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Court : Rajasthan

Decided On : Nov-14-1980

Reported in : 1980WLN(UC)466

Judge : D.P. Gupta, J.

Appeal No. : S.B. Civil First Appeal Nos. 61 and 81 of 1980

Appellant : Singhvi and Co.

Respondent : Dharmilal

Advocate for Pet/Ap. : Mr. Maheshwari

Judgement :

D.P. Gupta, J.

1. These two appeals arise out of a suit for recovery of money filed by M/s Singhvi & Company against Shri Dharmi Lal The suit was decreed by the Additional District Jude, Udaipur on March 22,1980 for a sum of Rs. 10,746.04. The plaintiff was also awarded interest on the decretal amount, from January 30, 1974 upto the date of the decree and until realisation of the said amount, at the rate of 6% per annum. As these appeals raise very short questions relating to interest and grant of instalments, they were taken together to day for hearing, with the consent of the learned Counsel for the parties.

2. The case of the plaintiff as put in the plaint filed on July 8, 1970 was that the defendant had purchased silver ornaments from the plaintiff's shop on various dates for a total sum of Rs. 56,211 55 and also made payment of a sum of Rs. 44,996.16 on different dates leaving a balance of Rs. 11,215.39. The aforesaid amount was claimed by the plaintiff in the suit along with Rs. 1983,55 by way of interest at the rate of 12% per annum. Some expenses were also claimed by the plaintiff, and the suit was filed for a total sum of Rs 13,297.15. The defendant in his written statement claimed that a sum of Rs. 8,647.00 was paid by him to the plaintiff in addition to the amount admitted by him and that only a sum of Rs. 2,568.39 remained to be paid to the plaintiff by the defendant. The defendant of course admitted that silver ornaments of the value alleged by the plaintiff were purchased by him from the plaintiff's shop. The defendant also claimed instalments of the amount which may be decreed against him in view of this weak financial position.

3. The trial Court substantially found the defence untenable and held that the defendant purchased silver ornaments worth Rs 56,211,55 from the plaintiff-s shop, and also took Rs. 2547 by way of loan in cash out of which a sum of Rs. 48,043.16 was repaid by the defendant to the plaintiff's firm with the result that a sum of Rs 10,715.39 still remained due against the defendant. Thus the amount of Rs. 10,715.39 along with bank commission Rs. 30.65 was found to be payable by the defendant to the plaintiff, and a decree was passed by the trial court against the defendant in the sum of Rs. 10,746 04 So far as the aforesaid amount decreed by the trial court is concerned none of the parties filed any appeal, which shows that both the parties are fully satisfied with the decision of the trial court in respect of the amount found to be due and payable by the defendant to be plaintiff firm.4. Now, only two questions arise in these two appeals The trial court allowed interest to the plaintiff at 6% per annum from January 30, 1974 upto the date of the decree and until realisation. The submission of the plaintiff in his appeal is that' interest should have been awarded to him for the entire period from the date of the transactions upto the date of the suit and then upto the date of decree and until realisation, at the rate of 12% per annum instead of 6% per annum. On the other hand, the submission of the learned Counsel for the defendant is that in view of the finding of the trial court on issue No. 5, interest should not have been awarded

at all to the plaintiff either during the pendency of the suit or even thereafter.

5. The question of award of interest was considered by the trial court tinder issue No, 5. It was held that there was no contract between the parties for payment of interest on outstanding amount. It was also held that interest could not be awarded as damages, because the extent of the damage has not been provide. The trial court also obsesved that the transactions between the parties related to the sale and purchase of silver ornaments and because the purity of the goods sold was merely 75 to 80%, there was no agreement for payment of interest between the parties. On this ground the trial court refused to award interest to the plaintiff in respect of the pre-suit period. However, no reason was assigned by it for not awarding any interest on the amount found outstanding against the defendant, from the date of the institution of the suit unto January 29, 1974 and so to why interest was awarded only from January 30, 1974.

6. Learned Counsel for the plaintiff argued that interest on the amount found due against the defendant should have been awarded on the basis of the provisions of Section 61 of the Sale of Goods Act, as the transactions between the parties related to sale of silver ornaments Section 61(2) of the Sale of Goods Act runs as under:

61(2) In the absence of contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of price.

(a) to the seller in a suit by him for the, amount of price from the date of the tender of the goods or from the date on which the price was payable;

(b) to the buyer in a suit by him from the refund of the price in a case of a breach of the contract on the part of the seller from the date on which payment was made.

7. There was admittedly no contract regarding payment of interest between the parties. It was urged by Mr. Arjun Lal Mehta that that there was a contract to the contrary for not charging interest, as the defendant stated in his statement that on account of the purity of the goods sold being limited only to 75 op 80%, interest was not intended to be charged. After reading the statement of the defendant, I am

unable to come to the conclusion that there was any specific contract to the contrary between the parties for not charging interest in respect of the transactions of sale and purchase of silver ornaments. The fact that the purity of the goods might be 75 to 80% may be a good consideration in the matter, of settlement of the price of the goods, but there does not appear to be any reason for holding that because the goods sold were not cent precent pure, as such interest would not be charged on the outstanding amount. It was perfectly known to both, the parties that the goods sold were not of 100% purity and it must be held that the sale price might have been fixed keeping in view this factor viz. that the goods sold were of 75 to 80% purity. As such I find that there was absence of contract to the contrary and Section 61 of the Sale of Goods Act was clearly attracted to the facts of the case. The seller is entitled to get interest on the amount of the price of the goods, in the suit filed by him, from the date of delivery of goods the date of payment.

