

SUPREME COURT OF INDIA

Rampur Fertiliser Ltd.

Vs.

Vigyan Chemicals Industries

C.A.No. 1101 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

18.02.2009

JUDGMENT

Dr. Mukundakam Sharma, J.

1. Leave Granted.

2. Discord in this appeal lies in a very narrow compass. The issue that arises for our consideration is with regard to the nature of interest that the respondent is entitled to in respect of the amount for which he had laid claim and in respect of which a decree was passed in its favour.

3. The present respondent filed a suit in the Court of Munsif, Dehradun on 31.10.1991 for recovery of Rs. 15,027.75 along with interest at the rate of 24% per annum and at 2% per month compounded with monthly rest from 23.9.1992 till actual date of recovery. According to the respondent- plaintiff it used to supply hydrated lime to the appellant-defendant but the defendant did not pay the bills amounted to Rs. 10,593.75. Consequently, the aforesaid suit was filed claiming the amount of Rs. 10,593.73 along with interest at the rate of 18% per annum till the date of suit and cost of legal notices. However, during the pendency of the suit, the plaint was amended after coming into force of the Interest *on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993* (hereinafter referred to as the 'Act'). The Act came into force with effect from 23.9.1992 whereunder if the buyer fails to make the payment on or before the agreed date or where there is no agreement before the appointed date the supplier becomes entitled to interest at such rate which is 5%, point above the floor rate for comparable lending with monthly rest.

4. By virtue of the aforesaid amendment the respondent requested for payment of interest at the rate of 24% per annum from 1.11.1991 to 22.9.1992 and 2% per month compounded with monthly rest from 23.9.1992 till the actual date of realization. The aforesaid suit filed by the respondent-plaintiff was decreed by the Civil Judge (Junior Division) for recovery of Rs. 15,027.75 along with interest at the rate of 18% per annum under judgment and decree dated 30.7.1998.

5. Feeling aggrieved by the aforesaid judgment and decree passed by the trial court, the appellant-defendant preferred an appeal before the Civil Judge (Senior Division) which was registered as Civil Appeal No. 51 of 1998. The respondent-plaintiff filed a cross-objection contending inter alia that the said respondent was entitled to higher rate of interest. The First Appellate Court vide its judgment and decree dated 21.2.2001 dismissed the appeal filed by the appellant but it allowed the cross-objection of the respondent-plaintiff whereby the First Appellate Court modified the decree to the extent that the plaintiff would be entitled to get interest at the rate of 23% per annum with monthly rests from 23.9.2002 till the date of realization. While arriving at the said finding the learned Civil Judge (Senior Division) held that the Scheduled Banks provide loan on interest at the rate of 18% per annum.

6. Being aggrieved by the aforesaid judgment and decree the appellant-defendant preferred a Second Appeal No. 167 of 2001 in the High Court which was admitted on the questions of law framed in the memo of appeal and the High Court also stayed the aforesaid order dated 30.7.1998. The appeal was taken up for final hearing during the course of which reference was made to the provisions, particularly Section 4 and 5, of the Act.

7. The learned Single Judge of the High Court disposed of the said appeal by judgment and order dated 2.5.2007 and held that the aforesaid Act No. 32 of 1993 was promulgated on 02.04.1993 and, therefore, the increased rate of interest would be payable from 02.04.1993 whereas the present suit was filed on 31.10.1991.

8. In the aforesaid premises it was held that the provisions of interest as provided in the said Act would not be applicable. However, as the respondent-plaintiff had not filed any document showing the scheduled banking rate of interest the learned Single Judge presumed the same to be at the rate of 13% per annum. Consequently, the decree passed by the trial court was modified to the extent that the respondent-plaintiff would be entitled to recover interest on the decree amount at the rate of 18% per annum with monthly rests from 02.04.1993 till actual payment.

9. In the present appeal, therefore, the issue that is involved is the amount of interest that the respondent would be entitled to receive. The learned counsel appearing for the appellant submitted before us that the High Court totally ignored the ratio of the judgment of this Court in *Assam Small Scale Industries Development Corpn. Ltd. & Ors. v. J.D. Pharmaceuticals & Anr.*¹. Relying on the ratio in the said case it was submitted that the provisions of the Act could not have been made applicable to the facts of the present case.

