

**Rakesh Kumar Vs. State and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/767759](http://sooperkanoon.com/767759)

**Court :** Rajasthan

**Decided On :** May-20-1997

**Reported in :** 1997(3)WLC126; 1997(1)WLN599

**Judge :** R.R. Yadav, J.

**Appeal No. :** S.B. Civil Second Appeal No. 244 of 1995

**Appellant :** Rakesh Kumar

**Respondent :** State and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**R.R. Yadav, J.**

1. Instant appeal arises from the judgment and decree dated 24.4.95 passed by learned Additional District Judge No. 3, Jodhpur, modifying the judgment and decree passed by learned Additional Civil Judge Sr. Div. No. 1.

2. Brief facts which are necessary for just decision of the present appeal are that the State of Rajasthan (Director, Primary and Secondary Education, Bikaner) invited tenders for the supply of Games Articles. Plaintiffs 16 sport articles were approved. The Goods were supplied to the Zila Parishad and payment was to be made by Zila Parishad. It is averred that 90 per cent price of sport goods was paid

by Zila Parishad Tonk but 10 per cent of the amount of goods was not paid without any valid reason inspite of repeated reminders and notices which necessitated the plaintiff-appellant to file the present suit for recovery of unpaid price of approved goods supplied to the defendants with interest.

3. Learned trial Court allowed interest @ 12 per cent per annum on the ground of trade usage and principle of natural justice for the period prior to the suit and till payment as the amount has been detained by the defendant respondent without any valid reason.

4. The learned first appellate court affirmed the judgment and decree passed by learned trial court but thought it proper to modify the interest awarded by the learned trial court to the effect that if the payment is not made within one month from the date of decree, the plaintiff shall be entitled to interest @ 12% per annum from the date of decree on the principal amount.

5. Aggrieved against the aforesaid modification of decree with regard to interest passed by learned first appellate Court this Appeal has been preferred.

6. I have heard the learned Counsel for the parties. Perused the judgments given by both the Courts below.

7. It is argued at the first instance by learned Counsel for appellant Shri B.R. Mehta that in the facts and circumstances of the case in absence of any appeal by Zilla Parishad, the learned first appellate Court was not justified in modifying the decree with regard to interest against Zilla Parishad which has become final, so far as interest part was concerned.

8. I am not impressed with the aforesaid argument of the learned Counsel for the appellant in view of the mandatory provisions envisaged under Order 41 Rule 33 CPC, according to which, the first appellate Court has power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require. The aforesaid power can be exercised by the appellate Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the

respondents or parties although such respondents or parties may not have filed any appeal or objection.

9. It is next contended by learned Counsel for the appellant that trade usage provides that Court can grant in trust at such prevalent market rate of interest from the date of supply of goods. Shri Mehta invited my attention towards Section 61 of Sale of Goods Act, Section 34 of Civil Procedure Code, as well as Section 3 of the Interest Act 1978 and urged that learned first appellate Court has committed substantial error of law and procedure in disallowing the interest awarded by the learned trial Court in the present case. It is conceded by learned Counsel for the appellant that the goods were supplied to the State Government by the plaintiff appellant on the basis of tender contract although amount was payable by Zilla Parishad. It goes without saying that the Government can only be bound by contracts that are entered into in a particular way and which are signed by the proper authority. Here in the present case, indisputably, there is no written contract between the plaintiff and defendant State or Zilla Parishad according to which if the defendants fail to make payment of the goods, the interest would be chargeable from them.

10. In the case on hand when the learned Counsel for the appellant was made face to face with the aforesaid settled principles of law then he invited my attention towards provision of Section 3 of the Interest Act 1978, according to which, in absence of any specific contract between the plaintiff and defendants, the Court is at liberty in its discretion to award interest in respect of any debt or damages if it thinks fit. It is true that if there is no specific agreement for interest, Section 3 of the Interest Act can be pressed into service by the Courts of law on the ground of equity, good conscience and principle of natural justice for general litigant public but not against State and its instrumentalities unless either there is written contract for payment of interest or there is demand in writing stating that interest will be charged from the date of demand if payment for goods supplied is not made within specified period.

11. From the above discussion I am satisfied that in the present case none of the conditions enumerated in preceding paragraph are satisfied hence the learned first

appellate Court has committed no error of law or procedure in modifying the decree on question of interest passed by learned trial court. To my mind, interest awarded by learned first appellate Court to the plaintiff appellant in the present case is fully in consonance with the principle of equity and good conscience.

12. Second limb of argument of the learned Counsel for appellant in this regard is that the plaintiff appellant is at least entitled to have interest w.e.f. 29.11.91 when he gave notice to defendants claiming interest on the unpaid amount. I am not impressed with this argument of the learned Counsel for the appellant, inasmuch, as the notice which was given did not satisfy the sum which was demanded. It is true that as regards interest pendente lite, until the date of realisation such interest was within the discretion of the Court and the learned first appellate Court has not committed any substantial error of law and procedure in granting interest @ 12% per annum to plaintiff appellant on the principal amount from the date of decree.

13. In view of what has been discussed above, instant appeal lacks merits and it is hereby dismissed. The judgment and decree under appeal passed by learned first appellate Court is affirmed. Both the parties are directed to bear their own costs.

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