

Letters Patent Appeal is allowed to that extent. However, we uphold the judgment of the learned Single Judge to the extent it quashed the appellate order (Annexure P-6), but remand the case to the Appellate Authority to decide the appeal afresh and pass a speaking order after affording opportunity to respondent Shri J. C. Mehta. The appeal may be decided within six months from the receipt of this order. We may clarify that it will be open to Shri J. C. Mehta to raise all the points before the Appellate Authority that the findings of the Enquiry Officer were not correct, and no punishment was called for. We leave the parties to bear their own costs.

R.N. R.

Before G. R. Majithia, J.

TELU RAM JAIN,—Appellant.

versus

M/S. AGGARWAL SONS,—Respondent.

Regular Second Appeal No. 1687 of 1978

11th September, 1990.

Sale of Goods Act, 1930—S. 61—Price of goods sold not paid—Liability of buyer to pay interest—Powers of the Court to grant such interest.

Held, that if there was no contract between the parties for the payment of interest, the provisions of sub-section (2) will come into play and be attracted. Sub-section (2) of Section 61 gives wide discretion to the Court to award interest as it thinks fit on the amount of the price from the date on which the payment was to be made. The seller would be entitled to interest from the date of delivery of goods upto the date of payment even in the absence of any contract for a payment of interest. (Para 5)

Regular Second Appeal from the decree of the Court of Shri H. L. Randev, Additional District Judge, Chandigarh, dated 3rd day of February, 1978 reversing that of the Court of Shri B. R. Gupta HCS, Judge 1st Class, Chandigarh dated the 17th January, 1977 and passing a decree for Rs. 6,500 with costs and ordering that the costs of Rs. 100 imposed regarding the additional evidence shall be liable to be adjusted against the same.

Claim : Suit for recovery of Rs. 6,500.

Claim in Appeal : For reversal of the order of Lower Appellate Court.

Balwant Singh Gupta Sr. Advocate with Satya Parkash Jain, Advocate, for the Appellant.

Nemo for the Respondent.

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JUDGMENT

G. R. Majithia, J.

(1) This appeal is directed against the judgment and decree of the first Appellate Court reversing on appeal those of the trial Court and decreeing the suit of plaintiff-respondent for recovery of Rs. 6,500 with costs.

(2) The respondent-plaintiff filed a suit for the recovery of Rs. 6,500 on the grounds that Rs. 5,021.49 were outstanding against the defendant-appellant on account of balance of the price of sanitary goods and material supplied to him on credit during the period from 28th April, 1969 to 15th October, 1970 and Rs. 1,471.07 to be due from him by way of interest at 12 per cent per annum or in the alternative compensation for loss of interest and profit on the same by further investing in business. The defendant resisted the claim of the plaintiff on various grounds including that the plaintiff-firm being not a registered one, the suit was liable to be dismissed on that short ground. From the pleadings of the parties, the following issues were framed :—

1. Whether the plaintiff firm is a registered partnership firm and the suit has been filed by a competent person ?
OPP
2. Whether suit against the defendant is not competent ?
3. Whether the goods supplied were not in accordance with the contract ? OPP
4. To what amount is the plaintiff entitled, if any on account of supply of goods ? OPP
5. Whether the plaintiff is entitled to claim interest if so, at what rate and to what amount ? OPP
6. Whether the defendant is entitled to special costs, if so, to what amount ? OPD
7. Whether the present suit is within time ?
8. Relief.

The trial judge under issue No. 1 found that the plaintiff had failed to prove by cogent evidence if it was a registered firm and therefore it could not be said that the suit had been filed by a competent person. Under issue No. 2, it was held that the suit was competent against the defendant. Under issue No. 4, it was held that the plaintiff was entitled to recover Rs. 6,500 from the defendant. Under issue No. 5, it was held that the plaintiff was not entitled to any interest on the balance amount. Under issue No. 6, it was held that no evidence had been placed on the record which might show that the defendant-respondent was entitled to any special costs. Under issue No. 7, the court gave finding that the suit was within time. As a result of finding on issue No. 1, the suit was dismissed. In first appeal, the plaintiff moved an application under Order 41 Rule 27 of the Code of Civil Procedure for permission to bring on record copy of form 'B' by way of additional evidence for proving registration of plaintiff firm earlier to the institution of the suit. The first appellate Court allowed additional evidence under Order 41 Rule 27(1)(b) of the Code of Civil Procedure. It allowed additional evidence since it felt that the production of copy of certificate of registration of the plaintiff-firm under the Partnership Act is necessary for pronouncing effective judgment and for deciding the appeal in a more satisfactory manner and also to do justice between the parties. In coming to the conclusion, the appellate Court relied upon the dictum of the apex Court in *State of U.P. v. Manbodhan Lal Srivastava* (1), and *K. Venkataramiah v. A. Seetharama Reddy and others* (2). Under issue No. 2, the first appellate Court awarded interest to the plaintiff under section 61(2) (a) of the Sale of Goods Act and resultantly decreed the claim of the plaintiff. The defendant has assailed the judgment and decree of the first appellate Court in the present appeal. The learned counsel had made the following submissions :—

- (i) Additional evidence has been wrongly allowed and in support of this submission he relied upon *Sunder Lal and Son v. Bharat Handicrafts Private Ltd* (3), and *Velji Deoraj and Co. v. Commissioner of Income-tax Bombay City II, Bombay* (4).

