

**In the Court of Ashwani Kumar Goel, Additional District Judge,
Rohtak.**

Civil appeal No.97 of 8.4.2015.

Date of Institution:14.6.2012/7.1.2015.

Date of Decision:21.7.2015.

- 1.Uttar Haryana Bijli Vitran Nigam Limited, Sector-6, Shakti Bhawan, Panchkula through its Chairman.
- 2.Superintending Engineer, Uttar Haryana Bijli Vitran Nigam Limited, Rohtak.
- 3.S.D.O. OP Sub Division No.2, U.H.B.V.N.L. Limited, Rohtak.
- 4.A.E.E. Vigilance, U.H.B.V.N.L. Rohtak.

---Appellants-defendants.

Versus

Devi Dayal son of Shri Brij Mohan, Proprietor Gurukirpa Ice Factory, near Sugar Mill, Rohtak.

---Respondent-plaintiff.

Civil appeal against the judgment and decree dated 11.4.2012 passed by the Court of Shri P.R. Sharma, the then learned Addl. Civil Judge (Senior Division), Rohtak.

Argued by : Shri Ajay Gandhi, counsel for the appellants.
Shri O.P. Gupta, counsel for the respondent.

JUDGMENT

This is an appeal against the judgment and decree dated 11.4.2012 passed by the Court of Shri P.R. Sharma, learned Additional Civil Judge (Senior Division), Rohtak, by virtue of which, the suit of the respondent-plaintiff (hereinafter to be referred as the respondent) filed against the appellants-defendants (hereinafter to be referred as the appellants) for recovery of Rs.4,45,200/- has been decreed with costs.

2. Briefly the case of the respondent-plaintiff is that he used to run an iron factory in the name and style of M/s. Devi Dayal near Shiv Mandir Rohtak. The respondent had taken an electricity connection with account No.MS-4-204. On 4.6.2006, the appellant No.4 visited the premises of the factory and imposed penalty to the tune of Rs.10,60,000/- on account of theft of electricity. Due to fear,

the respondent deposited the aforesaid amount with the appellants as per receipt No.68/12016. The respondent filed a civil suit challenging the illegality of the aforesaid electricity bill. In that suit, an Arbitrator was appointed and the case was sent for arbitration.

3. The arbitrator passed an award on 27.2.2008. Against the Arbitrator award, an application under Section 34 of the Arbitration and Conciliation Act, 1996 was filed but that application was dismissed on 11.2.2009. The appellants-defendants had illegally and malafidely retained Rs.10,60,000/- belonging to the respondent. Now, the respondent is entitled to interest at the rate of 12% per annum from the date of deposit till realisation.

4. In the written statement, besides taking preliminary objections on the ground of lack of jurisdiction etc. the suit is resisted on the ground that as per the arbitration award, the appellants have already paid Rs.10,60,000/-. There was no order of the payment of the interest nor the same has been claimed by the respondent before the Arbitrator, so the question of grant of interest does not arise. The rest of the averments have been denied. A prayer for dismissal of the suit has been made.

5. Rejoinder to the written statement was not filed. On the pleadings of the parties, the following issues were framed by the learned trial Court :-

1. Whether the plaintiff is entitled to recover the suit amount as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPP
3. Whether this Court has no jurisdiction to try the present suit?OPD
4. Relief.

6. In order to prove his case, the appellant-plaintiff himself appeared in the witness box as PW1 and examined Rohtas as PW2. He also relied upon the following documents.

Exhibit P1 : Copy of award.

Exhibit P2 : Notice

Exhibit P3 to 7 : Postal receipts.

7. On the other hand, the appellants-defendants examined Pardeep Kumar as DW1 and Raj Kumar, Record Keeper as DW2. The appellants also relied upon the documents i.e. copy of claim petition Exhibit D1, copy of replication in claim petition Exhibit D2 and copy of statement of the respondent Exhibit D3.

8. After hearing the contentions of the learned counsel for the parties, the learned trial Court decided issue No.1 in favour of the respondent holding that the respondent is entitled to interest to the tune of Rs.4,45,200/- from the appellants. Issues No.2 and 3 were also decided in favour of the respondent holding that the Civil Court has jurisdiction to decide the case and he is entitled to the interest. Consequently, the suit was decreed for recovery of Rs.4,45,2000/- along with interest at the rate of 9% per annum from the date of deposit of the amount till realisation.

9. Feeling aggrieved with the said impugned judgment and decree dated- 11.4.2012 the appellants-defendants have filed the present appeal.

10. Along with the appeal, an application for condonation of delay in filing this appeal has been filed by the appellants praying to condone the delay in filing this appeal.

11. I have heard the contentions raised by the learned counsel for the parties and have gone through the material available on the record.

12. The learned counsel for the appellants has argued that in this case, the civil court judgment and decree dated 11.4.2012 have been challenged. However, there is delay in filing the instant appeal as the same has been filed on 13.6.2012. He pointed out that the delay in filing the appeal occurred as after passing of the decree, the case was sent to the Legal Remembrance, Haryana Government, where opinion was given for filing the appeal after lapse of period of appeal. Since, due to administrative exigencies, the delay occurred in filing this appeal, a prayer for condonation of delay has been made.

13. He further pointed out that the learned trial Court has granted interest on the amount awarded by the Arbitrator despite the fact that no such prayer was made by the respondent while filing the civil suit or conducting the proceedings before the Arbitrator. Since, the Civil Court has no jurisdiction to grant any interest on the payment of money, the learned trial Court has committed error in passing the decree in question. He prayed for acceptance of this appeal. He relied upon the authorities Commissioner of Income Tax, Bombay Versus T.P. Kumaran 1996(4) SCT 287 and Improvement Trust Ludhiana Versus Ujagar Singh and others 2010(3) Civil Court Cases 374 (SC).

