HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil First Appeal No. 142 / 1994

Rajasthan State Warehousing Corporation, Bhawani Singh Marg, Jaipur, through its Managing Director.

----Appellant

Versus

1. Rajasthan Rajya Sahkari Kraya Vikraya Sangh, Bhawani Singh Marg, Jaipur, through its Managing Director.

2. The Food Corporation of India, Branch Sriganganagar, through District Manager, Food Corporation of India, 'G' Block, Sriganganagar.

3. The State Bank of India, Ravindra Path, Sriganganagar Branch, through Branch Manager.

----Respondents

For Appellant(s) : Mr. D.D. Thanvi
Mr. Arvind Shrimali
Mr. Amit Vyas

For Respondent(s) : Mr. G.R. Goyal
Mr. Sailendra kalla
Mr. Anuj Kalla

JUSTICE DINESH MEHTA

Judgment

21/11/2017

The present first appeal under Section 96 of the Code of Civil Procedure arises out of a judgment and decree dated 15.01.1994 passed by the Additional District & Sessions Judge No.2, Sriganganagar (hereinafter referred to as the Trial Court).

Succinctly stated the facts of the present case are that the plaintiff – Rajasthan Rajya Sahkari Kraya Vikraya Sangh (hereinafter referred to as the Kraya Vikraya Sangh) instituted a

suit for recovery of amount of Rs.4,96,409.16/- being claim of interest for depriving it of the amount of Rs.14,38,852.73/-.

It was stated in the plaint that the defendant No.1 – Food Corporation of India on reconciliation of accounts, informed it that a sum of Rs.14,38,852.73/-, which had been remitted vide account payee cheque No.264072 by them on 30.06.1983, had not been shown in the account statement of the plaintiff, for the year 1983-1984.

On enquiry being made by the plaintiff- Kraya Vikraya Samiti it was so revealed that such amount has not been credited in their accounts. Hence various correspondence were exchanged between the parties involved in the transaction including the respondent No.3 – Bank. After due enquiry, the Joint Manager of the State Bank of India, Jaipur informed the plaintiff that the cheque dated 30.06.1983 which had been issued in the name of the plaintiff had been inadvertently credited in the account of the Rajasthan State Ware Housing Corporation Ltd. the appellant herein.

On realising the same, the appellant paid the aforesaid amount of Rs.14,38,852.73/- on 30.05.1985 directly to the plaintiff.

After receipt of the amount aforesaid, the plaintiff instituted a suit for recovery of the interest thereupon, calculated at the rate of 24% for the period between 30.06.1983 to 30.05.1985, roping in all the defendants as according to the plaintiff, they were jointly and severally responsible for the delay and consequential loss of interest on such amount.

As far as the payment of basic amount is concerned, there is

no quarrel and the same has been admitted to have been received by the plaintiff. The only question left and posed to be determined by the Trial Court was: as to whether the plaintiff was entitled for interest on the aforesaid amount which had been received by it at belated stage.

Learned Trial Court had framed following issues on the basis of the pleading of the parties:-

''(1) क्या चैक मुतनाजा नं. 36472 बाबत 1438852.73 दिनांक 30.6.83 प्रतिवादी सं. 1 ने वादी को दिया ?

(2) क्या प्रतिवादीगण की गलती व लापरवाही के कारण वादी को ब्याज का नुकसान हुआ ?

(3) क्या वादी रूपये 496409.19 रूपये बाबत ब्याज बतौर हर्जाना पाने का अधिकारी है अगर है तो किस किस प्रतिवादी से व किस कदर है ?

(4) क्या बिना कोर्ट फीस के दावा पेश नहीं हो सकता था ?

(5) क्या प्रतिवादीगण सं. 1 ता 3 विशेष हर्जाना पाने के अधिकारी हैं ?

(6) अनुतोष ?''

