

(2017) 07 MP CK 0027
MADHYA PRADESH HIGH COURT
Case No: 127 of 1997

Roop Singh

APPELLANT

Vs

Naresh Singh

RESPONDENT

Date of Decision: July 31, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Section 80, Section 96 - Notice - Appeal from original decree
- Sale of Goods Act, 1930, Section 61, Sect

Hon'ble Judges: Rajeev Kumar Dubey

Bench: Single Bench

Advocate: Jhanvi Pandit, RK. Sanghi

Final Decision: Allowed

Judgement

1. This first appeal has been filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 31/10/1996 passed by XI Additional District Judge, Jabalpur in Civil Suit No.241-B/1994, whereby learned A.D.J. decreed the suit of the respondents/plaintiffs and directed the appellants/defendants to pay a sum of Rs.47,980/- towards the amount due for supply of Goods with cost and also directed to pay Rs.16,313/- towards interest on principal amount at the rate of 24% P.A. from the date of supply of goods till filing of the suit and to pay interest on total sum Rs.65,000/- (principal amount 47,980 + interest 16,313) at the rate of 12% P.A. from the date of filing of the suit i.e.13/09/94 till realisation of the of the suit claim.

2. It is admitted between the parties that the respondent on the request of defendant No.2 supplied Hydraulic Oil and Lubricants vide bill No.101/93 dated 24/02/93 of Rs.9,240/-, vide bill No.108/93 dated 27/02/93 of Rs.28,000/- and vide bill

No.110/93 dated 28/02/93 of Rs.10,740/- totaling Rs.47,980/-. That goods were supplied on credit. And it is also admitted that on 17/05/94 respondent also sent the notice to appellants through his counsel. Which was duly served on appellants.

3. Brief facts of the case are that the respondent/plaintiff filed a Civil Suit No.241-B/1994 averring that the respondent is a dealer of Bharat Petroleum Corporation Limited and deals with petroleum products and lubricants. On the request of appellant No.2 he supplied Hydraulic Oil and Lubricants vide bill No.101/93 dated 24/02/93 of Rs.9,240/-, vide bill No.108/93 dated 27/02/93 of Rs.28,000/- and vide bill No.110/93 dated 28/02/93 of Rs.10,740/- totaling Rs.47,980/-. That goods were supplied on credit. Defendant No.2 assured that the aforesaid amount would be paid within 15 days. Plaintiff specifically told the defendants and also stated in the bills that interest @ 24% P.A. would be charged on the bill amount from the date of bill, if the same is not paid within 10 days. But, thereafter payment was not made inspite of repeated demands of the plaintiff. So, on 17/05/1994 plaintiff also sent a notice through his counsel by Registered A.D. to appellants, but even after service of notice the appellants did not pay the amount. So the appellants be directed to pay a sum of Rs.47,980/- towards bill amount, Rs.750/- towards notice charge and Rs.16,313/- towards interest from the date of supply to the date of filing of the suit and interest pendente lite and future at the contractual rate of 24% per annum.

4. Appellants/defendants in their written statement do not dispute the receipt of the HSD and lubricants worth Rs.47,980/-. But clearly denied from the fact that there was any agreement with the plaintiff to pay interest @ 24% P.A. on the amount due against the supply of the goods and averred that there was no contract between defendants and respondent to the effect that if the appellant failed to pay any amount against the supply of goods by the plaintiff within 30 days, then appellant is liable to pay interest on the amount due @ 24% P.A. It is also stated that the said three bills of the demanded amount were never shown to the appellants, so the respondent is not entitled to get any amount from the appellants and pray for dismissal of the suit.

5. Learned trial Court after giving opportunity of hearing to both the parties passed the impugned decree and judgment on 31/10/1996 holding that the respondent supplied HSD and Lubricants to the defendants vide bill Nos.101/93, 108/93 & 110/93 amounting to Rs.9,240/-, 28,000/- and 10,710/- respectively, so the respondent is entitled to get that amount of Rs.47,980/- towards payment of bills and Rs.750/- towards notice charge and also held that as mentioned in the invoice memo plaintiff is also entitled to get Rs.16,313/- towards interest on principal amount at the rate of 24% P.A. from the date of supply of goods till filing of the suit and interest on total sum Rs 65000/- (principal amount 47,980 + interest 16,313) at the rate of 12% P.A. from the date of filing of the suit i.e.13/09/94 till realisation of the suit claim. Being aggrieved by the impugned judgment, appellants have filed

this appeal.

6. Learned counsel of the appellants submitted that there was no agreement between the appellants and respondents for payment of interest, therefore, no question of paying interest on the amount due arises. Learned counsel further submitted that a bill or invoice is essentially a document which is sent by one party to another for goods supplied, a condition printed on such a bill cannot be considered as an agreement between the parties. Learned trial Court without appreciating the fact wrongly awarded Rs.16,313/- towards interest on principal amount @ 24% P.A. from the date of supply of goods till filing of the suit and also erred in awarding interest of 12% P.A. from the date of suit till realization in spite of the fact that there was no agreement to that effect. She also submitted that in any case award of interest is excessive and contrary to law. In this regard she also placed reliance on a judgment of Delhi High Court passed in a Civil Suit No.754/2006 Sh. Vijay Mittal Vs. M/s Bajaj Products & Another.

