

RAJASTHAN HIGH COURT

State Bank of Bikaner

Vs.

Abdul Wahid

Civil Second Appeal Nos. 130 and 131 of 1997; 290 of 1994; 167 of 1990; 158 of 1993; 64, 74, 138 of 1994

(Arun Kumar, C.J. and Prakash Tatia, J.

07.02.2002

JUDGEMENT

Arun Kumar, C.J.

1. This batch of cases has been placed before us in view of a reference order made by the learned single Judge. The following issue was referred to a larger Bench:

"Whether the decision in *Central Bank of India v. Aman Travels and others*,¹ correctly decides the question of payment of interest under Section 34 of the Civil Procedure Code?"

2. When this matter had earlier been placed before this Court orders had been passed for issuance of notice to the High Court Bar Association, Jodhpur for assisting the Court in deciding the issue. However, at the time of hearing none has appeared for the High Court Bar Association or from the side of the respondents.

3. We have heard learned counsel. The issue involved is of a purely legal nature and, therefore, individual facts of the cases are not material. The basic facts necessary for purposes of appreciating the controversy which are common in all the cases are that the appellants had filed suits for recovery of money against the respondents. The suits were filed by appellants on account of failure of the defendants/borrowers to repay the loans granted by the appellants by way of financial accommodation. The loans in all the cases were bearing interest though there may be variation in the rate of interest in individual cases. This is also a common factor that the suits were contested by the defendants and the trial in each suit had proceeded as per normal course. After some lapse of time, during the course of trial of the suits the defendants deposited the respective amounts claimed by the plaintiffs at the time of institution of the suits. In

all the cases, the trial Court disposed of the suits in view of deposit of the suit amounts by the defendants. However, no decree was passed with respect to the pendente lite and future interest. This was because the trial Court felt bound by a Single Bench decision of this Court in (*Central Bank of India v. Aman Travels and others*), ² The said decision proceeds on the basis that Section 34 of the Civil Procedure Code which deals with grant of pendente lite and future interest comes into play when a decree for payment of money is passed. The learned single Judge was of the view that since the defendant had paid the amount claimed in the plaint during the pendency of the suit no decree for payment of money was being passed by the Court and, therefore, Section 34 of the Civil Procedure Code did not come into play. For this reason the claim of the Bank for pendent lite interest was rejected.

4. Learned counsel appearing for the appellants argued that the suit was based on the fact that the defendant-respondents had borrowed money from the banks which they failed to repay in terms of the agreement with the Banks. The terms and conditions of grant of loan included a term regarding payment of interest on the amount remaining unpaid and, therefore, the defendants were liable to pay interest as per the agreed terms. Merely because the amount claimed in the plaint was paid during the pendency of the suit did not absolve the defendants of their liability to pay interest till the entire dues of the Banks were cleared. The loan transactions were in the nature of commercial transactions and the parties were bound to honor the agreed terms regarding payment of interest.

5. We have given careful consideration to the issue involved. A plaintiff who approaches the Court includes in the plaint the amount due up to the date of the institution of the suit and pays Court-fee accordingly. The plaint normally contains a prayer for award of pendente lite and future interest till the date of payment of the decretal amount because on the date of the institution of the suit no plaintiff is in a position to know as to when ultimately the decree is going to be passed in the suit and for how much amount. Pendente lite and future interest is, therefore, left to the Court. The trial of a suit may take its own time and the liability of the defendant to pay interest for the period when the amount remains unpaid does not cease. In normal course, interest and costs follow the event i.e., the party who succeeds must get interest for the period for which the suit remained pending i.e., up to the date of decree and future interest up to the date of payment as well as costs of the litigation. The course adopted by the learned single Judge in *Central Bank of India v. Aman Travels and others* (supra) results in injustice because the defendant gets the benefit of

avoiding payment of interest for the period for which the suit remained pending. For the period for which the suit remains pending the plaintiff cannot be blamed or made to suffer. Likewise, the defendant cannot be allowed to take unfair advantage of protracting trial of a suit.

6. So far as the legal procedure in cases where the defendant chooses to pay the suit amount during the pendency of the suit is concerned, the same is contained in Order 24 of the Civil Procedure Code. This provision was unfortunately not brought to the notice of the learned single Judge deciding the case of *Central Bank of India v. Aman Travels and others* (supra). As per the provisions of Order 24 when the defendant chooses to deposit in Court a sum of money towards satisfaction of the claim in suit, notice of such deposit has to be given to the plaintiff. Interest will cease to run to the extent of amount deposited only on notice of deposit being served on the plaintiff. Rule 4 of Order 24 further contains a provision that if the plaintiff feels that his entire claim in suit is still not satisfied he may prosecute the suit for the balance amount at his own risk and cost. In view of the provisions of Order 24, C.P.C. the proper course for the Court in cases where the defendant deposits the amount for the claim in suit is to pass a decree for a particular amount and then record satisfaction of the decree to the extent the amount is deposited in the Court. A civil suit has to culminate in a decree, whether it is a decree of dismissal of suit or it is a decree in favor of the plaintiff allowing his claim in suit. On deposit of the amount claimed in the suit by the defendant during the pendency of the suit the trial Court ought to have passed a decree. Thereafter, the Court had to record satisfaction of the decree to the extent of payment or deposit of the amount in the Court by the defendant. Since there has to be a decree, Section 34, C.P.C. would be attracted. The Court could advert to the question of grant of interest pendente lite and future as per Section 34 of the Civil Procedure Code. The Court had the power to consider the question of grant of interest as per the provisions of Section 34, Civil Procedure Code. The question of payment of interest has not been considered by the respective trial Courts at all, in view of the decision in *Central Bank of India v. Aman Travels and others* (supra). All the cases are liable to be remanded back to the concerned trial Courts for adjudicating the question of interest as per the facts of individual cases. The cases be listed before the concerned Courts for this purpose expeditiously.

7. All the appeals are allowed. No order as to costs in the appeals.

Appeals allowed.

Cases Referred.

1. S. B. Civil First Appeal No. 40 of 1998, decided on August 9, 1988
2. Civil First Appeal No. 40 of 1998 decided on 9-8-1998 (1998 DNJ (Raj) 439)