After appreciating the evidence, learned Trial Court decided some issues in favour of the plaintiff while a few were decided against it. The other issues except issue No.2 and 3 do not much concern the appellant herein.

While deciding the aforesaid issues, the learned Trial Court has recorded following findings :-

''(13) उभय पक्ष के अधिवक्तागण की बहस एवं पत्रावली पर उपलब्ध मौखिक एवं दस्तावेजी साक्ष्य से यह तथ्य पूर्णतया स्पष्ट है कि तीनों ही प्रतिवादीगण की मौजूदा प्रकरण में राशि भुगतान किये जानें में लापरवाही रही है। प्रतिवादी संख्या (1) ने विवादित चैक दिनांक 30.6.83 वादी के

अधिकृत प्रतिनिधि या अधिकारी को प्रदान नहीं किया उन्होंने यह चैक किस व्यक्ति को दिया यह भी वह प्रमाणित करने में पूर्णतया असफल रहे है। प्रतिवादी संख्या (3) स्वयं अपनी गलती स्वीकार करते है कि गलती से उन्होंने इस चैक का भुगतान प्रतिवादी संख्या (2) के खाते मे कर दिया परन्तु उनका कथन है कि ऐसी त्रुटि भुलवंश हुई है। जहां तक प्रतिवादी संख्या (2) की लापरवाही का प्रश्न है पत्रावली पर उपलब्ध साक्ष्य से पूर्णतया स्पष्ट है कि दिनांक 2.7.83 को एक भारी राशि 1438852.73 रू. उनके खाते में बैंक द्वारा गलती से इन्द्राज कर दी गयी और उन्होंने उसी दिन 2.7.83 को ही अपने खाते से 2026818.54 रूपये की राशि प्राप्त कर ली इस कारण प्रतिवादी संख्या (2) का यह कथन कि उनकी इस प्रकरण मे कोई गलती नही है, स्वीकार योग्य नहीं है। पत्रावली पर उपलब्ध साक्ष्य से प्रतिवादीगण की लापरवाही स्पष्ट रूप से प्रमाणित होती है तथा विवादित चैक की राशि 1438852.73 रूपये की राशि के ब्याज का नुकसान भी निश्चित रूप से वादी को हुआ है। इस कारण विवाद्यक संख्या (2) का निर्णय वादी के पक्ष में एवं प्रतिवादीगण के खिलाफ किया जाता है।''

''(15) अब हमें यह देखना होगा कि प्रतिवादी संख्या (2) को किस कदर ब्याज अदा करने के लिये उत्तरदायी ठहराया जावे ? वादी द्वारा अपने वादपत्र एवं साक्ष्य के माध्यम से 18 प्रतिशत वार्षिक ब्याज दर से ब्याज की मांग की है एवं इस प्रकार के कथन पी.ड. 1 सत्यनारायण व पी.ड. 2 रामनारायण द्वारा किये गये है। प्रतिवादीगण की ओर से प्रस्तुत साक्षी पूनमचंद दुआ, महावीरसिंह एवं राजेन्द्रकुमार ने 18 प्रतिशत की ब्याज दर होने से इन्कार किया है। प्रकरण की सम्पूर्ण परिस्थितियों एवं पत्रावली पर उपलब्ध साक्ष्य एवं पक्षकारान की स्थिति को एवं उक्त प्रस्तुत दृष्टांत में प्रतिपादित सिद्धान्त को मध्यनजर रखते हुए हम वादी को प्रतिवादी संख्या (2) से विवादित चैक की राशि पर दावा दायरी तक 9 प्रतिशत वार्षिक ब्याज दर से 248205/– रूपये ब्याज प्रदान करवाया जाना न्यायोचित पाते है एवं साथ ही सी.पी.सी. की धारा 34(1) के अन्तर्गत दौराने दावा ता वसूली राशि

उक्त राशि पर 6 प्रतिशत वार्षिक ब्याज दर से ब्याज भी वादी को प्रतिवादी संख्या(2) से प्राप्त करने का अधिकारी पाते है। इस प्रकार विवाद्यक संख्या (3) का निर्णय उपरोक्तानुसार किया जाता है।

A perusal of the findings reproduced above shows that learned Trial Court has recorded a finding that the defendant No.2 or the appellant herein had after receiving the amount of Rs.14,38,852.73/- retained it, knowing it well that such amount did not belong to them. Trial Court has also found that such huge amount was refunded only when it was demanded by the plaintiff.

