

RAJASTHAN HIGH COURT

Ram Singh

Vs.

Ram Singh

Civil Revn. Petn. No. 384 of 1983

(S.K. Mal Lodha, J.)

21.08.1984

ORDER

S.K. Mal Lodha, J.

1. This revision petition under Section 115 of the Civil Procedure Code is directed against the Judgment and decree dt. May 31, 1983 of the District Judge, Jodhpur passed in Civil Original Suit No. 231 of 1981.

2. A contract for construction of lower Kodra Dam at Mt. Abu, District Sirohi was granted to the petitioner. Agreement No. 217/70-71 was entered into between the parties. A dispute arose in respect of measurements, rates, items etc. and the matter was referred to the sole arbitration of non-petitioner No. 1 (Ram Singh) vide letter dt. Nov. 7, 1979 of non-petitioner No. 2 (State of Rajasthan through the Chief Engineer, P. H. E. D., Jaipur). The reference was made to the sole arbitration in accordance with Clause 23 of the aforesaid agreement. The Arbitrator gave the award on Nov. 7, 1981 at Jodhpur in the presence of both the parties and it was signed. The material portion of the award with which I am concerned in this revision petition is as under :

"(4) Petitioner is not entitled to any interest due to the amount of payment as per this award."

The petitioner submitted an application under Section 14 of the Arbitration Act (Act No. X of 1940) (for short 'the Act' herein) for a direction to the Arbitrator to file the Award, the Agreement and other relevant papers in the court of District Judge, Jodhpur. The Award was filed on Sept. 15, 1982. Thereafter, the petitioner moved an application containing objections under Sections 15 and 16 of the Act within time for

modification of the Award. It was prayed therein that the decree in terms of the Award along with interest @ 2% per month from the date of the Award may be passed. Non-petitioner No. 2 did not file any objection. The learned District Judge, Jodhpur by his judgment and decree dt. May 31, 1983 passed the decree in terms of the Award and awarded interest @ 6% p.a. from May 21(31), 1983 in case non-petitioner No. 2 does not pay the amount payable under the Award by Aug. 31, 1983.

3. Aggrieved by the Judgment and decree dt. May 31, 1983, the petitioner has filed this revision petition praying that the Judgment and decree dt. May 31, 1983 of the District Judge, Jodhpur may be modified by awarding interest from the date of the Award or from the date of filing of the Award or any other date @ 2 % per month.

4. A show cause notice was issued to the non-petitioners, in pursuance of which, appearance has been put in on behalf of non-petitioner No. 2. On Aug. 8, 1984, when the revision petition was taken up, learned counsel appearing for the parties submitted that in view of the order dt. Jan. 17, 1984, the revision petition may finally be disposed of without requisitioning the record.

5. I have heard Mr. M. C. Bhoot, learned counsel for the petitioner and Mr. Rajendra Vyas, learned Deputy Government Advocate.

6. It may be stated that the learned District Judge directed in his judgment dated May 31, 1983 that if non-petitioner No. 2 does not pay the amount of Rs. 8,26,552/- by Aug. 31, 1983, the petitioner would be entitled to interest @ 6 % p.a. from May 21(31), 1983 until payment.

7. The contention of the learned counsel for the petitioner is that the petitioner requested for the payment of the amount of Award awarded by the Arbitrator on Nov. 8, 1981 by registered letter, the copy of which was also delivered in the Office of the Additional Chief Engineer, PHED, Jodhpur on Nov. 9, 1981. Despite that, the amount was not paid and so the petitioner has claimed interest @ 2% per month from the date of the Award or from the date of the demand under the Interest Act, 1978 (No. XIV of 1978) (hereinafter referred to as "the Act of 1978"). According to the learned counsel, the learned District Judge has not assigned any reasons whatsoever in disallowing the interest. He further contends that there was no justification in granting time to non-petitioner No. 2 for making payment by Aug. 31, 1983. Learned counsel, therefore,

contended that the learned District Judge has exercised his jurisdiction illegally and with material irregularity when he did not award interest from the date of the award or from the date of the demand made by registered notice up to Aug. 31, 1983. On the other hand, the learned Deputy Government Advocate supported the judgment of the District Judge in respect of the award of interest.