8. As regards the rate at which interest should be awarded for the period prior to the filing of the suit, it was argued by the learned Counsel for the plaintiff that in his Khatas interest was added at 12% per annum. It is not the, case of either party that interest was paid by the defendant in respect of any earlier transactions. The transactions in dispute relate to the period between 1968 and 1970. The defendant's statement is that at that time the market rate of interest was 6% per annum, although the plaintiff stated that the interest was payable at the rate of 12% per annum, In my view, it would be reasonable to, award interest at the rate of 6% per annum from the date of the transactions upto the date of the suit on the sum of Rs, 10,715,39, which amount has been found to he outstanding by the trial court against the defendant.

9. So far as the question of interest during the pendency of the suit is concerned, it is difficult to follow the manner in which the question has been disposed of by the learned trial court. An arbitrary date as January 30, 1974 has been fixed as the starting point for award of interest. Learned Counsel for the parties state that the plaint was amended during the pendency of the suit and the amended plaint was filed by the plaintiff on January 30,1974 and it is from that date that the trial court awarded interest at 6% per annum. Section 34 of the Code of Civil Procedure provides that where a decree is for 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 pf 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 together with future interest at such rate not exceeding 6% per annum on such principal sum from, the date of the decree to the date of payment; No reason has been assigned by the trial court for not awarding interest to the plaintiff on the sum found outstanding against the defendant from the date of the suit. If any amendment was prayed for by the plaintiff during the pendency of the suit and the same was allowed, then the amendment would become effective from the date of the suit and merely because the plaint was amended during the pendency of the suit cannot be any cogent reason for not awarding interest from the date of institution of the suit, as provided in Section 34 of the Code of Civil Procedure. It was argued by Mr. Maheshwari, learned Counsel for the plaintiff, that according to the proviso of Section 34(1), Code of Civil Procedure, which has been newly added in the year 1976, the court can grant interest at the higher rate than 6% per annum upto the contractual rate or where there is no contractual rate, at the rate at which money is lent or advanced by nationalised banks in relation to commercial transactions. In the circumstances of the case, as the suit relates to old transactions of the period between 1968 and 1970, I do not think it would be reasonable to award interest at the higher rate than 6% per annum during the pendency of the suit. But the plaintiff is certainly entitled to award of interest at the aforesaid rate from the date pf the institution of the suit upto the date of the decree. He is also entitled to get future interest at the same rate from the date of the decree upto the date of payment.

10. The net result of the aforesaid discussion is that the plaintiff is entitled to interest on the principal sum of Rs. 10,715.39 at 6% per annum from the date of the transactions to the date of the suit, and thereafter from the date of the suit upto the date of the decree and also future interest from the date of the decree to the date of payment, at the rate of 6% per annum.

11. The second question which has been raised in the appeal of the defendant relates to the grant of instalments. The defendant's case is that his financial position is weak and as such he should be allowed to make payment of the

decretal amount by instalments of Rs. 25/- per month. In this respect the defendant has examined himself as D.W. 1 and another witness Shankerlal has been examined as D.W. 2. The statements of these witnesses go to show that the defendant is owner of a two storyed shop and a house, each one of which is worth Rs. 50,000/-. Thus he is in possession of immoveable property worth Rs 1,00,000/-. It is also admitted that the defendant is carrying on business of sale of gold and silver ornaments at Salumber. It is further admitted that the shop of the defendant was formerly mortgaged but he has now redeemed the same. These factors go to show that the financial position of the defendant has rather improved and it cannot be said that it has deteriorated in recent years. The defendant's plea was that in the year 1968 there was a famine and as his business is mostly connected with Adivasis, there is large amount of outstandings which he has not been able to realise from his debtors. However, the defendant has not produced his account books to show the extent of the loss suffered by him, if any, or the debts outstanding, although it is admitted by him that he has properly kept account books in his possession. Another ground urged by the learned Counsel for the defendant was that there are other outstandings and decrees against him which the defendant has to pay but except for one decree of the brother of the plaintiff, there is no evidence to show as to what is the extent of liability of the defendant. The fact that the defendant is in possession of considerable immovable property and that his financial position has gradually improved in recent years so that he has been able to redeem the shop, which was formely mortgaged, do not support the defendant's case for grant of instalments. The trial court has considered the question at length and has refused to grant instalments to the defendant, while deciding Issue No. 7. I am in agreement with the decision of the trial court on this question. It cannot be held that the defendant is not in a position to make payment of the decretal amount and there is no plausible basis for grant of instalments. As such the finding of the trial court in respect of refusal to grant instalments is affirmed.

12. In the result, the appeal of the defendant S.B. Civil Regular First Apeal No. 81 of 1980 is dismissed, while the plaintiff's first appeal No. 61 of 1980 is partly allowed to the extent that the plaintiff would be entitled to interest on the decretal amount not only from January 30, 1974 upto the date of the decree, and upto

realisation, but he would be entitled to interest at the rate of 6% per annum on the decretal amount from the date of the transactions upto the date of the suit and from the date of the suit upto the date of the decree and thereafter upto the date of payment. In the circumstances of these appeals, the parties are left to bear their own costs of this court. Of course, the plaintiff would be entitled to costs of the trial court, as awarded by the learned Additional District Judge, Udaipur.