In light of the findings recorded qua issues No.2 and 3, the learned Court below has held the appellant liable for the amount of interest to the tune of Rs.2,48,205/- calculated @ 9% per annum on the amount retained by it.

Mr. Arvind Shrimali, learned counsel for the appellant challenging the order under Appeal assailed the findings recorded by the Trial Court with respect to issues No.2 and 3. He invited attention of the Court towards the finding qua issue No.5 wherein the Court below has observed that for the payment of the aforesaid amount of Rs.14,38,852.73/-, the defendants No.1 to 3 were negligent and careless. Relevant extract thereof is being reproduced hereinunder :-

(16) विवाद्यको के उपरोक्त विवेचन से हम इस निष्कर्ष पर पहुंचे है कि प्रतिवादीगण 1 ता 3 स्वयं लापरवाही के दोषी रहे है तथा वादी प्रतिफल स्वरूप ब्याज की राशि भी प्राप्ति का अधिकारी साबित हुआ है इस कारण हम प्रतिवादीगण को वादी से कोई हर्जाना प्रदान करवाया जाना न्यायोचित नहीं पाते एवं इस विवाद्यक का निर्णय प्रतिवादीगण के विरूद्ध किया जाता है।''

Mr. Goyal, learned counsel for the respondent – bank fairly admitted that due to inadvertence the amount has wrongly been credited in the account of the appellant, which mistake was bonafide and could not come to the Bank's notice. He submitted that be that as it may, it is not in dispute between the parties that the disputed amount of Rs.14,38,852.73/-has ultimately been paid to the plaintiff.

Learned counsel for the Bank submitted that as far as inadvertent error or negligence is concerned, the same has been attributed to the bank by the Trial Court; for which the Trial Court has seddled the Bank with the cost of the litigation. However while fixing the liability of interest; as the amount had been credited in account of the appellant and it was the appellant who had derived the fruits of the amount of Rs.14,38,852.73/-, the Court has held the appellant liable. The appellant, having taken the advantage, is liable to make payment of interest and not the bank, he argued.

Heard learned counsel for the parties and perused the material available on record.

It is settled proposition of law that the interest is a compensation for the money held. Besides this, even on the principle of restitution, a person who has enjoyed the fruits of the amount, is liable to make good the loss of earnings to the plaintiff and/or compensate for deprivation of the principal amount.

In the present facts, it is undisputed that the contentious amount of Rs.14,38,852.73/-was wrongly credited in appellant's bank account and the appellant has withheld or utilised the same. It was required of the appellant to have immediately paid the

amount either to the bank or to the plaintiff, as and when it was credited in its account. The amount aforesaid never belonged to the appellant, yet they have used the same in its business.

Since the appellant had utilised the funds for the period between 30.06.1983 to 30.05.1985, it has been rightly held liable for the interest.

The argument advanced by counsel for the appellant in light of finding of issue No.5 that all the defendants have been found negligent, the appellant alone cannot be held liable for the interest, is untenable. It may be true that all the defendants lacked due deligence, but it is the Appellant Warehousing Corporation, which had derived the advantage or earned national interest as a result of use of the money. Other defendant particularly Bank was negligent, for which the burden of cost has been imposed on it.

The order under challenge passed by the learned Trial Court is infallible, hence the appeal is dismissed.

Record of the Trial Court be sent back forthwith.

(DINESH MEHTA), J.

Anurag/17