

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.3656-3659/2000

(From the judgement and order dated 13/12/1999 in CR 6219/99 ETC.  
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

M/S. OM PARKASH GITA DEVI & CO. & ORS.

Petitioner (s)

VERSUS

FOOD CORPN. OF INDIA

Respondent (s)

( With prayer for interim relief)  
With

SLP(C)No.8705-8706/2000

Date : 30/11/2000 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI  
HON'BLE MR. JUSTICE S.N. PHUKAN

For Petitioner (s) Mr. RK. Jain, Sr.Adv.  
IN SLPs.3656-59 Mr. Aseem Mehrotra, Adv.  
Mr. Bharat Singh, Adv.for  
Mr. Ugra Shankar Pd.,Adv.

In SLPs.8705-06/00 Mr. Aseem Mehrotra, Adv. for  
Mr. US. Prasad, Adv.

For Respondent (s) Mr. SR. Sharma, Adv.  
Mr. Ajay Pal Singh, Adv.  
Mr. RU. Upadhyay, Adv.

UPON hearing counsel the Court made the following  
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C.A.Nos. @ SLP(C)Nos.3656-3659/2000@@  
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Leave is granted.  
The appeals are allowed. There will be no order as to  
costs.

C.A.Nos. @ SLP(C)Nos.8705-8706/2000@@  
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Leave is granted.  
The appeals are dismissed. No costs.

.SP1

(S.Thapar)

(Kanwal Singh)@@

AA  
PS to Registrar Court Master@@  
AA

Two signed orders are placed on the file.

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. ....OF 2000@@  
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(Arising out of SLP(C)Nos.3656-3659 of 2000)

M/s Om Prakash Gita Devi & Co. & Ors.

Appellant (s)

Versus

Food Corporation of India

Respondent (s)

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Leave is granted.

These appeals are directed against the order of the High Court of Punjab and Haryana in Civil Revision Nos.6219, 6220, 6221 and 6222 of 1999 dated December 13, 1999.

The facts in these cases lie in a narrow compass. The appellant constructed four godowns on his lands. The construction project was financed by the State Bank of Patiala. The arrangement between the parties was that the loan obtained from the State Bank of Patiala will be utilised by the appellant for constructing four godowns which would be taken on lease by the respondent and the rent thereof would be paid directly to the bank.

It appears that the lease was terminated by the respondent before the expiry of period of lease and therefore

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the rent for the period 1st March, 1981 to 2nd April 1984 became the subject matter of dispute for all the four godowns. The dispute between them was referred to an Arbitrator who has passed an Award granting the rent for the said period together with interest at 18 per cent per annum. Four awards were passed in respect of the four godowns. Those Awards were made Rule of the Court by the learned Subordinate Judge, First Class, Amritsar on September 13, 1995. The respondents carried the matters in appeal, in Civil Appeal No.(RBT) 302 of 1995, before the learned Additional District Judge Amritsar who allowed the appeal only in respect of rate of interest by reducing the same from 18 per cent to 6 per cent by his order dated September 8, 1999. Against the orders passed by the appellate authority, four revisions were filed in the High Court which were dismissed by the orders under challenge. That is how the appellant is before us in these appeals.

Mr. R.K. Jain, learned Senior Counsel appearing for the appellant contends that the order of the learned Appellate Judge as well as of the High Court reducing the rate of interest is wholly illegal and untenable in law. His contention is that once the Arbitrator has power to Award interest and the Award has been made Rule of the Court, there was no reason why the Appellate Court should reduce the rate

of interest particularly when the transaction between the parties, having regard to the background in which the lease was entered into between the appellant and the Food Corporation of India, was in the nature of commercial transaction.

Mr. R.U. Upadhyay, learned counsel appearing for the Food Corporation of India contends that the transaction was not a commercial transaction and therefore the Arbitrator ought not to have awarded interest at the rate of 18 per cent per annum. As such the appellate court was right in reducing the rate of interest from 18 per cent to 6 per cent per annum.

