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Annasaheb Vs. Suresh

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Court : Karnataka

Decided On : Aug-25-2014

Judge : Huluvadi G. Ramesh

Appeal No. : Regular Second Appeal No. 5574 of 2009

Appellant : Annasaheb

Respondent : Suresh

Judgement :

(Prayer: This Regular Second Appeal is filed under Section 100 of CPC against the judgment and decree dated 29.8.2009 passed in R.A.No.56/2007 on the file of VI Addl.District Judge, Belgaum.)

1. This Second Appeal is filed by the appellant-plaintiff against the judgment and decree passed by the learned VI Addl.District Judge, Belgaum, in R.A.No.56/2007, dated 29th August 2009.

2. Plaintiff filed suit in O.S.No.143/2000 for recovery of an amount of Rs.77,658-75 ps. with interest at the rate of 18% and with costs of the suit. By the judgment and decree dated 27th July 2007, the trial Court decreed the suit with costs holding that plaintiff is entitled to recover a sum of Rs.77,658-75 ps. with interest at 6% p.a. from the date of tobacco transaction i.e., 5.4.1998 till realisation of entire suit claim. Against this, defendant-respondent filed R.A.No.56/2007 before the lower Appellate Court. By the impugned judgment and decree, the lower Appellate Court

confirmed the recovery of the amount of Rs.77,658-75 ps. however, payment of interest waived. Being aggrieved by the same, plaintiff is before this Court.

Heard the learned counsel for respective parties.

3. This Court on 16.6.2011 has framed the following substantial question of law for consideration :

" Whether the first appellate Court was justified in refusing interest to the appellant on the claim made in the suit from the date of the suit till its payment?"

4. The case of the plaintiff is that in respect of supply of tobacco, defendant had issued the cheque. On presentation, the cheque came to be dishonoured. Plaintiff also initiated proceedings under Section 138 of Negotiable Instruments Act. Be that as it may, based on the issuance of cheque for recovery of money, plaintiff filed a suit. The suit came to be decreed for a sum of Rs.77,658.75 ps. with interest at 6% p.a. from the date of transaction i.e., on 5.4.1998 till payment. When the matter was taken up before the lower Appellate Court by the defendant, the lower Appellate Court waived of the interest part on the ground that it was not a regular transaction and also there was no specific agreement or contract between both parties with regard to interest part. According to the learned counsel for the appellant, the lower Appellate Court is not justified in waiving the interest as the transaction involved is a commercial transaction for having purchased the tobacco and in this connection, defendant had issued the cheque. As such, in regular course, for non-payment of the amount, the same shall carry interest, rather the interest awarded by the trial Court at the rate of 6% is also on the lower side.

5. Section 3 of the Interest Act, 1978 provides that in any proceeding for recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or to the person making such claim, as the case may be, at the rate not exceeding the current rate of interest, for the whole or part of the period, that is to say, 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. As per the decision

reported in AIR 2000 Del. 42 - Yogesh Kant Bhageria -vs- Deepak Jain, in the absence of a contract, the respondent would be entitled to interest at the current rate as defined under Section 2 of the Interest Act, to mean highest maximum rate of interest has to be paid.

6. In the case on hand, though there is no contractual obligation with respect to payment of interest, since the transaction involved is a commercial transaction as the defendant had purchased tobacco from plaintiff, when suit came to be filed for recovery of money, then necessarily it is for the defendant to pay interest at the current rate. However, the trial Court having visualised the situation, ordered to pay interest at the rate of 6%. But, the lower Appellate Court set aside the interest portion stating that there was no contractual obligation to pay interest. However, Interest Act itself provides that even in the absence of contract, plaintiff is entitled for interest at the current rate. Section 34 of CPC also provides for payment of interest as the Court deems reasonable to be paid on the principle amount from the date of institution of suit till the date of decree.

In that view of the matter, the judgment and decree passed by the lower Appellate Court waiving interest is set aside and plaintiff is entitled to interest as awarded by the trial Court. It is for the respondent-defendant to pay interest with costs.

Appeal is allowed accordingly.

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