vs. Labour Court and others*¹⁵, the Kerala High Court has also followed the Judgment of this Court in *Prabhavati Ramgarib B.* The issue taken up for consideration by the Court has been summarized in the opening Paragraph of the judgment as under :

A question of seminal importance, as to whether under Section 33C(2) of the Industrial Disputes Act, 1947 (for short the "I.D. Act"), the Labour Court is empowered to award interest, which has not been specifically granted in an award passed under the I.D. Act, is raised herein. When computation in terms of money is sought on the basis of a legal entitlement or on the basis of an award or settlement, and there is no specific provision to grant interest, could the principles of equity be invoked? When the claim is based on an award, will not the grant of interest be regulated by the award and will not an award; silent on

¹⁴ 2013 SCCOnLine Del 338

¹⁵ 2015 SCCOnline Ker 9802

that aspect be deemed to be a refusal of interest? The question is raised on the well established principle, that the Labour Court, under Section 33C(2), exercises power akin to an execution court as contemplated under the Civil Procedure Code, 1908 [for brevity "CPC"].

21) The Kerala High Court answered the issue by observing as under:

21. The learned counsel for the petitioner has placed before me a decision of the High Court of Judicature at Mumbai in W.P(C). No. 5529/2009 [*Prabhavati Ramgarib B v. Divisional Railway Manager*]. The learned Single Judge in the said decision found on a an elaborate consideration of the various provisions of the Industrial Disputes Act, Civil Procedure Code and the Interest Act that the High Court has power under Article 226 to grant interest in appropriate cases. While agreeing with the said proposition, this Court would go a step further to find that the Labour Court examining an issue under Section 33C(2) could also exercise discretion insofar as the award of interest looking at the facts and circumstances of the case.

29. Principles of equity definitely, commend grant of interest when the management choses not to comply with an award of the Labour Court on the basis of valid proceedings before a higher forum. There can be no question, that the management is entitled to challenge orders adverse to itself, before the appropriate forum in appeal or revision as provided by law. The specific provisions for grant of an interim order, is also based on the principles of equity since the party approaching the higher forum should not be prejudiced insofar as having to comply with an order, which he expects to get overturned in an appeal. By rote, the specific averments made in every affidavit accompanying an interim application for stay, is that "the applicant has a reasonable belief of success in the appellate forum and hence the appellant would be prejudiced insofar as the compliance is enforced when the challenge against the order is pending". The undisputed corollary would be that, when against the reasonable expectation of the appellant, the appellate forum upholds the impugned order, necessary consequences would follow.

30. The reasonable belief stands dispelled by the appellate order and the reasonable expectation of the opposite party, who was deprived of the fruits of the order, at the proper time, would be; some compensation for the delay caused, by an unsuccessful appellate or revisional proceeding. "He who seeks equity must do equity". The grant of interest compensates the loss caused to the workman and repairs the injury occasioned by deprivation of lawful employment and wages due at a distant, earlier point of time. Equity is not a one way street, nor are benefits legally admissible always found between the pages of an enactment/legislation. The guiding principles in

Section 34 of the CPC would be the grant of interest, to a person who is made to wait, to reap the benefits of an order; by reason of the opposite party having availed an appellate remedy. [2002 (2) KLT SN 6 (Case No. 6) (Co-operative Sugars Ltd. v. Noorudeen)].

31. On the above reasoning, this Court finds that the claim of interest made by the petitioner is to be allowed.

22) While considering the *pari materia* provisions of Section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, another Coordinate Bench of this Court in *Lintas India Pvt. Ltd.* (supra) has held in paras-45, 46, 47 and 48 as under :

45. Lastly, a feeble attempt was made on behalf of the petitioner to urge that the learned Member Industrial Court could not have awarded interest on the due amount. The submission is required to be stated to be repelled. Interest on the delayed payment of wages due to an employee is a well recognized mode of compensating the employee, who has been kept away from legitimate dues.

46. In the case of **Dilip T. Khandar** (supra), a Division Bench of this Court awarded interest on the amount, for which a recovery certificate was granted under Section 50 of the Act, 1971. The Division Bench had drawn support from provisions contained in Section 267 (1) of the Maharashtra Land Revenue Code, 1966, under which the amount is to be recovered as an arrear of land revenue. The Court thus awarded interest on the amount due under the recovery certificate at the rate of 6% p.a.

47. An issue which merits consideration is the rate at which the interest is awarded by the Industrial Court. Interest has been ordered to be paid from the date of the judgment in complaint (ULP) No. 1161 of 1989 till the date of realisation. The said period exceeds 20 years. It is common knowledge that interest rate moves in cycles. It is rarely static for even a couple of years.

