



A.S.No.498 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 18-06-2025

CORAM

THE HONOURABLE MR JUSTICE M.JOTHIRAMAN

A.S.No.498 of 2019

Tinna Overseas Limited
represented by its Senior Manager N.K.Singh,
A-151, Mayapuri, Phase-II,
New Delhi – 110 064.

Appellant(s)

Vs

1.Jai Bharat Tanners
a registered partnership firm consisting of
1.P.S.Rajagopal Naidu
2.P.S.Balaji Naidu
3.P.S.Krishnamoorthy Naidu
4.P.S.Ramamoorthy Naidu
5.O.R.Varadarajulu
6.P.R.Viswanath
7.A.S.Ramamoorthy
8.P.S.Govindasamy
9.A.R.Ramanujam
10.N.P.Ramakrishna
11.A.R.Subramani and
12.O.K.Raghuram
as its partners and are carrying on business
at No.15, Sami Mudali Street, Periamet, Chennai – 600 003
represented by its Managing Partner S.Rajagopal Naidu



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2.Bachi Shoes Limited
15, Sami Mudali Street
Periamet, Chennai 600 003.

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Respondent(s)

Appeal Suit filed under Section 96 CPC to set aside the judgment and decree dated 16.12.2016 passed in O.S.No.1248 of 2011 on the file of the VII Additional City Civil Court, Chennai.

For Appellant(s): Mr.P.J.Rishikesh

For Respondent(s): No appearance

ORDER

Unsuccessful defendant has preferred the present appeal against the judgment and decree dated 16.12.2016 passed in O.S.No.1248 of 2011 on the file of the VII Additional City Civil Court, Chennai.

2. The parties are referred to as per rankings in the trial Court.



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3. The suit was filed for recovery of money for a sum of Rs.17,91,568.25/- with subsequent interest at 21% per annum on the principal amount of Rs.14,22,566.12/- from the date of plaint till the date of payment and to pay the second plaintiff a sum of Rs.17,91,568.25/- with subsequent interest at 21% per annum on the principal amount of Rs.14,22,566.12/- from the date of plaint till the date of payment and for costs.

4. The Court below decreed the suit with costs directing the defendant to pay the second plaintiff a sum of Rs.17,91,568.25/- together with interest at 21% per annum on the principal amount of Rs.14,22,566.12/- from the date of plaint till the date of payment.

5. The brief case of the plaintiffs is as follows:

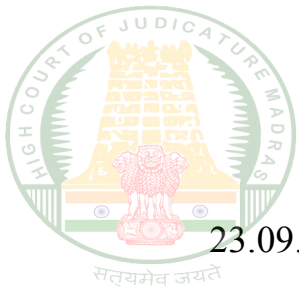
The plaintiffs are the manufacturers and dealers of finished leather and they have been supplying to the defendant the finished leather from the year 1988. The plaintiffs normally insist on the buyers inland letter of credit. On the request of the Managing Director of the defendant, the defendant has



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been paying bills regularly till June 1995. Thereafter, there had been enormous delay. The plaintiffs have sent a telex message dated 25.08.1995 to remit the amounts due. On the same day, the defendant sent a reply telex informing that they will be sending a Demand Draft for Rs.7,61,964.26/- on the next day and the balance amount will be paid in one week's time. Again, the plaintiffs sent a telex message dated 07.09.1995 in respect of the bills dated 07.08.1995 to 07.09.1995 amounting Rs.10,45,626.06/-. The defendant on 13.09.1995 sent a fax message stating that they received the telex messages. The defendant sent a letter dated 13.09.1995 and informed that in the said order they are due only Rs.13,435.33/- instead of Rs.10,45,626.06/- payable by them. The plaintiffs state that the six items mentioned by the defendant amounting to Rs.9,84,350.63/- as a counter claim is baseless. The plaintiffs sent a reply dated 18.09.1995 and called upon the defendant to remit the amount due. The defendant returned some materials by train with ulterior motive without even insuring the same. The plaintiffs sent a protest for having sent the goods without any basis, without insurance and informed the defendant that they will be engaging surveyor to examine the materials sent. The plaintiff sent a telex message dated



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23.09.1995 and called upon the defendant to pay a sum of Rs.10,45,626.06/-