7. On the other hand learned counsel for the respondent/plaintiff submitted that in the bill (Ex.P/1 to P/3) given by the respondent to appellants regarding supplied Petroleum products, it was clearly mentioned that the interest @ 24% P.A. would be charged on the bill amount from the date of bill, if the same is not paid within 10 days. Plaintiff, even after repeated demands, did not pay that amount, so the learned trial Court has not committed any mistake in awarding the interest @ 24% P.A. on the bill amount and also in awarding interest of 12% P.A. from the date of suit till realization.

8. In this regard learned counsel of the respondent also placed reliance on a judgment of Jammu & Kashmir High Court passed in the case of Bank of Baroda Vs. Shri Subhash Chander Dutta, AIR 1995 Jammu And Kashmir page 99, and on Apex court judgment passed in the case of South Eastern Coalfields Ltd. Vs. State of M.P. & others, 2004 (1) JLJ 90, Secretary, Irrigation Department, Government of Orissa and others v. G.C. Roy, AIR 1992 SC 732 and TVC Sky Shop Limited Vs Reliance Communication And Infrastructure Limited, (2013) 11 SCC 754.

9. The only question for determination in the appeal is that whether the trial Court committed error in holding that the respondent is entitled to get Rs.16,313/- towards interest on principal amount @ 24% P.A. from the date of supply of goods till filing of the suit and interest on total sum Rs.65,000/- @ 12% P.A. from the date of filing of the suit i.e. 13/09/94 till realisation of the suit claim.

10. This court has gone through the record and arguments advanced by the counsels of both the parties. It appears from the record that there is no contract between the parties that the interest @ 24% P.A. would be charged on the bill amount of goods sold from the date of bill, if the same is not paid within 10 days. On the contrary respondent himself admitted in his cross-examination that there was no separate agreement regarding interest. Although, respondent deposed that he

had given 3 bills Ex.P/1 to Ex.P/3 regarding payment of supplied goods, in which it was clearly mentioned that the interest @ 24% P.A. would be charged on the bill amount of goods sold from the date of bill, if the same is not paid within 10 days and on that basis learned counsel of the respondent submitted that the term printed in the bill is binding on appellants, because respondent sold the goods on the basis of term printed in the bill. According to provisions of section 61 of sales of goods act, the seller is always entitled to the award of interest on the price of the goods sold, the only condition for denying the interest for the seller is that there should be a contract contrary to the above perception. In this matter, since there is no express or implied contract for the amount not carrying any interest, so respondent/seller is entitled to the award of interest on the price of the goods sold according to the condition printed in the bill.

11. But, in this regard the arguments of learned counsel and the finding of trial court do not appears to be correct. There is no material on record to show that before or at the time of supply of said goods, it had been made known to the respondent that delivery would be on a term mentioned in the bills (ExP/1 to ExP/3). Appellants clearly averred in their written statement that respondent never showed the said bills for the payment of the interest. In para two of the plaint and in the notice Ex.P/4 given by the respondent to appellant for payment of amount, it is mentioned that the goods were supplied on credit. Respondent did not depose in his statement that at the time of supply of said goods he gave the said bills to appellant no.2 also. In the notice Ex.P/4 given by the respondent to appellant for payment of amount also it is mentioned that the bills were duly signed by the Sub-Engineer and SDO. But, in the bill Ex.P/1 to ExP/3 produced by the respondent in support of his claim there is no such signature. Even in para 5 and 6 of the notice Ex.P/4, it is mentioned that because of non-payment of amount, appellant No.1 is responsible for damages by way of interest @ 18% per annum. Had the plaintiff supplied the goods with the condition that interest @ 24% P.A. would be charged on the bill amount of goods sold, it would have been mentioned in the notice. Hence, the plaintiff's statement that the goods were provided on the condition of paying interest at the rate of 24% per annum to appellants do not hold water.

12. In these circumstances simply and merely because the respondent/plaintiff has printed in the bill/invoice that 24% interest per annum would be payable on the balance due, the unilateral statement of a party cannot be taken as an agreement binding on the appellants. As also held by the Delhi High Court in the case of Sh. Vijay Mittal Vs. M/s Bajaj Products & Another(supra) relied by the learned counsel of the appellants.