8. I have given my anxious and thoughtful consideration to the rival submissions of the learned counsel for the parties.

9. The first question is whether the plaintiff is entitled to interest from the date of the Award i.e. Nov. 7, 1981 or from the date of the notice to the date of the judgment and decree dt. May 31, 1983. The second question is whether the petitioner is also entitled to interest from the date of the judgment and decree i.e. May 31, 1983 to Aug. 31, 1983 as the learned District Judge has ordered that if the amount of Rs. 826,552/- is not paid by Aug. 31, 1983, the petitioner would be entitled to interest @ 6% p.a. from May 21(31), 1983 (Date of judgment and decree is May 31, 1983). The notice which was given by the petitioner is under Section 3 of the Act of 1978.

10. Before proceeding further, it will be relevant to notice Section 29 of the Act:

"29. Interest on awards. - Where and in so far as an award is for the payment of money, the Court may in the decree order interest, from the date of the decree at such rate as the court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree."

S.29 of the Act empowers the court where the award is for payment of money to award the reasonable rate of interest from the date of the decree. Section 34 Civil Procedure Code provides for award of pendent lite and future interest. It is thus clear that under Section 29 of the Act, the court can only award interest from the date of the decree of the court till the realization of the amount. The 'court' has been defined in Section 2(c) of the Act. It reads as under :

"2(c). "Court" means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under Section 21, include a Small Cause Court;"

S.41 of the Act deals with procedure and powers of Court. If the two provisions of Sections 29 and 41 of the Act are read together, the inevitable conclusion is that Section 34 Civil Procedure Code cannot be applied to a case of an award brought before the court. Under Section 34 of the Act (C.P.C.?) interest from the date of the suit to the date of the decree and from the date of the decree until realisation can be awarded Section 29 of the Act, however, does not grant that power to the court inasmuch as the court can grant interest only from the date of the decree at such rate as the court deems reasonable and that too, on the principal sum as adjudged by the award and confirmed by the decree. The court can only award interest from the date of the decree and not from any prior date. Section 29 of the Act was considered by Tulzapurkar, J. (as he then was) in *Srikantia and Co. v. Union of India*,¹ In that case, it was observed as under (at p. 354) :

"In my view, Section 29 of the Act also is exhaustive of the whole law upon the subject of "interest on awards" and since the said section enables the court to award interest on the principal sum adjudged by an award from the date of the decree onwards, it must be held that it carries with it the negative import that it shall not be permissible to the court to award interest on the principal sum adjudged by an award for any period prior to the date of the passing of the decree."

It is, thus, clear that under Section 29 of the Act, the District Judge was right in not awarding interest prior to the date of the decree.

11. The matter does not rest at that. The argument of the learned counsel for the petitioner is that notice was given to non-petitioner No. 2 and it did not make payment although it was specifically stated in the notice that they would recover interest under Section 3 of the Act of 1978. The amount was not paid. It was further submitted by the learned counsel for the petitioner that the petitioner filed an application under Section 14 of the Act on Sep. 15, 1982 for a direction to the Arbitrator to file the award. Non-petitioner No. 2 did not file any objections to the award. The petitioner, however, filed an application containing objections under Sections 15 and 16 of the Act praying that while passing the decree in terms of the award, interest @ 2% per mensem from the date of the award may be awarded.

12. Section 3 of the Act of 1978 gives powers to the Civil Court to award interest. In

awarding interest under Section 3 of the Act of 1978, the following conditions must be fulfilled:

- (i) there must be a debt or a sum certain;
- (ii) it must be payable at a certain time or otherwise;
- (iii) these debts or sums must be payable by virtue of some written contract at a certain time;
- (iv) there must have been a demand in writing stating that interest will be demanded from the date of the demand.

