

Ram Phool Vs. Meer Singh and Another

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Court : Punjab and Haryana

Decided On : Aug-21-2013

Appellant : Ram Phool

Respondent : Meer Singh and Another

Judgement :

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH R.S.A.
No.124 of 1990 (O&M) Date of decision:

21. t August, 2013 Ram Phool .. Appellant Vs. Meer Singh and another ..
Respondent Coram: Hon'ble Mr. Justice Surinder Gupta Present: Mr. Alok Jain,
Advocate for the appellant. None for the respondents. Surinder Gupta, J Having
lost before both the courts below, the defendant- appellant has preferred this
regular second appeal.

2. The substantial question of law which arises in this case for determination is,
whether interest on the amount advanced by the plaintiff to the defendant No.1
(appellant) can be allowed in the absence of any settled terms in writing with
regard to payment of interest?..

3. The plaintiff Meer Singh (herein referred as, 'the plaintiff') filed the suit against
Ram Phool and Popular Aluminum Utensils Industries for recovery of `5,280/-,
which included `4,000/- as principal and `1,280/- towards interest @ 1% per
month. The basis of the claim of the plaintiff is the writing in Bahi (Ex.PW1/8),

which is as follows :- Dated:

2. 1.1983 On 2.1.1983 Ram Phool son of Shri Har Lal has taken `4,000/- for factory. Sd/- Ram Phool Singh Deepak Kumar 2.1.1983. 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -2- 4. The plaintiff pleaded that the interest was settled @ 1% per month and the liability was of defendant No.1 Ram Phool Singh and the defendant No.2 Popular Aluminum Utensils Industries through its owner Har Lal, jointly and severally to pay the loan amount.

5. The defendant No.1 denied his liability to pay any amount and also execution of writing as alleged by the plaintiff. He further alleged that he has no concern whatsoever with the defendant No.2, which is owned by his natural father Har Lal, but he was given in adoption to Bhagwana and since long he has been residing with his adopted father.

6. The defendant Non.2 in its separate written statement denied his liability to make any payment to the plaintiff. It has further been pleaded that the defendant No.2 has no concern with regard to the alleged dealing in between the plaintiff and the defendant No.1. It was reiterated that the defendant No.1 was given in adoption to Bhagwana and he has no concern with the business of defendant No.2.

7. The pleadings of the parties led to the framing of the following issues by the trial court :- 1. Whether the defendant No.1 borrowed a sum of `4000/- from the plaintiff on 2.1.1983 and executed a bahi entry to this effect, agreeing to repay the said amount along with interest @ `1% per month?.OPP 2.Whether the defendant is adopted son of Bhagwana son of Chet Ram and has no concern with his natural father Har Lal. If so, its effect?.OPD Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -3- 3. Whether the suit is not maintainable in the present form?.OPD 4.Whether the defendants are entitled to special costs under Section 35-A CPC?.OPD 5.Relief.

8. The trial court decreed the suit against both the defendants and their liability was held to be joint and several. The plea of adoption of defendant No.1 by Bhagwana was discarded. The first appellate court maintained the decree of the trial court against Ram Phool Singh-defendant No.1 (appellant in this appeal) and dismissed the suit of the plaintiff against defendant No.2.

9. Arguments heard. Record perused.

10. Learned counsel for the appellant has argued that there was no agreement between the parties with regard to payment of interest. No covenant or custom prevailing in the marketing with regard to payment of interest was proved. The parties were related to each other. Both the courts below have committed grave error of law while decreeing the suit of the plaintiff with interest @ 1% per month and allowing pre-suit interest as well.

11. The suit of the plaintiff is based on the Bahi writing Ex.PW1/A wherein no terms with regard to payment of interest on the amount of `4,000/- advanced to Ram Phool Singh is settled. The plaintiff Meer Singh appeared in this case as PW-2. He has stated that at the time of scribing the writing in the Bahi, the interest was settled @ 1% per month. However, his statement cannot be given any weight in the absence of any mention Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -4- regarding terms of payment of interest in the Bahi writing. In case this rate of interest had been settled at the time of writing Ex.PW1/8, the same must have been incorporated in the writing itself. Hari Singh (PW3) has stated that the amount of `4,000/- was advanced to Ram Phool Singh in his presence. He has also stated about the settlement of interest @ 1% per month but his statement with regard to settlement of interest cannot be relied upon in the absence of any mention about the same in the Bahi writing.