On these contentions, the only question that arises for our consideration is what is the appropriate rate of interest that could be awarded to the appellant having regard to the nature of the transaction.

It is not in dispute that the Arbitrator had power to award interest. It is only the rate of interest that is in controversy. It cannot be denied that on account of premature termination of lease by the FCI, the appellant had to bear the burden of interest at the rate of 18 per cent - the rate which is being charged by the bank on the amount of loan obtained by

him. It is also brought to our notice that four suits were filed by the bank against the appellant, the rate of interest claimed is 17 and 1/2 per cent with quarterly rest which will be even more than 18 per cent per annum. Under Section 3 of the Interest Act, 1978, the Arbitrator has power to Award interest on the amount awarded by him in view of the definition in Section 2(a) of the said Act. The power of the Arbitrator extends to awarding interest at the rate not exceeding the current rate of interest. The expression "current rate of interest" has been defined in clause (b) of Section 2 to mean the higher of the maximum rate of interest that may be paid on different classes of deposits (other than those maintained in savings account or those maintained by the charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949. It must be noticed that the current rate of interest is the maximum that could be awarded by the Arbitrator. That is not the rate which should invariably be awarded in every case where interest at the maximum rate is awarded, specific reasons must be given to justify the same in the circumstances of the case. On the facts of this case, the claim which was allowed against the respondent relates to recovery of arrears of rent. Though

in the circumstances in which the transaction of loan was entered into, resulted in the appellant bearing burden of higher rate of interest yet they do not render the agreement of lease between the appellants and the respondents, a commercial transactions. All those circumstances will only be relevant in coming to the conclusion about the rate of interest which should be awarded by the Arbitrator.

Having heard the learned counsel on the question of

current rate of interest we are of the view that in the facts and circumstances of these appeals, the rate of interest at 12 per cent per annum would meet the ends of justice. We accordingly modify the order under challenge by allowing the appeals. We make no order as to costs.

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.....J  
(Syed Shah Mohammed Quadri)

New Delhi,  
November 30, 2000.

.....J  
(S.N. Phukan)

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. ....OF 2000@@  
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(Arising out of SLP(C)Nos.8705-8706 of 2000

Dharam Pal

Appellant (s)

Versus

Executive Engineer & Anr.

Respondent (s)

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Leave is granted.

The dispute in these appeals relates to rate of interest awarded by the Arbitrator, which was reduced by the High Court in revision.

The appellant is a Government Contractor. He carried on the work of construction of road. The disputes between the Executive Engineer, State of Haryana and the appellant was referred to the Arbitrator. By Award dated 5th April, 1996, the Arbitrator awarded a sum of Rs.3,72,169 together with interest at 18 per cent per annum for the period which covered pre-reference, pendente lite and future. Learned Civil Judge, Senior Division made the Award Rule of the Court rejecting the

objection of the respondent on November 16, 1996. The learned District Judge, Kaithal on appeal by the Executive Engineer - respondent herein disallowed the interest for pre-reference

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period and reduced the interest to 15 per cent per annum pendente lite. However, he confirmed the rate of interest at 18 per cent for the period from the date of the Award to the date of the payment. Against that order the respondent filed revision petition before the High Court. By its order dated 8.9.1999, the High Court disallowed the interest pendente lite having regard to the term of the agreement between the parties, namely, clause 25 which is extracted at pages 2 and 3 of the order of the High Court. Insofar as the future interest is concerned, the High Court granted simple interest at the rate of 12 per cent per annum under Section 29 of the Arbitration Act. On the facts and in the circumstances of these cases we are unable to say that granting 12 per cent interest per annum by the High Court is unreasonable so as to warrant our interference in these appeals. We, therefore, dismiss the appeals. No costs.

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.....J  
(Syed Shah Mohammed Quadri)

New Delhi,  
November 30, 2000

.....J  
(S.N. Phukan)