

State of Punjab v. Ajit Singh and others (S. S. Sandhawal'ia, C.J.)

FULL BENCH

Before S. S. Sandhawal'ia, C. J., Harbans Lal and S. P. Goyal, JJ.

STATE OF PUNJAB—Appellant.

versus

AJIT SINGH AND OTHERS—Respondents.

Letters Patent Appeal No. 104 of 1975.

February 12, 1979

Punjab Co-operative Societies Act (XXV of 1961)—Sections 55 and 56—Code of Civil Procedure (V of 1908)—Sections 34—Reference under sections 55 and 56—Arbitrator—Whether competent to award future interest—Principles underlying section 34—Whether applicable—No plea in regard to claim for future interest—Arbitrator—Whether can still grant such interest.

Held, that if not the provisions, in any case, the principle underlying section 34 of the Code of Civil Procedure 1908 is attracted in the case of proceedings before an arbitrator when he is deciding a reference made to it under sections 55 and 56 of the Punjab Co-operative Societies Act 1961. Once this is so, it is plain that one has only to turn to the provisions of section 34 of the Code to seek an answer to the question whether the arbitrator is entitled to award future interest or not. Provisions of section 34 as amended now are plain and unequivocal. From a bare language of this provision it is manifest that an arbitrator is expressly warranted and authorised to grant future interest on the amount awarded upto the date of its realisation.

(Paras 13 and 14)

Amar Kumar v. State of Punjab and others, 1975 P.L.J. 6.
State of Punjab v. Surrinder Nath Goyal, A.I.R. 1960 Punjab 623,
OVERRULED.

Held, that the language of section 34 of the Code does not leave any manner of doubt that here primarily the power has been vested in the discretion of the Court itself and it is not in any way dependant on the pleadings of the parties. Therefore, it cannot be easily fettered on the technical plea that in so many words the claim for future interest was not made by the party entitled thereto.

(Para 16)

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawal'ia and the Hon'ble Mr. Justice S. S. Dewan on July 25, 1978 to a Full Bench for decision of an important question of law involving in the case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawal'ia, the Hon'ble Mr. Justice Harbans Lal and the Hon'ble Mr. Justice S. P. Goyal finally decided the case on February 12, 1979.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Rejindra Nath Mittal, passed in Civil Writ Petition No. 3198 of 1972, on the 4th December, 1974.

I. S. Tiwana, Addl. AG (Pb.), for the Appellants.

S. C. Sibal, Advocate, for the Respondents.

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(1) Whether an arbitrator in a reference under section 55 and 56 of the Punjab Co-operative Societies Act, 1961, has jurisdiction to grant fictitious interest on the amount awarded till the date of its realisation is the solitary, though meaningful, question which falls for determination in this reference to a Full Bench.

2. The facts are of no great significance and it suffices to mention that Ajit Singh and others, respondents, had brought the writ petition (giving rise to the present Letters Patent Appeal) to challenge the arbitration award rendered by the Arbitrator on a dispute being referred to him under the Act, as also the appellate and the revisional orders upholding the same. The learned Single Judge gave substantial relief to the petitioners and in particular held that the grant of future interest at the rate of six per cent, by the arbitrator, till the principal amount was recovered was without jurisdiction and set aside the same. In doing so he placed reliance on a Division Bench judgment of this Court in *Amar Kumar v. The State of Punjab and others* (1). The writ petition was partly allowed and it is the common case that a Letters Patent Appeal preferred by the respondents—Ajit Singh and others, against this very judgment was dismissed in limine. The present appeal has been preferred by the State of Punjab and the learned counsel for the parties are agreed that the solitary challenge herein is directed against the setting aside of the future interest by the learned Single Judge, which had been earlier granted by the Arbitrator and upheld in appeal and revision.

(1) 1975 P.L.J. 6.

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3. Though it appears to me that the issues is now concluded in favour of the appellant-State by a binding precedent of the final Court, it nevertheless becomes necessary to notice the divergence of views earlier prevailing in the Supreme Court as also within this Court itself.