12. not the question which arises for determination in this appeal is two folds :- i) Whether pre-suit interest can be awarded to the plaintiff in the absence of any settlement or proof of custom prevalent in the market regarding payment of interest?. ii) Whether pendente-lite and future interest can be allowed to the

plaintiff?.

13. In this regard reference can be made to Section 3 of the Interest Act, 1978 (hereinafter referred to as, 'the Act'), which provides as follows :-

3. Power of court to allow interest:- (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, - Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -5- (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: Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment. (2) xxx xxx xxx (3) Nothing in this section,- (a) shall apply in relation to- (i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or (ii) any debt or damages upon which payment of interest is' barred, by virtue of an express agreement; (b) and (c) xxx xxx xxx.

14. Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'the Code') also relates to the interest which can be allowed in a suit and provides as follows :- Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -6- Section 34- Interest - (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the

principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit : Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions. Explanation I and II xx xx (2) xx xx xx.

15. It is clear from the perusal of Section 3 (1) of the Act that the court in its discretion and within the parameters of this provision grant interest if the proceedings relates to debt from the date when the debt is payable as per a written instrument; when date of payment is not settled, Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -7- from the date mentioned in legal notice till the date of institution of the proceedings. This provision, as such, relates to pre-suit interest which could be allowed.

16. In the writing Ex.PW1/8, it is not mentioned as to on which date the debt was payable. However, the plaintiff sent a notice to the defendant on 9.9.1985, copy of which is Ex.P6. It is mentioned in this notice that the loan amount was payable on demand. Vide this notice dated 9.9.1985, the plaintiff asked the defendant to repay the loan amount along with accrued interest of `1,280/- i.e. @ 1% per month which was settled at the time of writing within a period of 7 days of the receipt of notice.

17. Section 34 of the Code deals with the grant of interest at such rate as the court deems reasonable to be paid (i) on the principal sum adjudged from the date of the suit to the date of decree, (ii) in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit; and (iii) with further

interest at such rate not exceeding six per cent per annum on such principal sum from the date of decree to the date of payment with a proviso where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum but shall not exceed the contractual rate of interest.

18. The Single Bench of this Court, in the case of Balwant Kaur vs. Life Insurance Corporation of India (2005 (1) R.C.R. (Civil) 36) has elaborately dealt with the provisions of Section 34 of the Code and also looked into the observations of the Apex Court regarding the payment of pre-suit, pendente-lite and post decree interest. Para 10 and 11 of the Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -8- aforesaid judgment are relevant to be quoted here, which read as follows :-

10. Still further, provisions of Section 34 of the Code came to be interpreted by the Constitution Bench of Supreme Court in Central Bank of India v. Ravindra, 2002 (1) R.C.R. (Civil) 49 (SC). The Court held to the following effect :- Mulla on the Civil Procedure Code (1995 Edition) sets out three divisions of interest as dealt in Section 34 of CPC. The division is accordingly to the period for which interest is allowed by the Court, namely - (1) interest accrued due prior to the institution of the suit on the principal sum adjudged; (2) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, at such rate as the Court deems reasonable; (3) further interest on the principal sum adjudged, from the date of the decree to the date of the payment or to such earlier date as the Court thinks fit, at the rate not exceeding 6 per cent per annum. Popularly the three interests are called pre-suit interest, interest pendente lite and interest post-decree or further interest. Interest for the period anterior to institution of suit is not a matter of procedure; interest pendente lite is not a matter of substantive law.....

11. Still further, it has been held that pre-suit interest can be sub-divided into two sub heads : (1) where there is a stipulation for the payment of interest at the fixed rate; and (ii) Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court,