10. We heard the learned counsel appearing for the appellant on the aforesaid issue which was also raised in the *Assam Small Scale Industries Development Corpn. Ltd. & Ors.* (supra) (wherein one of us, namely, Sinha, J. was a member) after referring to the provisions of Section 1, 3, 4, 5 and 10 of the said Act, considered the scope of applicability of the Act. Sections 1, 3, 4, 5, and 10 of the Act are extracted below:

“1. Short title, extent and commencement.-(1) This Act may be called the *Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993*.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 23rd day of September, 1992.

3. Liability of buyer to make payment.- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day.

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.

4. Date from which and rate at which interest is payable.-- Where any buyer fails to make payment of the amount to the supplier, as required under Section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one-and-a-half time of Prime Lending Rate charged by the State Bank of India.

Explanation. - For the purposes of this section, "Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.

5. Liability of buyer to pay compound interest.-- Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly rests) at the rate mentioned in Section 4 on the amount due to the supplier.

10. Overriding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

11. It was held in Assam Small Scale Industries Development Corpn. Ltd. & Ors. (supra) that the provisions of the Act are applicable only with prospective effect. Paragraphs 37 and 38 of the said case which deal with the scope of the applicability of the Act are reproduced hereunder:

“37. We have held hereinbefore that clause 8 of the terms and conditions relates to the payments of balance 10%. It is not in dispute that the plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act

imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply. The 1993 Act came into effect from 23-9-1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, Sl. Nos. 1 to 26 (referred to in the penultimate para of the trial court judgment), that is supply orders between 5-6-1991 to 28-7-1992, were prior to the date of the 1993 Act coming into force. Only the transactions at Sl. Nos. 27 to 71 (that is supply orders between 22-10-1992 to 19-6-1993), will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June 1991 and 23-9- 1992. The trial court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% up to June 1991 and 23.5% thereafter.”

12. In view of the ratio of the aforesaid decision the scope of the present appeal is very limited for it is already laid down by this Court that the Act, namely Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 came into effect from 23.9.1992. Therefore, the said Act would have no application and would not apply to transactions which took place prior to the aforesaid date. In the case in hand the transaction which was the subject matter of the suit took place prior to 23.9.1992. This position is clear for the suit itself was filed on 31.10. 1991 and therefore cause of action for filing the suit has to be prior in point of time.

13. In paragraph 11 of the plaint the respondent-plaintiff had itself stated that the cause of action for the suit arose on dates prior to coming into force of the Act. It is obvious from the records that on the date when the Act came into force, the present suit was pending for consideration, and therefore, what would be applicable to the facts of the present case is the provisions of Section 34 of the *Code of Civil Procedure, 1908* (for short the `Code') which are reproduced hereinbelow:

“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.”

14. In fact, in the plaint the appellant claimed interest at the rate of 18% per annum but later on when it was found that the Act had come into force with effect from 23.9.1992 an amendment was sought for to the plaint which was allowed by the trial court. The said amendment, in our opinion, should not have been allowed as the said provisions of the Act are not applicable to the facts and circumstances of the present case.

15. The quantum and rate of interest which the appellant in the present case is entitled to would be in accordance with the provisions of Section 34 of the Code and not in accordance with the provisions of the Act. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount.

16. In *Clariant International Ltd. v. Securities & Exchange Board of India*², it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory. It was further held that in absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in *Kaushnuma Begum v. New India Assurance Co. Ltd.*³, *H.S. Ahammed Hussain v. Irfan Ahammed*⁴ and *United India Insurance Co. Ltd. v. Patricia Jean Mahajan*⁵ and it was observed that even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.

17. In *Assam Small Scale Industries Development Corpn. Ltd. (Supra)* also in terms of Section 34 of the Code, in relation to the transactions made prior to coming into force of the Act, simple interest at the rate of 9% per annum was granted taking the same to be bank rate at the relevant time.

18. Therefore, in view of the foregoing legal proposition, we hold that the High court was not justified in granting interest at the rate of 18% per annum with monthly rests. Considering the facts and circumstances of the present case we direct that pendente lite and future interest at the rate of 9% shall be paid.

19. With the aforesaid modification in the decree, the present appeal is disposed off.

¹(2005) 13 SCC 19

²(2004) 8 SCC 524

³(2001) 2 SCC 9

⁴(2002) 6 SCC 52

⁵(2002) 6 SCC 281