4. Adverting first to the decision of the final Court it is worth recalling that in *Thawardas Pherumal and another v. Union of India* (2), Bose, J., speaking for the Bench of three learned Judges observed as follows:—

“31. It was suggested that at least interest from the date of “suit” could be awarded on the analogy of Section 34 of the Civil Procedure Code, 1908. But Section 34 does not apply, because an arbitrator is not a “court” within the meaning of the Code nor does the Code apply to Arbitrators, and, but for Section 34, even a Court would not have the power to give interest after the suit. This was, therefore, also rightly struck out from the award.”

5. However, later in *Ct. A. Ct. Machiappa Chettiar and others v Ct. A.Ct Subramaniam Chettiar* (3), the Bench considered the aforesaid observations and observed that it would be open to about whether these were intended to Laydown any such broad and unqualified proposition that in no case can the arbitrator award interest.

6. Again in *Satinder Singh v. Umrao Singh and another* (4), the observations in *Thawardas Pherumal’s* case (supra) were considered afresh and these were explained to be findings on the peculiar facts of that case and the Court proceeded to grant future interest at four per cent per annum from the date when respondent No. 2 took possession of the claimant’s land to the date on which it deposited or paid the amount of compensation to them.

7. However, it is the two subsequent decisions in *Firm Madanlal Roshan Lal Mahajan v. Hukumchand Mills Ltd., Indore* (5), and *Union of India v. Bungo Steel Furniture Private Ltd.* (6), which now appear to conclusively settle the issue.

(2) A.I.R. 1955 S.C. 468.

(3) A.I.R. 1960 S.C. 307.

(4) A.I.R. 1967 S.C. 908.

(5) A.I.R. 1967 S.C. 1030.

(6) A.I.R. 1967 S.C. 1032.

8. In this Court a Division Bench in *State of Punjab v. Surinder Nath Goel* (7), had taken the view that neither the provisions of Section 34 of the Code of Civil Procedure, nor its principles were attracted in the context of award of future interest by the arbitrator and the latter had no implied power to do so. Again an identical view was expressed by a Division Bench in *Amar Kumar v. The State of Punjab and others* in the particular context of an arbitrator appointed under the Punjab Co-operative Societies Act and it was held that he had no power to award future interest.

9. However, a discordant note was struck by the learned Single Judge in *Mathra Dass v. The State of Punjab and others* (8), wherein even after noticing the earlier two judgments they were nevertheless not followed on the ground that they ran counter to the subsequent observations of the final Court.

10. It was the aforesaid conflict of precedent which has been duly noticed in the referring order and which evidently necessitated the constitution of this Full Bench.

11. As I have said earlier the point seems to me so well covered by the final Court that it would be both wasteful and inapt to attempt any examination thereof on principle. In *Firm Madan Lal Roshan Lal Mahajan's case* (supra), their Lordships have reviewed the earlier case law and observed as follows :—

“In the present case, all the disputes in the suit were referred to the arbitrator for his decision. One of the disputes in the suit was whether the respondent was entitled to pendente lite interest. The arbitrator could decide the dispute and he could award pendente lite interest just as a Court could do so under Section 34 of the Code of Civil Procedure. Though, in terms, Section 34 of the Code of Civil Procedure, does not apply to arbitrations, it was an implied term of the reference in the suit that the arbitrator would decide the dispute according to law and would give such relief with regard to pendente lite interest as the

(7) A.I.R. 1960 Pb. 623.

(8) 1975 P.L.J. 42.

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Court could give if it decided the dispute. This power of the arbitrator was not fettered either by the arbitration agreement or by the Arbitration Act, 1940. The contention that in an arbitration in a suit the arbitrator had no power to award pendente lite interest must be rejected."

12. Following closely on the heels of this judgment, even a more categorical enunciation of law was made in *Union of India v. Bungo Steel Furniture's* case and it was observed as under:—

"In the present case, all the disputes in the suit, including the question of interest, were referred to the arbitrator for his decision. In our opinion, the arbitrator had jurisdiction, in the present case, to grant interest on the amount of the award from the date of the award till the date of the decree granted by Mallick, J. The reason is that it is an implied term of the reference that the arbitrator will decide the dispute according to existing law and give such relief with regard to interest as a Court could give if it decided the dispute. Though, in terms, Section 34 of the Code of Civil Procedure does not apply to arbitration proceedings, the principle of that section will be applied by the arbitrator for awarding interest in cases where a Court of Law in a suit having jurisdiction of the subject matter covered by Section 34 could grant a decree for interest."