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The defendant by letter dated 25.09.1995 informed that according to their books, the amount due was Rs.9,97,785.96/- and they wanted details only with regard to Rs.47,840/-. The defendants have returned the goods worth Rs.3,60,369.21/- with ulterior motive by debit note dated 15.09.1995. The defendants placed order for supply of three items. The plaintiffs have made ready for delivery of goods. The defendant's representative Krishnan had admitted having seen the materials made ready for inspection as on 08.09.1995, but, he did not turn up for inspection. As such, allegations to the contrary that the plaintiffs failed to supply the said goods within the stipulated period and the foreign buyers have canceled the order are all false. As per the contract, the defendant is liable to pay interest at 21 % per annum for the belated payment. The plaintiffs have sent a notice dated 04.11.1995 and called upon the defendant to pay the sum of Rs.19,37,287.65/- due as on date. The defendant received the said notice and sent a reply dated 10.11.1995. The items manufactured under order nos.1261 and 1278 could not be sold, as the same has been manufactured for the specific order of the defendant and the same cannot be sold to



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anyone locally and hence, the plaintiffs are constrained to treat the value of the two items amounting to Rs.3,17,710.68/-. The defendant is due owing to the plaintiffs the sum of Rs.17,91,568.25/-. Hence the suit.

6. The brief case of the defendant is as follows:

In respect of the various supplies made by the plaintiffs, as per the bills, a sum of Rs.9,97,785.96/- was due and payable. But, the said amount was adjusted towards the amount payable by the plaintiffs is Rs.9.82,775.63/- to the defendant. Out of the bill amount, only a sum of Rs.15.010.33/- is payable by the defendant to the plaintiffs. In each purchase order, delivery time has been fixed and in all commercial contracts, time fixed for performance of the contract is the essence and the plaintiffs had delayed the delivery of goods. The loss itself runs to several lakhs of rupees. The allegations contained in paragraph no.6 of the plaint that the defendant mentioned six items amounting Rs.9,84,350.60/- is baseless and untenable, is absolutely false. In fact, the materials were not according to the quality and they were not fit for the purpose, for which, they were ordered. Hence, the defendant had no alternative, but, to return



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the materials. There is no obligation on the part of the defendant to insure

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the materials and unless the goods are accepted, the plaintiffs have no manner of right to claim any amount. The plaintiffs had not kept ready the goods, as per the orders placed by the defendant. It is not correct to state that as against the order nos.1262, 1272 and 1278, the plaintiffs had manufactured the materials and kept ready for inspection. The defendant's representative found that the quality of the material was not good and informed the same to the plaintiffs. The question of liability to pay a sum of Rs.3,57,512.63/- towards additional sale tax and CST turnover does not arise at all. The defendant denies that the plaintiffs had sold the goods covered under order no.1272 at Rs.30 per sq.ft. as against the contract rate of Rs.38.50 is not admitted. The defendant does not owe any money to the plaintiffs expect the sum of Rs.15,010.33/-. The defendant denies that it is liable to pay interest at 21% per annum. There is no contract nor any provision of law, under which, the plaintiffs are entitled interest at the rate of 21% per annum. There are no merits in the suit and the defendant therefore prays that the suit be dismissed with costs.

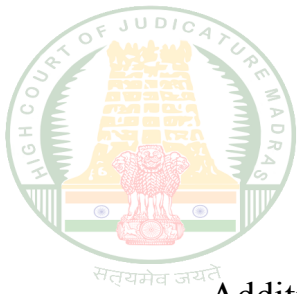


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7. On the basis of the above pleadings, the trial Court has framed

the following issues:

- (1) Whether the suit is maintainable?
- (2) Whether the defendants is entitled to adjust items III to VII mentioned in paragraphs 4 of the written statement towards amount due and payable to the plaintiffs?
- (3) Whether the plaintiffs have not manufactured and made ready for inspection the items against order nos.1262, 1272 and 1278 and the material made ready against order no.1272 as not good as alleged in paragraph 12 of the written statement?
- (4) Whether the defendant is not liable to pay additional sales tax amount of Rs.3,57,513.63/- with interest as claimed in the plaint?
- (5) Whether the defendant is liable to pay interest on the amounts due to the plaintiffs?
- (6) Whether the defendant is liable to pay any amount in respect of the materials returned as defective?
- (7) Whether materials valued at the sum of Rs.3,60,369.20/- are defective as alleged and whether return of the same is valid for all or any of the reasons contained in paragraph 12 of the written statement?



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Additional issues were also framed as follows:

- (1) Whether the plaintiffs are entitled to claim suit amount as prayed for?
- (2) To what other reliefs the plaintiffs are entitled to?