48. In the totality of the circumstances, in my view, it would be appropriate to modify the rate of interest awarded by the learned Member Industrial Court. A direction for payment of interest at the rate of 8% p.a. would be just and equitable.

23) In M/s. Standard Pharmaceuticals Ltd. Versus. State of West Bengal & Ors.¹⁶ Calcutta High Court has held that interest would also be covered under the ambit of the term 'benefit' as under :

11. With due respect to the judgments delivered by the Madras High Court I feel that this aspect of the matter has not been argued and, accordingly, not considered. Any other narrow interpretation of the word 'benefit' in the facts of the case would render Section 33C(2) otiose and a dead letter. Interest is a benefit, which is capable of being computed in terms of money if the management fails to act in terms of the award and awarded sum is not paid in accordance with Section 17A of the Industrial Disputes Act. If the workman is required to enforce the award, his right to claim interest as a benefit cannot be denied. The Labour Court has already adjudicated the main reference and has passed an award in favour of the petitioner. The failure on the part of the management to calculate the back wages and left it to the Labour Court to calculate the same in a proceeding initiated by the workman and thereafter to come with a plea that the Labour Court cannot grant interest on such awarded sum, in my view, is clearly unsustainable. Any other interpretation denying the right to claim interest for belated payment of the awarded sum would only result in manifest justice. The Court exists to do justice between the parties. Injustice would be caused to the petitioner in the event such interest is not allowed in favour of the petitioner which, in my view, is in consonance with the provisions of the Industrial Disputes Act, 1947.

24) On the other end of the spectrum, there appears to be few judgments holding that it is impermissible for Labour Court to award interest in exercise of jurisdiction under Section 33-C(2) of the ID Act. In Municipal Council, Bhandara Versus. Vimal wd/o Sadaram Kodape¹⁷ a coordinate bench of this Court has held as under :

9. There is an order of award of interest at the rate of twelve per cent per annum from the date of application, i.e., 7th October, 1999. The proceedings u/s 33-C(2) of the Industrial Disputes Act are in the nature of execution proceedings only and there is no provision therein to award interest on the amount found due. **Hence Labour Court does not have the jurisdiction to award interest on the amount found due. In my opinion, grant of interest at the rate of twelve per cent per annum would be penalizing the Municipal Council.**

10. This Court having noticed that there is no power in the Labour Court acting u/s 33C(2) of Industrial Disputes Act, finds that it is necessary to make some observations in the present matter. The application u/s 33C(2)

¹⁶ 2014 (2) Cal LJ 616

¹⁷ (2014) 5 AIR Bom. R 377

was filed on 7th October, 1999 and the decision was made on 5th July, 2002. Section 33C(2) reads thus:-

33C. Recovery of Money Due from an Employer.-

(1).....

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

It is seen that the outer limit for decision is three months. But in this case the decision came late by more than two years due to transfer of Presiding Officer or for want of notification conferring power. Thus, the applicant has lost the interest on the due amount. But as found above, there is no power to award interest, as the proceedings have been held to be in the nature of execution proceedings. It is a matter of common experience that these summary proceedings of execution are not decided within three months. **Hence this Court finds that the Labour Court acting u/s 33C(2) of Industrial Disputes Act should be empowered to award interest.**

(emphasis added)

Thus in the judgment of this Court in *Municipal Council, Bhandara Versus. Vimal wdlo Sadaram Kodape* the coordinate bench, after noticing absence of provision for award of interest under Section 33-C(2), has made an observation that such provision needs to be made especially where the proceedings under Section 33-C(2) itself takes long time to decide, contrary to statutorily prescribed period of 3 months. This Court did observe that award of interest was actually warranted, but on account of absence of statutory provision, this Court felt that the same could not be awarded. Also, it appears that attention of this Court was not drawn to the judgment in *Prabhavati Ramgarib B.* while deciding the case *Municipal Council, Bhandara Versus. Vimal wdlo Sadaram Kodape*.

25) Thus, following the judgment of this Court in *Prabhavati Ramgarib B.* various High Courts have taken a view that interest can be awarded on delayed payment of dues arising out of implementation of Award. The view expressed by coordinate bench in *Prabhavati Ramgarib B.* is held to be good law by the Apex Court in *Dushyant Dalal*. In some judgments, it is held that the award of interest can be in exercise of jurisdiction under Section 33-C(2) of the I.D. Act, whereas in some judgments, it is held that even if there is absence of provision for award of interest under Section 33-C(2) of the ID Act, High Court can always award interest if it notices delay in implementation of award.

