

(2001) 08 CAL CK 0004

Calcutta High Court

Case No: C.O./C.R. No. 3015 of 1999

Subrata Mazumdar

APPELLANT

Vs

The Learned District Judge,
Alipore and Another

RESPONDENT

Date of Decision: Aug. 8, 2001

Acts Referred:

- Interest Act, 1978 - Section 1

Citation: AIR 2002 Cal 58

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: Saibalendu Bhowmik, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Pratap Kumar Ray, J.

Attaining majority, the petitioner filed application for discharge of the guardian and for permission to withdraw the amount lying in deposit with the Court of the learned District Judge at Alipore. By the order dated 25-7-95, such prayer was allowed and the petitioner was permitted to withdraw the money deposited in the Court and necessary direction was given to the Nazir concerned. Even in the year 1999, after lapse of 4 years, despite such order since money was not available, being his own money as was under deposit during the period when the petitioner was minor, he approached the Court of the learned District Judge again by filing an application on 10-5-99, when the learned District Judge simply directed to put up the petition after the advice was filed. At this juncture, this application was filed under Article 227 of the Constitution of India praying, inter alia, by quashing the said order dated 19-5-99 and direction for making payment along with interest thereto.

2. By the order dated 7-12-99, Bhaskar Bhattacharya, J. directed the learned District Judge to submit a report on the said Issue. The learned District Judge by his report

dated 22-12-99, submitted that as the payment orders relate to financial years 1988-89 and 1989-90 became lapsed deposits accordingly the amount could not be released though the payment order was passed on 19-9-95. Bhaskar Bhattacharya, J., considered the report and the other relevant papers annexed with such report and was not satisfied with the reason as mentioned, by observing, Inter alia, that money of a minor by this process as made lapsed deposit and accordingly directed the learned District Judge to make requisition of the money from the Office of the Accountant General, asking the latter to release payment and further directed the learned District Judge to make enquiry fixing the responsibility of the concerned employee and/or officer by which the deposit could not be encashed, being a lapsed deposit, upon taking into account the serious nature of the issue as the property belongs to the minor and the minor even upon attaining majority was deprived of not only from getting the money back, but from fetching the interest therefrom. However, the learned District Judge further submitted his report on 9-2-2000, wherefrom it reveals that the learned District Judge failed to fix up the responsibility to any person as there was a heavy back-log in accounts section since long resulting in failure on the part of the learned District Judge to fix up Individual responsibility to a particular staff. Along with the report, report of the Registrar, Civil Court, Alipore, was also annexed, who in fact enquired the matter and observed in his report about the inability to fix up the individual responsibility to a particular staff. In view of changed determination, the matter was placed before P. K. Samanta, J.. and by the order dated 6-3-2000, the matter was released with the observation that the same should be placed before Bhaskar Bhattacharya. J. However, on 10-3-2000, Bhaskar Bhattacharya, J. released the matter on the ground that the Court was not vested with the determination to take up this case. Now the matter has come in my list.

3. It is submitted on behalf of the petitioner that the money has been released in his favour, but no interest has been paid. Since the money of a minor as was kept in deposit during such period was not released after attaining majority by the minor in spite of the order by the learned District Judge to that effect on 25-7-95, and the same has been released now, surely the petitioner would not be deprived of getting the interest as it is the petitioner's own money. Hence, the petitioner is entitled to get interest at the rate of 12% per annum. Reliance is placed to the judgment of Justice [Union of India Vs. Justice S.S. Sandhawalia \(Retd.\) and others](#), whereby the Apex Court held that money is a property in the hand of the person concerned. In that case, it was held that the money relating to provident fund and other retirement benefits, and nobody can utilise the same, and in default of payment or delay to make payment, the person concerned must be compensated by way of interest. Even applying the principles of Interest Act, 1978. the petitioner is entitled to get interest in terms of Section 1 of the Interest Act, which provides that if there is no provision under any statute for payment of interest, Interest Act would be applicable in that field. Applying such, the Full Bench of Punjab & Haryana High

Court accordingly directed payment of interest in land acquisition proceedings in the case reported in [Hari Krishan Khosla \(decd.\) and Others Vs. The Union of India \(UOI\) and Another,](#). The Apex Court also applied the same principle while passing the order of interest with reference to a dispute cropped up under the Electricity Act relating to the licensee's purchase price and directed payment of interest in the case of [The Godhra Electricity Co. Ltd. and Another Vs. The State of Gujarat and Another,](#). Now, it is a settled law in view of different pronouncements of the Apex Court reported in [Seth Thawardas Pherumal Vs. The Union of India \(UOI\),](#), a judgment of 3 Judges Bench [National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India,](#), a Judgment of the Constitutional bench dealing with LIC Act as well as a judgment reported in [Satinder Singh and Others Vs. Amrao Singh and Others,](#). that Interest Act would be applicable. Hence, in the instant case, the petitioner is entitled to interest which is otherwise payable also under the doctrine of equity.

4. Now, the question is who will pay the interest. No doubt from the report, it is clear that the money was lying in the custody of the learned District Judge, the judiciary, and thereafter it was deposited to the Trustee on behalf of the learned District Judge, namely, the Accountant General, West Bengal. The judiciary is also a State in terms of Article 12 of the Constitution of India, and accordingly the ultimate responsibility of payment is falling to the State of West Bengal, through its office Accountant General, West Bengal, who is the Trustee. In that view of the matter, the Accountant General, West Bengal, is directed to release interest at the rate of 12% per annum on the total amount, and such Interest is to be calculated on the basis of the respective dates of deposit in the Office of the learned District Judge, and such interest must be paid within 2 months from date, upon giving the detailed particulars and break-up of such calculation.

5. So far as the grievance of the petitioner about payment of money and interest, the same is adjudicated in this petition, but in view of the report of the learned District Judge as he could not fix up the responsibility due to such lapse, which is a serious one as the property of the minor is being dealt with by a Court of law and there is a lapse, this Court is not satisfied with the report of the learned District Judge.

6. The Registrar General, High Court, Calcutta, is directed to initiate appropriate steps and proceedings on the issue in question and to place the report before this Court and he is also further directed to find out the real man behind this mischief. Such report is to be placed before this Court positively within a month from this date. Let the matter appear after one month.

7. The Registrar General is also directed to communicate this order to the Accountant General, West Bengal, as well as to the learned District Judge, Alipore, so far as payment of interest is concerned.

8. However, the petitioner will be at liberty to file appropriate application in the appropriate forum for non-payment of money.