8. On the side of the plaintiffs, V.Ashok Kumar, Managing Director, was examined as PW1 and through him Ex.A1 to A48 were marked and further N.Babu, Accounts Manager, was examined as PW2 and through him Ex.A49 to A59 were marked. On the side of the defendant, one V.Srinivasa Rao, Manager of the defendant company, was examined as DW1 and no documents were marked.

9. Findings of the trial Court:

9.1 During pendency of the suit, the first plaintiff sold its business in favour of the second plaintiff in the suit. I.A.No.11951 of 2011 has been filed under Order 22 Rule 10 on behalf of the first plaintiff to implead the second plaintiff as party to the suit and the same was allowed. Subsequently, the plaint also came to be amended. Hence, the suit is maintainable.



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9.2 The defendant have not come forward to file any counter claim or any set off by giving details of amount to be adjusted under items (iii) and (iv) from the total claim made by the plaintiffs, as claimed by the plaintiffs and the defendant is not liable to pay any amount in respect of the materials returned as defective.

9.3 As per Exs.P40 and P41, it reveals that having failed in their attempt to make the Sales Tax Department to desist from levying 2% sales tax, the first plaintiff informing the same to the defendant and the defendant also complying the request of the first plaintiff to pay 2% sales tax by immediately paying a portion of the amount.

9.4 As per Exs.A52 to A54, it reveals that the plaintiff had already paid 2% additional sales tax levied by the Commercial Tax Department for the materials supplied to the defendant. Hence, the defendant is liable to pay the additional sales tax of Rs.3,57,513.63/- with interest.



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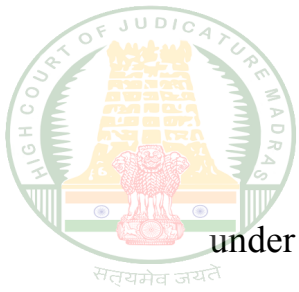
9.5 The defendant has not denied placing of orders, whereas, claimed that the materials were of poor quality, but, they have not come forward to prove the same by producing additional evidence. The defendant is liable to pay the amount under Exs.A1 to A9 amounting to Rs.10,45,626.06/-.

9.6 Since these all are commercial transactions, the plaintiffs are entitled to charge 21% on the value of the goods and therefore, the plaintiffs are entitled to the suit amount with interest at the rate of 21% per annum.

10. The points for determination arises in this appeal is that,

(a) Whether the plaintiffs are entitled entitled to the suit amount as claimed for?

11. The learned counsel appearing for the appellant/defendant would submit that the trial Court had overlooked Ex.A19, the valid and clinching evidence, which is supporting the case of the defendant and also failed to consider the question as to how the defendant is responsible and answerable to the plaintiffs' claim, when it has no liability. He would further submit that the trial Court had failed to consider the items manufactured



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under the alleged order nos.1262, 1272 and 1278 were not received and supplied on the ground that the goods were not supplied in time for foreign buyer obligation and thus, the contract was canceled. Further, he would submit that the trial Court failed to consider Exs.A19 to A24 and there is no contract in respect of the interest towards the supplied goods and at no point of time, the defendant agreed to pay interest on the invoice value of the goods supplied and thus, the finding of the trial Court directing the defendant to pay interest at 21% per annum, as claimed by the plaintiff, is erroneous and not correct. The learned counsel further argued that there is no cause of action to file the suit at Chennai and the cause of action only arises either at Vellore or Delhi and therefore, the suit is not maintainable. To strengthen his argument, he relied upon the judgment of the Supreme Court in ***Swastik Gases Private Limited vs. Indian Oil Corporation Limited*** reported in ***(2013) 9 SCC 32***, to show that where two Courts have territorial jurisdiction to try the dispute between the parties and the parties have agreed that dispute should be tried by only one of them, the Court mentioned in the agreement shall have jurisdiction and this principle has been followed in many subsequent decisions.



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12. *Per contra*, the learned counsel appearing for the respondents/plaintiffs would submit that there is no pleading with regard to objection raised on territorial jurisdiction. He would further submit that the defendant has not at all filed any document to show that the amount claimed by the plaintiffs has already been paid. Further, he would submit that though V.Srinivasa Rao (DW1), Manager of the defendant company, was examined as witness, the defendant has not come forward to file any counter claim or any set off by giving any details of amount. He would further submit that all the transactions between the parties are purely commercial in nature and the plaintiffs are entitled to charge interest at the rate of 21% per annum on the value of the goods.

