

A STATE OF RAJASTHAN

v.

RAGHUVVEER SINGH & ORS.

February 5, 1979

B [R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

Interest Act 1839 (32 of 1839)—Suit for recovery of amount due in respect of building contract—Claim if a “sum certain” under the Act.

Notice of demand for payment claiming “loss by way of interest”—If valid and sufficient—Notice not to be strictly construed.

C The Interest Act, 1839 (32 of 1839) empowers the Court to allow interest to the plaintiff if the amount claimed is a *sum certain* which is payable at a certain time by virtue of a written instrument at a rate not exceeding the current rate of interest from the time when such amounts were payable and if the amount is payable otherwise, then from the time when the demand of payment shall have been made in writing.

D As the amounts due in respect of a building works contract remained unpaid despite demands and notices, the respondent (plaintiff) filed a suit for its recovery together with interest. Decreeing the suit, the trial court awarded interest at 4½ per cent. But in appeal, the High Court enhanced the rate of interest *pendente lite* from 4½ per cent to 6 per cent.

E In the further appeal to this Court it was contended that the Interest Act 1839, was not applicable as no sum certain was payable and there was no demand for payment of interest.

Dismissing the appeal,

HELD : 1. The claim was for a “sum certain” within the meaning of the Act. [9F]

F The claim was ascertainable on a calculation made in terms of the agreement and was therefore a sum certain within the meaning of the Act. It is “a sum of money which is now payable or will become payable in the future by reason of a present obligation” and in any case it was not for the payment of any unliquidated damages or for the payment of any amount arising out of an inchoate obligation. [9E-F]

G 2. The respondent issued two notices. In the second notice a definite claim of interest had been made by them. The term “loss by way of interest” mentioned in the first notice suggested that what was being claimed was compensation for the damages suffered by them. The notice should not be construed literally or technically. The mention of loss was only explanatory. Without any manner of doubt the respondents were claiming interest as such. [9G-10D]

H 3. Nor again can it be said that there was no claim for future interest. A claim for past interest would necessarily imply a claim for future interest.

[10E]

Kuppasami Pillai v. Madras Electric Tramway Co. Ltd., ILR 23 Mad. 41; *Sita Ram & Ors. v. Mrs. S. Sullivan*, [1901] 2 Punjab Law Reporter 464; referred to. A

Mahabir Prashad Rungta v. Durga Datt, [1961] 3 SCR 639 and *Union of India v. A. L. Rallia Ram*, [1964] 3 SCR 164; distinguished.

4. Having regard to the various continuous defaults committed by the appellant and its officers the High Court was justified in enhancing the rate of interest to 6 per cent. [11E] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2008 of 1969.

From the Judgment and Order dated 7-4-1965 of the Rajasthan High Court in D. B. Civil Regular Appeal No. 67/53. C

S. M. Jain for the Appellant.

B. D. Sharma, Ramesh Chandra and B. P. Maheshwari for the Respondent.

The Judgment of the Court was delivered by D

CHINNAPPA REDDY, J.—The State of Rajasthan, defendant in Civil Suit No. 9 of 1963 in the Court of the Senior Civil Judge, Udaipur, is the appellant in this appeal filed pursuant to a certificate granted under Article 133(1)(a) of the Constitution of India (as it stood prior to the 30th amendment). The plaintiff respondent took a building work on contract from the erstwhile Government of the State of Udaipur. He completed the work on 6th June, 1950. Despite demands and notices issued by the plaintiff a considerable amount due to him remained unpaid. He, therefore, filed the suit out of which the appeal arises to recover a sum of Rs. 3,19,458/11/- together with interest at the rate of 12%. The suit was contested by the State of Rajasthan. An interim decree for a sum of Rs. 66,517/- was passed on 7th November, 1955. After full trial a decree for Rs. 1,67,619/- (including the sum of Rs. 66,517/- for which a preliminary decree had already been passed) was passed on 11-6-1958/30-6-1958. The decree also awarded interest at the rate of 4½% on the amount decreed from the date of suit till the date of realisation. The plaintiff and the defendant preferred appeals to the High Court of Rajasthan. The High Court reduced the decretal amount by a sum of Rs. 9,991/-. The High Court, however, held that the plaintiff was entitled to interest from 1st January, 1951, and not merely from the date of suit. The High Court also enhanced the rate of interest *pendente lite* from 4½% to 6%. The High Court having varied the decree of the Trial Court, the State of Rajasthan E
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A sought and obtained a certificate under Article 133(1)(a) of the Constitution and has filed this appeal.