13. Although in this regard learned counsel for the respondent also place reliance on a judgment of Hon"ble Apex Court in the case of TVC Sky Shop Limited Vs Reliance Communication And Infrastructure Limited (Supra) and the judgement of J & K High Court passed in the case of Bank of Baroda Vs. Shri Subhash Chander

Dutta, (supra), but the facts of these cases do not match with the instant case as in the former, it is proved from the evidence that appellants had always paid the bills in which interest was claimed at the rate of 30% per annum. But in this case there is no evidence on record that appellants had always paid the bills wherein interest was claimed at the rate of 24% per annum. In the later case also agreement regarding interest is proved. But, in this case, no such agreement regarding interest was proved. So these judgements do not help the respondent much.

14. In the considered opinion of this Court, respondent/plaintiff failed to prove that he supplied the said goods to appellants on terms printed in the bill/invoice stipulating 24% interest per annum on the balance due. Learned trial Court committed mistake in holding that the bill stipulated 24% interest per annum to be payable on the balance due. So respondent is entitled to get interest on principal amount @ 24% P.A. from the date of supply of goods till filing of the suit.

15. Then question arises whether respondent is entitled to get interest on the amount due in the absence of any contract regarding interest and if yes, then on what rate.

16. It is not disputed that appellants did not pay the amount due towards supply of goods even after receiving notice Ex.P/4 from the respondent. Regarding award of interest on the price of the goods sold, Section 61 of Sales of Goods Act reads as thus:-

61. Interest by way of damages and special damages.-

(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price--

(a) to the seller in a suit by him for the amount of the price--from the date of the tender of the goods or from the date on which the price was payable;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller--from the date on which the payment was made.

17. Which shows that seller is always entitled to the award of interest on the price of the goods sold by way of damages. The only condition for denying the interest for the seller is that there should be a contract contrary to the above perception. In this matter, the appellants did not allege that there was a contract to the contrary within the meaning of expression as used in Section 61 (2). Since there is no express or implied contract for the amount not carrying any interest, the respondent/seller is entitled to the award of interest on the price of the goods sold.

18. The Apex Court in the case of Secretary, Irrigation Department, Government of Orissa and others v. G.C. Roy (supra) relied by the learned counsel of the respondent held that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. In the case of A.K. Srinivasa Naidu v. Jayarama Reddiar reported in AIR 1977 Madras 56, the Madras High Court held that it is no doubt true that a seller is entitled to the award of interest on the price of the goods provided there was no contract to the contrary as between himself and the buyer. This liability on the part of the buyer to suffer interest is a statutory liability arising under Section 61 (2) of Sales of Goods Act . In the case of Rajpati Prasad v. Kaushalya Kuer, AIR 1981 Patna 187, the Patna High Court also held that as per Section 61 (2) of the Act, it is manifest that even in the absence of a contract to pay interest, so long as no contract to the contrary was pleaded and proved, the Court has a discretion to award to the plaintiff interest at such rate as it thinks fit on the amount of the price of the goods sold by him from the date of which the price was payable.

19. Apex court also In the case of M/s. Marwar Tent Factory v. Union of India, (1990) 1 SCC 71 held that the award of interest to seller on amount of price not paid by buyer within a reasonable time cannot be denied merely because in the notice served under Section 80 of Code of Civil Procedure, the seller had not claimed interest.

20. In the light of above mentioned pronouncement of the apex court and high courts it is clear that as per Section 61 (2) of the Act, it is manifest that even in the absence of a contract to pay interest, so long as no contract to the contrary was pleaded and proved, the Court has a discretion to award to the plaintiff interest at such rate as it thinks fit on the amount of the price of the goods sold by him from the date of which the price was payable.

21. As regard to the rate of interest is concern learned counsel submitted that even in the absence of any contract regarding interest respondent is entitled to get interest according to prevailing market rate in this regard he placed reliance on a judgment of Hon"ble Apex Court in the case of South Eastern Coalfields Ltd. Vs. State of M.P. & others, 2004 (1)JLJ 90, in which the Hon"ble Apex Court has held that the rule in equity is that interest is payable on a market rate even in the absence of any agreement or custom to the effect though subject, of course, to a contrary

agreement.

22. But in this case respondent did not produce any evidence regarding prevailing market rate of interest, neither did he depose anything in his statement in this regard. Learned counsel of the respondent submitted that at the time of supply of said goods the prevailing market rate of interest was also 24% per annum. But this arguments do not appear to be corrected, because if at that time the market rate of interest had been 24% per annum, the trial Court would not have ordered interest to be paid at the rate of 12% per annum from the date of filing of the suit till date of payment. Therefore, considering the fact that Trial Court awarded interest @ 12%, per annum from the date of the suit to the date of payment it is appropriate to award interest @ 12%, per annum till the date of payment from the date of supply of the goods.

23. So the appellant's appeal is partly allowed and the judgment and decree of trial Court is partly modified and it is directed that respondent is only entitled to get interest @ 12% per annum on the principal of Rs.47,980/- till the date of payment from the date of supply of the goods i.e. 31/10/1996.

24. Looking to facts and circumstance of the case, both the parties shall bear their own cost of the appeal.

25. Accordingly Decree be prepared.

Certified copy as per rules.