13. This Court has considered the submissions made on either side and perused the materials on record.

14. It is not in dispute that during pendency of the suit, the first plaintiff sold its business and assistance including the right of recovery of money in this case against the defendant in favour of the second plaintiff, as



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per Ex.A59, the order dated 09.04.2011 passed by the Government of India

permitting the second plaintiff to run as a public limited company. It is also not in dispute that the plaintiff has filed an application in I.A.No.11951 of 2011 under Order 22 Rule 10 to implead the second defendant as a party to the suit and the same was allowed by the Court below on merits.

15. The main contention of the learned counsel for the plaintiffs is that the first plaintiff was having office at Vellore and the goods were dispatched at New Delhi and Chennai has no jurisdiction to try the suit. In this regard, there is no specific averments in the written statement or in the evidence adduced by V.Srinivasa Rao (DW1). The second plaintiff has stepped into the shoes of the first plaintiff and conducted the suit against the defendant. The second plaintiff is having its registered office at Chennai and therefore, a part of the cause of action arises at Chennai and therefore, the trial Court has territorial jurisdiction to try the suit. It is apposite to mention that that the defendant has not chosen to file any interlocutory application to decide territorial jurisdiction as a preliminary issue and also not taken any legal steps to strike of the plaint.



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16. According to the defendant, the materials to the value of Rs.2,97,976.53/- was returned to the plaintiff as defective and further another bulk of materials for the value of Rs.62,392.08/- was also returned to the plaintiff as defective. It is also contended that the returned value of materials and also 2% added in price on the materials towards additional sales tax paid over the returned goods along with freight charges on the returned amount in total to the tune of Rs.9,82,775.63/- has to be adjusted from the total value of the bill for the goods supplied. According to the plaintiffs in the statement of account annexed in the plaint, a sum of Rs.3,60,369.21/- is debited or adjusted from the total value of goods supplied and after deducting a sum of Rs.3,60,369.25/- being the value of the defective goods returned by the defendant, finally a sum of Rs.17,91,568.25/- has arrived.

17. It is seen that the additional sales tax is due from the period between 1992 and 1993, but, the goods returned by the defendant pertain to the year 1995. V.Srinivasa Rao (DW1), Manager of the defendant company,



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has not chosen to file any details of amount to be adjusted under items (iii) and (iv) from the total claim made by the plaintiffs. Without filing any documentary evidence with regard to the adjusted items (iii) and (iv) as stated in paragraph no.4 of the written statement from the total claim made by the plaintiffs, the contention of the defendant that they are not liable to pay any amount in respect of the materials returned as defective is not acceptable one.

18. The next contention of the defendant is that the defendant is not liable to pay additional sales tax amount of Rs.3,57,513.63/- with interest as claimed by the plaintiffs. According to the plaintiff, the liability to pay Central Sales Tax for the supplies made to the defendant is upon the defendant right from the commencement of the transaction between them from 1988 and the defendant used to send “C” Forms to the plaintiffs and pay 1% sales tax upon the value of the goods supplied. It is not in dispute that the Commissioner for Commercial Taxes of Tamil Nadu have issued Circular letter dated 29.04.1993, wherein, demanding additional 2% sales tax for the year 1992-1993. Then, there was litigation, wherein, the



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manufacturers association filed writ petition before this court and the same was dismissed. Thereafter, the plaintiffs sent a letter dated 27.12.1993 informing the same to the defendant that in future additional 2% sales tax would be included in the future bills and this was also accepted by the defendant by its letter dated 28.02.1994. After accepting the same, the defendant also paid a sum of Rs.1,68,195.06/- towards portion of sales tax by way of cheque and the same is revealed as per Exs.A40 & 41.

19. As per Ex.A40 & 41, it reveals that having failed another attempt to make the sales tax department to desist from levying 2% sales tax, the first plaintiff informing the same to the defendant and the defendant also complying the request of the first plaintiff to pay 2% sales tax by paying the amount. Ex.A54 is the information given by the Commercial Tax Officer to the first plaintiff and it reveals that the plaintiffs had already paid 2% sales tax for the materials supplied to the defendant. In the view of the above transactions and amount paid by the plaintiffs, the defendant is liable to pay the additional sales tax amounting to Rs.3,57,513.63/- with interest.



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20. According to the plaintiffs, the defendant placed purchase orders for supply of three items and the plaintiffs got the materials ready under order no.1262 dated 28.02.1995 to the value of Rs.1,79,710.68/-, order no.1272 dated 19.05.1995 to the value of Rs.2,81,235.96/- and order no.1278 dated 30.08.1995 to the value of Rs.1,38,000/- and also informed that the materials being made ready, in turn, the defendant's representative Krishnan visited the plaintiffs' factory and seen the materials made ready for inspection on 08.09.1995.