(1) A.I.R. 1957 S.C. 912.

(2) A.I.R. 1963 S.C. 1526.

(3) A.I.R. 1968 S.C. 406.

(4) (1968) 1 I.T.J. 322.

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(ii) The interest would not be granted to the seller under the provisions of Section 61(2) (a) of the Sale of Goods Act.

(3) The submissions are without any merit. The suit was dismissed by the trial Court on wholly technical ground. The appellate Court in view of the provisions of Order 41 Rule 27(1)(b) of the Code of Civil Procedure allowed the additional evidence to pronounce the judgment in a most satisfactory manner and doing justice between the parties. The discretion exercised by the appellate Court in the circumstances of the instant case cannot be said to be irregular and improper. The ratio of the judgment in *Sunder Lal's case* (supra) is not applicable to the facts of the case in hand. In that case the facts were as under :—

The appellants in appeal before the apex court were members of the East India Jute and Hessian Exchange Ltd., an Association recognised under the provisions of the Forward Contracts (Regulation) Act, 1952. The appellants applied to the High Court of Judicature at Calcutta on its original side under section 33 of the Indian Arbitration Act for an order *inter alia* declaring that “there existed a valid arbitration agreement contained in contract No. 750 dated September 16, 1960, between the petitioner,” and the respondents. The appellants claimed that they entered into a contract with the respondent on September 16, 1960, for the purchase of 6,00,000 bags of B T will at the rate of Rs. 132.50 np. per 100 bags, “on their own account” in Transferable Specific Delivery Form prescribed under the bye-laws of the Association and on terms and conditions set out therein. The respondents denied the existence of the contract and also its validity. The application was dismissed by the High Court holding that the contract was invalid and that it did not comply with the requirement of Section 15 sub-section (4) of the Forward Contracts (Regulation) Act, 1952.

In appeal the appellants sought to produce a confirmation slip in which the consent of the other party was obtained. It was in this context, the apex Court rejected the plea of the appellant for producing additional evidence with the following observations:—

“Counsel for the appellants says that the respondents did give a slip confirming the contract in the “sold” note, but it

was unfortunately not tendered in evidence in the High Court, and he applies for leave to tender in evidence that confirmation slip in this Court. The confirmation slip sought to be produced in this Court purposes to bear the confirmation by a person who has signed it as "M. L. Bhati". This document was admittedly in the possession of the appellants and could have been produced by them in the High Court. No rational explanation is furnished for not producing the document before the High Court. Again the document does not prove itself to make out the case that the respondents had consented in writing to the term of the contract, evidence that the signature "M. L. Bhati" was subscribed by the person bearing that name and that he was authorised to confirm the note on behalf of the respondents would be necessary. The "sold" note is addressed to the appellants; it purports to be made out in the name of the respondents and is signed by the appellants as Member Licensed Broker of the Association." It is claimed that the appellants subscribed their signature to the "sold" note under the authority of the respondents. The authority of the appellants from the respondents to enter into the transaction does not appear from the terms of the "sold" note. But it is urged on behalf of the appellants that the bye-laws from of the note shall be adopted even in transactions in which a broker is entering into a contract on his own account, and if the contract is not in the form prescribed under the bye-laws the contract would be void. We need not dilate upon that question, for we are only concerned to point out that there is no evidence on the record that the appellants had secured the written consent or authority of the respondents to the contract".

(4) In *Velji Deorai's case (supra)* the Tribunal refused to take additional evidence on record and it was in this context, the Division Bench of the Bombay High Court on a reference under section 54 of the Indian Contract Act observed that the Tribunal found no difficulty in pronouncing judgment on the material on record, nor did it discover any lacuna or defect, which it was necessary to cure. Hence the Tribunal was justified in declining to admit the additional evidence. The judgment is in no way applicable to the facts of the present case. The first submission of the learned counsel is rejected.

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(5) The second submission of the learned counsel is equally untenable. Section 61 of the Sale of Goods Act reads as under:

- “61. *Interest by way of damages and special damages.*—(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.
- (2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price—
- (a) to the seller in a suit by him for the amount of the 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 for 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 the payment was made.”

Sub section (2) of Section 61 is not in the nature of an exception or proviso to sub-section (1) nor is the former subject to the latter. If there was no contract between the parties for the payment of interest, the provisions of sub-section (2) will come into play and be attracted. Sub-section (2) of section 61 gives wide discretion to the Court to award interest as it thinks fit on the amount of the price from the date on which the payment was to be made. The seller would be entitled to interest from the date of delivery of goods upto the date of payment even in the absence of any contract for payment of interest. Under the circumstances, I think the first appellate Court correctly exercised discretion and allowed interest at the rate of 12 per cent per annum.

(6) For the reasons aforesaid, the appeal is devoid of any merit and is dismissed, since there is no representation on behalf of the respondents, the parties are left to bear their own costs.