The controversy in the High Court related primarily to (i) conveyance and lift charges; (ii) alleged double benefit in regard to bond-stones, lintels and sills; (iii) use of Jodhpur slabs and their high cost; (iv) charge for C. P. Teak wood at the same rates as for Burma Teak. In regard to conveyance and lift charges the High Court pointed out that no question was raised in the Memorandum of grounds of appeal and there was, therefore, no justification for permitting the learned Counsel for the State to assail the finding of the Trial Court relating to those charges. We do not see any reason either why the learned Counsel should be permitted to agitate this question in this appeal. Regarding double-charge for bond-stone, lintels and sills, the complaint of the appellant was that while separate payment was being made for them, they had also been included in the measurements of the walls in which they happened to be fixed. From the office circular issued by the Chief Engineer of the Public Works Department of the United State of Rajasthan on 12th July, 1948, it appears that it was the practice uptill then to allow payment for bond-stones, lintels and sills separately without deducting their cubic contents from the general wall masonry. This had always been the practice and this was never objected to by the Accountant General. In view of the practice obtaining till then it could not be said that the contractor had wrongfully claimed double payment for bond-stones, lintels and sills. The use of Jodhpur slabs was not questioned in the written statement. All that was said was that the rate was high but at the trial there was no evidence worth the name, as observed by the High Court to show that the charge was excessive. Again there was no objection to the use of C.P. Teak-wood instead of Burma teak wood as the latter was not available. According to the letter of the Superintending Engineer dated 6th February, 1950, where Burma teak wood was not available and C. P. Teak wood was used, the rates specified for Burma teak wood should be taken for C.P. teak wood. It could not, therefore, be said that the contractor had charged more than what he should for C.P. Teak wood.

The last question which was argued before us by Shri Jain, learned Counsel for the State of Rajasthan was that no interest should have been awarded for the period before the filing of the suit and that the rate of interest should not have been enhanced by the High Court for the period subsequent to the filing of the suit. It was

submitted that the Interest Act, 1839, was not applicable as no sum certain was payable and there was no demand for payment of interest. It was argued that what was demanded by the plaintiff was damages and not interest. It was also contended that the Trial Court having, in exercise of its discretion, awarded interest at the rate of 4½% *pendente lite*, the High Court ought not to have interfered with the discretion of the Trial Court. Reliance was placed upon the decision in *Mahabir Prasad Rungta v. Durga Datt*(¹) and *Union of India v. A. L. Rallia Ram*(²).

We are unable to agree with the submission of the learned Counsel for the appellant. Under the Interest Act, 1839, "upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: provided that interest shall be payable in all cases in which it is now payable by law". The claim of the present plaintiff was not for the payment of any unliquidated damages or for the payment of any amount arising out of an inchoate or contingent obligation. It was for the payment of a sum which was ascertainable on a calculation made in accordance with the terms of the agreement. It was clearly a "sum certain" within the meaning of the Interest Act. In any case it would be a debt, i.e., "a sum of money which is now payable or will become payable in the future by reason of a present obligation". The further question for consideration is whether the plaintiff had made a demand of payment, "so as such demand shall give notice that interest will be claimed from the date of such demand until the term of payment". The plaintiff issued two notices to the defendant demanding payment. The first was on 21st December, 1950, and the second was on 5th April, 1953. There is no dispute that in the second notice of demand of payment of definite claim for interest had been made. In the first notice it was said "by withholding payment of his bills absolutely, the Government has put my client to enormous loss by way of interest also I intimate to you

(1) [1961] 3 S.C.R. 639.