21. Further, it is the case of the plaintiffs that the items were specifically manufactured at the request of the defendant and the same could not be sold in open market and they are still lying unused. The second order no.1272 was sold in open market at the rate of Rs.30 per sq.ft. instead of the contracted rate of Rs.38/- and due to the non execution of orders, the plaintiffs incurred loss to the tune of Rs.3,17,710.68/-. Instead of making payment, the defendant returned the goods worth Rs.3,60,369.21/-which were supplied long back. The defendant having been admitted placing of orders, but, contended that the materials were of poor quality. In order to



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prove the same, the defendant has not chosen to adduce any documentary evidence. Therefore, the initial burden lies on the plaintiff, had been discharged and the burden shifts on the defendant, has not been discharged.

22. As per Exs.A1 to A9, the plaintiffs have supplied finished leather to the defendant to the value of Rs.10,45,626.06/- and the same is not denied by the defendant. In this regard, telex messages exchanged between the plaintiffs and the defendant under Exs.A10 to A13, A25 to A29, and A31 to A35 were marked, which reveal that the plaintiffs repeatedly made demand and subsequently, the plaintiffs were constrained to issue legal notice under Ex.A36 and for which, the defendant chosen to give a reply under Ex.A37.

23. It is seen from the telex messages that the last supply of the goods were made under the invoice no.156 dated 07.09.1995 and the demands were made and they were noted as outstanding from 1995 onwards. The plaintiffs state that though the defendant is a customer of the plaintiffs from the year 1988 onwards, the defendant defaulted payment only from the year 1995.



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24. In order to prove the claim of the plaintiffs, as many as documents were filed. The plaintiffs company's Manager Ashok Kumar (PW1) was examined and through him Exs.A1 to A48 were marked. Similarly, N.Babu (PW2), Accounts Manager, was examined and through him Exs.A49 to A59 were marked.

25. Except, the oral evidence of Srinivasa Rao (DW1), Manager of the defendant company, no documents were filed to establish their claim that the amount claimed by the plaintiffs had already been adjusted or paid to be plaintiffs. The defendant also have not come forward to file any counter claim or any set off by giving details to be adjusted as claimed by them.

26. In the written statement, the defendant had admitted that in respect of various supplies made by the plaintiffs as per the bills, a sum of Rs.9,97,785.96/- was due and payable, but, the said amount was adjusted towards the amount payable by the plaintiff amounting Rs.9,82,775.63/- to the defendant and therefore, out of the bill amount only a sum of



Rs.15,010.33/- is payable by the defendant to the plaintiffs. In order to prove the above said facts, the defendant has not filed any documents to that effect. Therefore, the claim of the plaintiffs has been proved.

27. The next point for determination in this appeal is with regard to rate of interest awarded by the Court below. Though the plaintiffs claimed interest on the amount, it is to be noted that there is no contract, whatsoever, for paying any interest. In the absence of any specific contract, it is the duty of the plaintiff to issue notice in writing claiming interest. At his juncture, it is relevant to refer Section 3 of Interest Act, 1978:

Section 3 of the Interest Act, 1978:

“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



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institution of the proceedings:

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

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

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

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

(3) Nothing in this section,-

(a) shall apply in relation to-

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

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

(b) shall affect-

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

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

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



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28. It is apposite to mention that, from the above section, it is very clear that for claiming interest, demand shall be made by the party concerned. In this regard it useful to refer Section 34 of CPC, which reads as follows:

“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 the 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 Court 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. - In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II. - For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.”



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30. In the present case, admittedly, the liability has arisen out of commercial transactions, but, there was no contract *inter se* the parties and therefore, the rate of interest at 21% per annum granted by the Court below from the date of plaint till the date of payment on the principal amount cannot be sustained. This Court, invoking Section 34 IPC, is inclined to reduce the rate of interest awarded by the Court below from 21% per annum to 9% per annum from the date of plaint till the date of decree and thereafter 6% per annum from the date of decree till the date of realization. The point is answered accordingly.



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passed by the Court below is modified as follows:

“The defendant is directed to pay the second plaintiff a sum of Rs.17,91,568.25/- with subsequent interest at the rate of 9% per annum on the principal amount of Rs.14,22,566.12/- from the date of plaint till the date of decree and thereafter, interest at the rate of 6% per annum from the date of decree till the date of realization.

The other aspects of the decree passed by the Court below is confirmed.”

18-06-2025

nsd
Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No

To

The VII Additional Judge,
City Civil Court, Chennai.



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M.JOTHIRAMAN, J.

nsd

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