

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.4656 OF 1998

RAJASTHAN HOUSING BOARD & OTHERS
(s)

Appellant

VERSUS

KRISHNA KUMARI
t(s)

Respondent

(with application for ex-parte stay)

WITH

CIVIL APPEAL NO. 5439 OF 1998

(with application for directions)

Date: 10/08/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE S.B.SINHA

For Appellant(s)

Mrs. Sheela Goel, Adv.

in CA 4656/98

Mr. Nikhil Goel, Adv.

In CA 5439/98

Mr. B.D. Sharma, Adv.

For Respondent(s)

RR-Ex-Parte

Mr. Naresh Kumar, Adv.(Not Present)

UPON hearing counsel the Court made the following

O R D E R

Appeals are partly allowed in terms of the signed order with no order as to costs.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4656 OF 1998

Rajasthan Housing Board & Others

..Appellants

Versus

Krishna Kumari

..Respondent

WITH

CIVIL APPEAL NO. 5439 OF 1998

O R D E R

These two appeals have been filed against a common order passed by the

Monopolies & Restrictive Trade Practices Commission (for short 'the Commission')

in RTPE Nos. 135 and 130 of 1994 filed by the respondents under Section 10(a)(i)

read with Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969

(for short 'the Act') along with an application for temporary injunction under Section

12-A of the Act wherein the Commission while dismissing the complaints filed by

the respondents directed that the respondents shall not be liable to pay interest on

the amount due during the period of stay granted by the Commission.

The facts are taken from CA No.4656/1998:

Respondent purchased a booklet No.65240 (being a proposal/invitation)

along with application form for registration for purchase of a house under the

medium income group 'B'. The estimated cost of the house was to be Rupees fifty

thousand only. Appellants allotted the House Number 17E/746 situated in

Chopasani, Jodhpur, since the consideration of the house was to be fixed on the

date of allotment, after adjustment of Rupees thirty five thousand already paid by the

respondent, the appellants vide their letter dated 30th April, 1993 demanded a final

consideration of Rupees 2,25,000/- (Rupees Two lacs twenty five thousand only).

This payment was to be made within three months failing which the allotment was

liable to be cancelled. Under the Scheme, on the delayed payment of any amount /

installment, the allottee is liable to pay interest which is stated to be 20% .

Aggrieved against the demand raised by the appellants, respondent filed a

complaint under Section 10(a)(i) read with Section 37 of the Act along with an

application for temporary injunction under Section 12-A of the Act. The Commission

vide interim order dated 15th September, 1993 restrained the appellants from

cancelling the allotment. The Commission vide its order dated 24th June, 1998 while

arriving at the finding that no restrictive trade practices by demanding the enhanced

money had been indulged and dismissed the complaint. However, while doing so, it

was observed:

"However, as we have passed interim orders in these cases on 15.9.1993 that the respondents are restrained from cancelling the allotments of the houses of the complainants or from giving effect to the cancellation order, if already passed, the respondents shall not ask for payment of interest on the amount due from the complainants from 1.9.1993 to 30.6.1998. If the complainants make the payment in accordance with the letter dated 30.4.1993 of the respondents, the respondents shall not charge any penal interest from the complainants. Thus, the complainants shall pay the balance amount within 60 days from 1.7.1998 and the first instalment of the balance payment will commence from 1.9.1998."

Aggrieved against the restrained put on the appellants that they would not

ask for the payment of interest on the amount due from the complainants from

1.9.1993 to 30.6.1998 i.e. the period during which the stay granted by the

Commission was in operation, have come up in these appeals.

This Court in a number of decisions has repeatedly emphasised that in view of the legal maxim "actus curiae neminem gravabit" which means that an act of Court shall prejudice no man, has held that the claimants/allottees who have obtained stay will not be justified in seeking waiver of claim of interest over the arrears which remain unpaid because of the stay granted by the Court. In Gursharan Singh vs. New Delhi Municipal Committee reported in (1996) 2 SCC 459, this Court observed in para 13 as follows:

"13. In view of the legal maxim "actus curiae neminem gravabit" which means that an act of court shall prejudice no man, NDMC is justified in making a claim for interest over the arrears which have remained unpaid for more than 12 years because of the interim orders passed by this Court....."

In State of M.P. vs. M

.V.Vyavsaya &

Co. reported in (1997) 1 SCC 156, this

Court in paras 15 & 19 observed as follows:

"15.....This Court has also repeatedly emphasized the inadvisability of making interim orders which have the effect of depriving the State (the people of the State) of the revenues legitimately due to it. The Court should not take upon itself the responsibility of staying the recovery of amounts due to the State unless a clear case of illegality is made out and the balance of convenience is duly considered. Otherwise, the odium of unlawfully depriving the State/the people of the monies lawfully due to it/them would lie upon the Court....."

19.....It is the duty of the court to try to repair the damage to the extent possible. No one should be allowed to suffer on account of the act(s) of the court...."

In Kanoria Chemicals & Industries Ltd. vs. U.

P.State Electricit

y Board

reported in (1997) 5 SCC 772, this Court again in para 11 observed as follows:

"11..... This Court held expressly that the grant of an injunction does not relieve the consumers of their obligation to pay the charges at the enhanced rates and, therefore, the demand for surcharge/interest for such period is not illegal....."

In Style (Dress Land) vs. Union Territory, Chandigarh reported in (1999) 7

SCC 89, this Court in Paras 15 & 16 observed as under:

"15....It is a settled principle of law that as and when a party applies and obtains a stay from the court of law, it is always at the risk and responsibility of the party applying. Mere passing of an order of stay cannot be presumed to be the conferment of any additional right upon the litigating party....."

16. The High Court was, therefore, not wrong in directing the payment of interest on the amount of arrears of rent for the period when the stay order was obtained till the period the writ petitions were dismissed.

We, however, feel that awarding of interest @ 18% per annum from the aforesaid period was on excessive side.....In our opinion 15% per annum interest for the aforesaid period would have been just and proper. We, however, agree with the findings of the High Court that the respondents are free to charge appropriate interest on the amount of arrears of rent between 1.3.1992 to the

date when the stay orders were passed by the High Court...."

In view of the above judgments, we need not dilate on the subject any more and respectfully following the dictum in these judgments, set aside the part of the order reproduced in the earlier part of this order and the appellants shall be entitled to charge interest for the period during which stay granted by the Commission was in operation. Although the amount of interest in brochure is stated to be 20% which is unconscionable in the facts and circumstances of the case, we reduce the same to 15% per annum. The appellants shall be entitled to charge interest on the amount due for the period during which stay remained in operation at the rate of 15% per annum.

In case the possession of the house has not been handed over to the respondent, then the appellants shall handover the possession of the house on payment of the principal amount, if any, not already paid along with interest for the period during which the stay granted by the Commission was in operation.

Appeals are partly allowed with no order as to costs.

.....J.

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[ASHOK BHAN]

NEW DELHI;
.....J.

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AUGUST 10, 2005.

[S.B.SINHA]