(2) [1964] 3 S.C.R. 164.

A through this notice that the said Shri Ramsingh claims a sum of Rs. 2,50,519/- from the Rajasthan State as under :

1. Unpaid bills for work done :	Rs. 1,37,177/-
2. Interest on the above.	11,511/-
3.	
4.	
5.	
6.	
Total :	<u>Rs. 2,50,519/-</u>

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C The learned counsel submitted that what was claimed by the plaintiff in this notice was damages and not interest and that too for the past, without any indication that future interest was also being claimed. It is true that the plaintiff mentioned "loss by way of interest", suggesting that what he was claiming was compensation for the damage suffered by him. We are, however, not prepared to construe the notice so literally or technically. The mention of loss was only explanatory. The plaintiff was, without any manner of doubt claiming interest as such. Nor are we impressed with the argument that there was no claim for future interest. In our opinion a claim for past interest would necessarily imply a claim for future interest, vide *Kuppuswami Pillai v. Madras Electric Tramway Co. Ltd.*⁽¹⁾ and *Sita Ram & Ors. v. Mrs. S. Sullivan*⁽²⁾.

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In *Mahabir Prasad Rungta v. Durga Datt*⁽³⁾ interest was disallowed on the ground that the notice which was given did not specify the sum which was demanded and therefore, the Interest Act did not apply. On the question whether interest could be awarded on grounds of equity it was held that what was claimed by Durga Datt was interest as damages and that it could not, therefore, be awarded. The suit itself was one for damages for breach of contract. We do not think that this case is of any assistance to the appellant. In *Union of India v. A. L. Rallia Ram*, (supra) the Arbitrator had awarded interest by way of compensation since the party had to borrow a large amount of money from its banker to meet its obligation under the contract. The Supreme Court pointed out that interest could not be awarded by way of damages. The Supreme Court also noticed that an Arbitrator was not a Court within the meaning of the Interest Act. No question arose before the Supreme Court whether interest could not be awarded under the Interest Act merely because the notice demanding payment

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(1) I.L.R. 23 Mad. 41.

(2) [1901] 2 P.L.R. 464.

(3) [1961] 3 S.C.R. 639.

mentioned that the plaintiff had suffered loss of interest also. In our view the condition prescribed by the Interest Act that such demand shall give notice to the debtor that interest shall be claimed is fulfilled if interest is claimed, notwithstanding the fact that the notice of demand explains that loss by way of loss of interest has been suffered. To take any other view would be to be over technical in the construction of pleadings, including notices preceeding the action.

We must notice here an argument advanced by the learned counsel for the appellant that the contract prohibited the award of interest. He relied upon the following sentence occurring in paragraph 16 of the Contract dated 11th May, 1947: "Neither the earnest money deposit nor the with-held amount shall bear any interest". This sentence far from supporting the case of the appellant appears to support the case of the plaintiff. The reference to "the with-held amounts" is to the amounts representing five per cent of the running bills which are required to be with-held at the time of payment of the running bills. The provision that the contractor is not entitled to interest on these with-held amounts appears to imply that interest is claimable on other amounts due to the contractor.

While awarding interest *pendente lite* the Trial Court adopted the rate of 4½% but the Trial Court gave no reasons for so doing. The High Court considered the matter in some detail and having regard to the various continuous defaults committed by the defendant and its Officers, the High Court enhanced the rate of interest to 6%. The High Court was justified in doing so and we see no reason to interfere with the discretion exercised by the High Court. In the result the appeal is dismissed with costs.

N.V.K.

Appeal dismissed.