26) Mr. Shetty has relied upon various judgments in support of his contention that in a limited remit of enquiry under Section 33-C(2), the Labour Court can only compute pre-existing right or benefit and cannot add anything to the Award. The law appears to be fairly well settled that the Labour Court has no jurisdiction to first decide workmen's entitlement and then proceed to compute the benefit so adjudicated on the basis of exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer, jurisdiction under Section 33-C(2) can be exercised merely as an executing court by leaving ambiguity if any in exercise of power to interpret the decree. However, none of the judgments relied upon by Mr. Shetty deal with the issue of payment of interest on account of delay on the part of the employer to implement the Award. Therefore, none of the judgments relied upon by Mr. Shetty have any remote application to the facts of the present case. It is therefore considered unnecessary to discuss the ratio of judgments relied on by Mr. Shetty.

27) Turning to the facts of the present case, the Award was made on 16 September 1999. It directed reinstatement of the two workmen with continuity and full backwages w.e.f. 29 May 1997. Respondent-Bank went on litigating before this Court in two rounds of litigation and apparently did not implement the Award till its Appeal came to be dismissed by the Division Bench on 10 June 2014. It is only on 6 January 2015 that the Respondent-Bank offered amount of Rs.1,99,280/- to each of the two workmen and also called upon Mr. Vijay Patil to report for duties. It appears that Shri. Kotharkar had already reported for duties in July 2010. The issue here is whether the Bank should be permitted to take advantage of its own wrong by not implementing the Award for over 17 long years. As a matter of fact, the said delay of 17 years latter escalated to 26 years as the final order for payment of dues came to be passed by the CGIT on 29 August 2024. The issue therefore is whether the employer can escape the liability to pay interest on amount which was payable 24 years ago ? The answer to the question, to my mind, appears to be in emphatic in the negative. The facts of the present case are such that this Court would be otherwise justified in awarding interest in exercise of its extraordinary jurisdiction, if not under Section 33-C(2) of the ID Act.

28) Having held that the Petitioners would be entitled for award of interest, the next issue is the rate of interest and the period for which the same is to be awarded. The calculation of amount of Rs. 8,58,525/- in respect of both the employees would indicate that the same is towards wages for the period from 1998 to 2014. This shows that the CGIT has not awarded any sum towards backwages after issuance of letter dated 6 January 2015 by the Bank offering backwages and calling upon Shri. Vijay Patil to report for duties. Since Shri. Kotharkar had already reported for duties in July 2010, the salary

drawn by him after July 2010 is deducted and his claim is upheld only for Rs.5,53,162/-. Thus, what was payable in the year 1998 was partly offered to the workers in January 2015 and would now be ultimately paid as a result of order dated 29 August 2024 passed by the CGIT. The amount of Rs.1,98,280/- offered towards backwages by Respondent-Bank does not match with the figure of Rs.8,58,825/- ultimately accepted by the CGIT for the period from 1998 to 2014. Therefore, the employees had rightly refused to accept the amount of Rs.1,98,280/- offered to them in January 2015. Considering the facts and circumstances of the present case where part sums were offered to the workmen by the employer in January 2015, in my view, award of interest at the rate of 6% p.a. on the amount of backwages till the date of actual payment would be appropriate. Such interest will have to be calculated for the period when the amounts became due till the same is actually realised. For ease of calculations, the amount of wages payable in respect of each year be considered as payable in December of that year and interest thereon be calculated from first day of January of following year till the date of actual payment of the said amount. To illustrate, in respect of Shri. Vijay Patil, wages of Rs.28,600/- were payable for the entire year 1998. Therefore, the said amount of Rs.28,600/- shall carry interest at the rate of 6% p.a. from 1 January 1999 till the date of actual payment. Similarly, in respect of wages for the period 1999, an amount of Rs. 31,350/- simple interest at the rate of 6% p.a. would be payable from 1 January 2000 till the date of actual payment. This is how the interest payable on the delayed payment of interest of simple interest of 6% p.a. is required to be computed and paid to the legal heirs of the concerned workers.

29) The petition accordingly succeeds, and I proceed to pass the following order:

- (i) The Petitioners would be entitled to simple interest of 6% p.a. on the amount awarded by the CGIT, which is to be computed in accordance with the methodology suggested above.
- (ii) The Respondent-Bank shall pay the amount of interest to the Petitioner within a period of two months.

30) With the above directions, the petition is **allowed and disposed of**. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]