Chandigarh R.S.A. No.124 of 1990 (O&M) -9- where there is no such stipulation. If there is a stipulation for the rate of interest the Court must allow that rate up to the date of the suit subject to three exceptions, firstly, any provision of law applicable to money lending transactions, or usury laws or any other debt law governing the parties and having an overriding effect on any stipulation for payment of interest voluntarily entered into between the parties; (ii) if the rate is penal, the court may reduce if the interest is excessive and the transaction was substantially unfair. However, if there is no express stipulation for payment of interest, the plaintiff is not entitled to interest except on proof of mercantile usage, statutory right of interest, or an implied agreement. In the present case, there is an express agreement of no payment of interest. Therefore, the plaintiff is not entitled to pre-suit interest under the substantive law as contained in Interest Act, 1978. In the aforesaid judgment it has been further held that interest from the date of the suit to the date of decree is in the discretion of the Court. Similarly, interest from the date of decree to the date of payment or any other earlier date is again in the discretion of the Court to award or not to award or also the rate at which to award. Still further, it has been held that once a suit is filed in the Court, so far as Section 34 of the Code is concerned, the relationship of the parties ceases to be governed by contract between the parties and comes to be governed by Section 34 of the Code. It was held to the Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -10- following effect ;-

46. True it is that once a suit is filed in the Court, so far as Section 34 of the Civil Procedure Code is concerned, the relationship of parties ceases to be governed by contract between the parties and comes to be governed by Section 34 of the Civil Procedure Code.

19. In the case Thazhathe Purayil Sarabi and Ors. vs. Union of India and Anr. (AIR 200.Supreme Court 3098), the Hon'ble Supreme Court after analyzing the provisions of Section 3 of the Act and Section 34 of the Code, has observed as under :-

16. It is, therefore, clear that the Court, while making a decree for payment of money is entitled to grant interest at the current rate of interest or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and/or awarded, from the date of claim or from the date of the order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claimants. 17-18. The Courts are consistent in their view that normally when a money decree is passed, it is most essential that interest be granted for the period during which the money was due, but could not be utilized by the person in whose favour an order of recovery of money was passed. As has been frequently Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -11- explained by this Court and various High Courts, interest is essentially a compensation payable on account of denial of the right to utilise the money due, which has been, in fact, utilized by the person withholding the same. Accordingly, payment of interest follows as a matter of course when a money decree is passed. The only question to be decided is since when is such interest payable on such a decree. Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings till the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute.

20. In the aforesaid case, the claim was under the Railway Claims Tribunal Act, 1987 and there was no provision for the payment of interest on the awarded sum either in the Railway Claims Tribunal Act or the Railways Act, 1989. The Hon'ble Apex Court has observed that the interest can be allowed from the date of application till the date of recovery.

21. The facts of the present case when examined under the provisions of Section 3 of the Act and Section 34 of the Code, leave no iota Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -12- of doubt in the mind of this Court that the interest on the borrowed amount could be allowed from the date this amount was claimed even in the absence of any term with regard to payment of interest. The perusal of the writing in Bahi (Ex.PW1/8) depict in clear term that money was taken for factory which by all means was a commercial purpose. Even if the interest can not be allowed from the date of advancement of the loan, still it can be allowed in this case from the date it was payable as per notice Ex.P6 till the date of filing of the suit and from the date of filing of the suit till the date of actual payment.

22. Another factor to be kept in mind is that the loan transaction in this case relates to the year 1983 and period of more than 30 years has passed. Even the interest @ 12% per annum on the loan amount will not be in a position to duly compensate the lender for deprivation of the use of the money which he had advanced in the year 1983.

23. In view of the discussion above, both the points so framed for determination in para 12 above are decided in favour of the plaintiff- respondent No.1 and against the appellant. The substantial question of law, as framed above is also answered in affirmative.

24. Consequently, this appeal is allowed and the judgment and decree of the trial court is affirmed with the modification that the plaintiff's suit is decreed for recovery of `4,000/- with costs throughout and with interest from the date of decree till the date of actual payment at the rate as allowed by the trial court. The pre-suit interest has not been allowed as the notice Ex.P6 dated 9.9.1985, calls upon defendant to repay the loan amount within 7 days of the receipt of notice and the suit was filed on 21.9.1985. Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh R.S.A. No.124 of 1990 (O&M) -13- The suit against the defendant No.2 has already been dismissed by the first appellate court and no

cross appeal or cross objections have been filed against the judgment and decree of the first appellate court to that extent. August 21, 2013 (Surinder Gupta) deepak Judge 1. Whether reporters of local papers may be allowed to see the judgment?. 2. To be referred to the Reporters or not?. 3. Whether the judgment should be reported in the Digest?. Deepak Kumar 2013.08.26 11:27 I attest to the accuracy and integrity of this document which has been signed by the Hon'ble Bench High Court, Chandigarh

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