If these conditions are not fulfilled, the court cannot allow interest under the Act of 1978.

13. In *Union of India v. Rallia Ram*,² a contention was raised that the interest may be awarded on grounds of equity and reliance was placed upon the Interest Act (No. XXXII of 1839). Their Lordships of the Supreme Court observed as under :

"Under that Act, the court may allow interest to the plaintiff if the amount claimed is a sum certain which is payable at certain time by virtue of a written instrument. The Act, however, contains a proviso that interest shall be payable in all cases in which it is now payable by law." Section 1 of the Interest Act, 1839 came up for examination before a learned single Judge of the Calcutta High Court in *Hogarth Shipping Co. Ltd v. Mitsui Bussan Ltd. Kaisha*.³ The learned Judge observed as under :

"It appears to me that as regards the award, this court is now in the position of an executing court and is not a court in which such sums or debts may be recovered to employ the language of the section. These words in my opinion refer to the court which adjudicates as to actual debt or claim." (Underlining is mine). Hogarth Shipping Co's case was relied upon in *Srikantia and Co's case* (AIR 1967 Bombay 347) and it was held that the words "the Court before which such debts or sums may be recovered" in Section 1 of the Interest Act means the court which adjudicates on the actual debt or claim. It is, thus, obvious that the court which had not adjudicated upon the actual debt or claim cannot award interest under the Act of 1978. In the Act of 1978, the court has been defined as under :

"2(a) 'Court' includes a tribunal and an arbitrator."

So it is clear that under Section 3 of the Act of 1978, the court which includes the

Tribunal or an Arbitrator is the Court which adjudicates upon the debt and it can only award interest. In this case, the Arbitrator has not awarded any interest. Respectfully following Hogarth Shipping Co.'s case (AIR 1926 Calcutta 1119), and Srikantia and Co.'s case, I am of opinion that the District Judge could not award interest to the petitioner under Section 3 of the Act of 1978. It follows from the discussions made hereinabove that the petitioner was not entitled to any interest before the date of the judgment and decree.

14. The other question is whether the learned District Judge while exercising the jurisdiction did not commit any illegality or material irregularity in ordering that if the amount is not paid by Aug. 31, 1983, the petitioner would be entitled to recover interest @ .6% p.a. from May 21, 1983. It may be recalled here that the decree was passed on May 31, 1983. Under Section 29 of the Act, the Court could award interest when the award was for the payment of money at reasonable rate from the date of the decree. No reasons whatsoever have been given by the learned District Judge in not awarding interest from the date of decree. No reasons have been shown by the learned Deputy Government Advocate either. In the circumstances narrated above, the learned District Judge should have awarded interest from the date of decree at a reasonable rate which he had not done. 2% per mensem is an exorbitant rate of interest, which has been claimed. In the facts and circumstances of the case, the reasonable rate of interest will be 6% p.a. and in my opinion, under Section 29 of the Act, the petitioner should have been awarded interest from the date of the decree until the amount was paid @ 6% p.a.

15. The result is that I allow the revision in part and modify the decree dt. May 31, 1983 of the District Judge, Jodhpur. The petitioner will be entitled to recover interest from non-petitioner No. 2 on the amount of Rs. 8,26,552/- from May 31, 1983 until the amount was paid at the rate of 6% per annum.

16. Learned counsel states that the amount was paid on Aug. 31, 1983. It follows, therefore, that the petitioner will be entitled to recover interest from non-petitioner No. 2 on the amount of Rs. 8,26,552/- @ 6% per annum from May 31, 1983 to Aug. 31, 1983.

17. In the circumstances of the case, the parties are left to bear their own costs.

Revision partly allowed.

Cases Referred.

1. AIR 1967 Bom 347
2. AIR 1963 SC 1685
3. AIR 1926 Cal 1119