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C.A.No. 7373 OF 1997
ITEM No. 105
Court No. 3
SECTION XVI

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

CIVIL APPEAL NO. 7373 OF 1997

THE GOPALPUR TEA CO. LTD.

.....
APPELLANT (S)

VERSUS

MOTILAL JINDAL (D) BY LRS.

.....
RESPONDENT (S)

(With appln. for stay and with office report)

Date : 16/12/2003

This/These Appeal(s) was/were listed for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI

HON'BLE MR. JUSTICE ASHOK BHAN

For Appellant (s) Mr. Dipankar P. Gupta, Sr. Adv.
M/s C. Mukund, Ashok Jain, Pankaj Jain,
Rakesh Jain, B.K. Jain, and Sushil Kumar Jain, Advs.

For Respondent (s)

For Lrs. Nos.1, 3-5 of

sole deceased rr. Mr. Rana Mukherjee, Adv.

M/s Siddharth Gautam, Ardhendhumauli Kr. Prasad and Goodwill Indeevar, Advw.

For Lr No.2 of sole

deceased rr. Ms. Sumita Ray, Adv. (NP)

UPON hearing counsel, the Court made the following

O R D E R

The appeal is allowed and the impugned order is modified in terms of the signed order.

KALYANI

(RADHA R. BHATIA)

COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7373 OF 1997

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RESPONDENT (S)

O R D E R

The order under appeal was passed at a stage of the proceeding initiated under Sections 433/434 of the Companies Act, 1956. The respondent staked a claim for recovery of a debt due of Rs. 5,16,617.99p. for the machinery and other parts, supplied, with interest calculated at the rate of 18 per cent per annum. Vide order dated 7th January, 1987, the learned Company Judge admitted the petition but gave the appellant an opportunity of payment of the amount of Rs. 5,16,617.99p. with interest calculated at the rate of 12 per cent per annum or to seek stay of the proceedings. Several orders passed in between by the learned Company Judge and also by this Court need not detain us. The crux of the matter is whether the appellant was actually liable to pay the amount claimed by the respondent or there was a bona fide dispute as to the amount claimed by the respondent.

During the course of hearing, the learned counsel for the respondent submitted that although the respondent is entitled to compound interest, the respondent does not press his claim and would be satisfied if the principal amount due and payable to the respondent is paid by the appellant-Company with simple interest calculated at a reasonable rate which in his submission ought to be 12 per cent as noted by the learned Company Judge in his order dated 7th January, 1987. The learned senior counsel for the appellant-Company, on the other hand, submitted that there was a bona fide dispute as to the amount actually due and payable and according to him no liability for payment of interest could be fastened on the appellant.

Having heard the learned counsel for the parties and having perused the several documents available on record we are satisfied that the bonafides of the claim to the extent of Rs. 5,16,617.99p. as claimed by the respondent cannot be doubted. The litigation has been pending for almost 17 years by this time and it would meet the ends of justice, if the appellant-Company is allowed liberty of making payment of Rs. 5,16,616.99p. with simple interest calculated at a reasonable rate so as to terminate the winding up proceedings. Though there has been a difference between the parties on the question of claim for interest we are satisfied that inasmuch as the appellant has benefitted itself by retaining the amount while respondent has been deprived of the use of the same, the appellant-Company should pay a simple interest calculated at the rate of 10 per cent per annum on the principal amount due and payable to the respondent.

Accordingly, the appeal is allowed and the impugned order is modified. The appellant-Company is allowed the liberty of making payment of the above said principal amount with interest calculated at the rate of 10 per cent per annum from 7th January, 1987 till the date of payment. The payment shall be made within three months from today. In the event of the payment being made and certified before the learned Company Judge, winding up proceedings shall stand terminated. In the event of failure to make the payment, the appellant shall be at liberty to seek revival of the winding up proceedings and the order dated 7th January, 1987 shall operate. The bank guarantee furnished by the appellant pursuant to the interim order of this Court shall continue to remain in operation till the date of payment. In the event of failure to make the payment, the bank guarantee shall be subject to such directions as may be made by the learned Company Judge.

.....J
(R.C. LAHOTI)

.....J
(ASHOK BHAN)

NEW DELHI;

DECEMBER 11, 2003.