14. On the other hand, the learned counsel for the respondent Shri O.P. Gupta, Advocate has argued that it is not disputed that the respondent-plaintiff has deposited Rs.10,60,000/- with the appellants, who did not repay this amount until the arbitration award was challenged by them and they remained unsuccessful before the learned District Judge, Rohtak. He argued that the amount deposited with the appellant has become a debt and as per Section 3 of the Interest Act, 1978, the respondent is certainly entitled to get interest on the delayed payment. He further pointed out that no reason has been given by the appellants for causing

delay in filing this appeal and no explanation for condonation of delay in filing this appeal has been given. He prayed for the dismissal of this appeal.

15. I have considered the aforementioned contentions.

16. After considering the contentions of the learned counsel for the parties and having gone through the material available on record, this Court is of the considered view that in this case, it is an admitted fact that the respondent-original plaintiff was the consumer of the appellants. It is also an admitted fact that the amount of Rs.10,60,000/- was deposited by the respondent with the appellants when a case of theft of electricity was detected. It is an also admitted fact that in a civil suit filed by the respondent, the appellants agreed to send the civil suit for arbitration and Arbitrator has given an award. It is also an admitted fact that the appellants have challenged the validity of the said award before the learned District Judge, Rohtak in an application filed under Section 34 of the Arbitration and Conciliation Act and the application was dismissed on 11.2.2009. Now, the question is only of payment of interest on the amount deposited by the respondent with the appellants i.e. whether or not the respondent is entitled to get the interest on this amount ?

17. From the facts disclosed above, it is clear that the amount deposited by the respondent with the appellants has become a debt payable by the appellants to the respondent. There is no terms and conditions regarding the payment of interest at the time of deposit of the amount to the tune of Rs.10,60,000/- with the appellants by the respondent.

Section 3 of the Interest Act, 1978 is reproduced here for facilitate reference :-

“(a) If the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then from the date

when the debt is payable to the date of institution of the proceedings.

(b) If the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed to the date of institution of the proceedings.”

In the instant case also, as discussed above, the amount to the tune of Rs.10,60,000/- deposited by the respondent under protest with the appellants has become a debt and the respondent is certainly entitled for the interest on the amount deposited by him from the day when the debt is payable. In this case, after the deposit of the amount, the respondent had filed a civil suit challenging the validity of the impugned notice by virtue of which he was directed to deposit Rs.10,60,000/-. Meaning thereby, the demand of the money was made by the respondent at the time of filing of the said suit. So, he is entitled to get the interest on the amount to the tune of Rs.10,60,000/- from the date when he instituted the civil suit.

18. The contention of the learned counsel for the appellants that in this case no demand of interest was made by the appellants neither at the time when he instituted the suit nor at the time of arbitration proceedings, so, he estopped by his own act and conduct from claiming the interest. However, this contention of the learned counsel for the appellants does not hold much force for a simple reason that in this case, it has been held by the learned District Judge, Rohtak while deciding the application under Section 34 of the Arbitration Act that the Award dated 27.2.2008 is legally valid and perfect document. At the time of filing of the civil suit, the respondent had not conceived that much time will be taken by the

Civil Court in the arbitration proceedings or in deciding the application by the learned District Judge so, he did not claim interest on this amount. In those proceedings, the legality of the notice was challenged and return of the money was the consequential relief. If much time is spent in deciding the controversy, then the appellants cannot use the impugned amount without paying any interest on it. In these circumstances, the question of estoppel does not arise in this case and this contention of the learned counsel for the appellants also does not hold much force. The ratio of the case titled Commissioner of Income Tax, Bombay Versus T.P. Kumaran's case (supra) is not applicable on the facts of this case and the same are quite distinguishable from the facts of the present case and cannot be relied upon.

19. So far as the question regarding delay in filing the appeal is concerned, in this case, the learned trial Court has passed the impugned order on 11.4.2012 and this appeal has been preferred on 14.6.2012. A perusal of the record shows that the copy of judgment has been obtained on 20.4.2012, so, there is delay nearly 24 days in filing this appeal. Keeping in view the fact that some time is being taken by the superior officers in recommending the appeal against the judgment and it takes some time and keeping in view the fact that a lis should be decided on merits, the application for condonation of delay is hereby allowed. However, the appeal stands dismissed with costs. Decree sheet be prepared accordingly. Trial court record along with a copy of this judgment be returned. File after due compliance be consigned to the record room.

Announced in open Court.
21.7.2015.

(Ashwani Kumar)
Addl. District Judge,
Rohtak.

Note: All the seven pages of this judgment have been checked and signed by me.

(Ashwani Kumar)
Additional Sessions Judge,
Rohtak, 21.7.2015.

Present : Shri Ajay Gandhi, counsel for the appellants.
Shri O.P. Gupta, counsel for the respondent.

On the request of the learned counsel for the parties, the appeal is now adjourned to 20.7.2015 for arguments.

(Ashwani Kumar)
ADJ, Rohtak,
17.7.2015.

Present : Shri Ajay Gandhi, counsel for the appellants.
Shri O.P. Gupta, counsel for the respondent.

Arguments heard. For orders, to come upon 21.7.2015.

(Ashwani Kumar)
ADJ, Rohtak,
20.7.2015.

Present : Shri Ajay Gandhi, counsel for the appellants.
Shri O.P. Gupta, counsel for the respondent.

Vide my separate judgment of even date, the application for condonation of delay has been allowed, whereas the appeal has been dismissed with costs. Decree sheet be prepared accordingly. File after compliance be consigned to the record room.

Announced in open Court.
21.7.2015.

(Ashwani Kumar)
Addl. District Judge,
Rohtak.