13. Now, there seems to be no manner of doubt that in the light of the aforesaid unequivocal enunciation of law, if not the provisions, in any case the principle underlying Section 34 of the Code of Civil Procedure is at once and equally attracted in the case of proceedings before an arbitrator. Once this is so, it is plain that one has only to turn to the provisions of that section to seek an answer of the question whether the arbitrator was entitled to award future interest or not. Provisions of Section 34 as amended now are plain and unequivocal. Section 34(1) of the Code of Civil Procedure is in the following terms:—

"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 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."

14. It would thus be manifest from the bare language of the aforesaid provisions as also by the application of the principles lying thereunder that an arbitrator is expressly warranted and authorised to grant further interest on the amount awarded upto the date of its realisation.

15. On the aforesaid finding it is plain that the Division Bench judgments in the State of Punjab v. Surrinder Nath Goel, (7 supra), and Amar Kumar v. The State of Punjab and others, (supra), can no longer hold the field in view of the categoric observations of their Lordships of the Supreme Court. Both these judgments are, therefore, hereby over-ruled.

16. It, however, becomes necessary to notice a spacious argument, which was still raised on behalf of the respondents to the effect that even conceding the power to the arbitrator to grant future interest, nevertheless it cannot be awarded unless it was expressly and in terms claimed and pleaded on behalf of the party. It was contended that where such a claim or plea has not been taken, the arbitrator would still be powerless to grant future interest, however, well merited the claim may be. I am unable to agree. The language of Section 34 does not leave any manner of doubt that here primarily the power has been vested in the discretion of the Court itself. Therefore, it cannot be easily fettered on the technical plea that in so many words the claim for future interest was not made, by the party entitled thereto. However, it is unnecessary to dialate on this aspect of the matter either, because this also appears to be equally concluded in favour of the appellant by precedent.

17. The issue is capable of being viewed from two angles, both under section 34 of the Code of Civil Procedure as also under Order VII Rule 7 thereof. It has been authoritatively held that the nature of the power exercisable under section 34 is a discretion vested in

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the Court itself and not in any way dependant on the pleadings of the parties. The Division Bench in *Rup Ram v. Harphul* (9), has observed in no uncertain terms :—

“In our opinion the question of awarding interest has been made discretionary by the Legislature, though, no doubt, that discretion has to be exercised judicially. Mr Manohar Lal for the respondent contended that this discretion has been correctly exercised having regard to the provisions of Order VII, rule 7, Civil Procedure Code, which lays down that it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. This, of course, is subject to the limitation that this “other relief” is not inconsistent with relief claimed in the plaint. The granting of interest not specifically asked for in a suit for money can scarcely be regarded as an inconsistent relief and therefore, it would seem that the District Judge in this case had discretion to award interest subsequent to the institution of the suit.”

18. More or less the same view has been expressed by a Division Bench of the Calcutta High Court in *Balai Lal Pal v. The State of West Bengal* (10).

19. Even more categorical findings appear in *Gopalakrishna Pillai and others v. Meenakshi Ayal and others*, (11). There it has been held that future mesne profits even if not claimed by the parties can well be awarded by the Court. It is also noticed therein that the claim for mesne profits is not a cause of action available to the litigant at the earlier stage, and therefore, hardly any question of pleading and claiming the same would arise. This reasoning of the final Court appears to me as equally applicable, even with greater force, to the grant of future interest under Section 34 as well. The ancillary argument on behalf of the respondents, therefore, merits only rejection.

(9) A.I.R. 1921 Lahore 125.

(10) LXX Calcutta Weekly Note 363.

(11) A.I.R. 1967 S.C. 156.

20. In the light of the aforesaid discussion I am constrained to allow this Letters Patent Appeal and modify the judgment of the learned Single Judge to the effect that the arbitrator was entitled to award future interest. To this limited extent, the grant of interest on the computed amount of award is restored and the judgment of the learned Single Judge on this point is set aside. There will be no order as to cost.

Harbans Lal, J.—I agree.

M.K.S.