

S. K. Sayal, D.A.G., Punjab, Chandigarh *v.* State of Punjab
(G. R. Majithia, J.)

does not come to an end on account of change of ownership and nothing has been stated to make out that a tenant inducted by the mortgagor with regard to agricultural land shall have to vacate when the mortgage is extinguished by lapse of time. In the circumstances the counsel for the plaintiffs contends that a decree for symbolic possession be granted and the plaintiffs be left to seek their right of evicting the tenants under the provisions of Punjab Security of Land Tenures Act 1953. No exception can be had to this and, therefore, in the facts and circumstances aforesaid, the suit of the plaintiffs shall be allowed only to the extent that they would be declared owners and would have right to seek only symbolic possession. For seeking actual possession, they would be left to seek the remedy provided to them under the provisions of Punjab Security of Land Tenures Act. The appeal shall be allowed in the manner indicated above. The judgment and decree of the first appellate Court is set aside and there shall be no order as to costs.

S.C.K.

Before : G. R. Majithia, J.

S. K. SAYAL, D.A.G., PUNJAB, CHANDIGARH,—Appellant.

versus

STATE OF PUNJAB,—Respondent.

28th May, 1991.

Interest Act (14 of 1978)—S. 3—Code of Civil Procedure, 1908—S. 34—Six percent interest allowed by first appellate Court on amounts due under decree—Appellant claiming higher interest in second appeal—Where suit is not for payment of money, S. 34 is inapplicable—Interest under S. 3 of the Interest Act can be awarded even by way of damages—High Court allowing interest at the rate of 12 per cent instead of 6 per cent.

Held, that S. 34 of the Code of Civil Procedure applies only where the decree is for payment of money. The interest can only be awarded on the principal sum and not on the principal and interest as on the decree. However, the instant suit is not a suit for payment of money. S. 34 of the C.P.C. is not applicable in the instant case. Interest will be payable under the provisions of the Interest Act, 1978. Indisputably, the Act applies to the State of Punjab. Under S. 3 of the Act, interest can be awarded even by way of damages. The respondent withheld the payment of salary to the

Appellant on illegal grounds and was thus deprived of the use of the money. Interest can be awarded on the amount illegally withheld. Interest of justice will be met if the appellant is allowed interest on the amount due at the rate of 12 per cent per annum instead of 6 per cent per annum as already allowed by the first appellate Court.

(Para 5)

Regular Second Appeal from the decree of the Court of Shri Babu Ram Gupta, dated 17th January, 1990 modifying on Cross objections filed by the plaintiff that of Shri Birinder Singh, PCS, Sub Judge 1st Class, Chandigarh dated 9th March, 1989 (decreeing the suit of the plaintiff to the effect that the order dated 26th December, 1984 to the extent of treating the period from 15th June, 1982 to 31st December, 1984 as 'Dies-non' along with order of rejection of representation appeal dated 19th August, 1987 as illegal, arbitrary, in isolation of principles of natural justice and the plaintiff is held entitled for all consequential benefits to which he could have been entitled to in the natural course of service in absence of aforementioned impugned orders with no orders as to costs) to the extent that the plaintiff would be entitled to interest on the amount due at the rate of 6 per cent per annum upto the date of payment and leaving the parties to bear their own costs throughout.

Claim : Suit for declaration to the effect that the order dated 26th December, 1984 to the extent of treating the period 15th June, 1982 to 31st December, 1984 as 'dias non' along with the order of rejection of representation/appeal dated August 19, 1987 are illegal, arbitrary in violation of the principles of natural justice and deserved to be quashed being non-existent in the eyes of law thus the plaintiff is entitled for all the consequential benefits which he would have entitled in the natural course of service in absence of afore mentioned impugned orders.

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

Gopal Mahajan, Advocate, for the Petitioner.

O. P. Goyal, Addl. Advocate General, Punjab, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) The only dispute arising for adjudication in this Regular Second Appeal is that the plaintiff-appellant should have been allowed interest on the amount due to him at the rate of 15 per cent per annum and not at 6 per cent per annum as has been done by the first appellate Court.

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The facts:

(2) The plaintiff, an Advocate of this Court, was appointed as Assistant Advocate-General, Punjab with effect from July 15, 1976. His service record throughout was categorised as 'good' and very good'. His services were terminated by order dated June 15, 1982 on the ground that he had interpolated the opinion in the case '*State v. Mohinder Singh and others* (1), filed appeal against the order of termination from service. In the meantime, the apex Court decided the criminal appeal titled *Mohinder Singh and others v. State of Punjab and another* (2). The apex Court held that there was no interpolation and that the Public Prosecutor was authorised by the Under Secretary (Home) to file appeal before the High Court against the acquittal and the High Court had erred in holding that the appeal filed by the State was not properly presented. Having been exonerated of the charge of interpolation by the apex Court on the basis of which plaintiff's service was terminated, the order of termination was set aside by the State of Punjab,—*vide* order dated December 26, 1984 and the plaintiff was reinstated in service. He joined his duty as Assistant Advocate General on January 1, 1985. However, it was ordered that the period from June 15, 1982 to the date of reinstatement (i.e. December 31, 1984) be treated as *dies non*. Presumably, the purpose to treat the period as *dies non*, was to declare Shri G. S. Bains, Assistant Advocate General, Senior to the plaintiff. The plaintiff challenged the Government's order dated December 26, 1984 by which the period from June 15, 1982 to December 31, 1984 was treated as *dies non*. He also challenged the order dated June 24, 1987 passed by the State Government, by which Shri G. S. Bains was declared senior to him. The trial Court decreed the suit by judgment and decree dated March 9, 1989. The State of Punjab challenged the judgment and decree of the trial Court in appeal before the first appellate Court and the plaintiff filed cross-objections assailing the decree of the trial Judge to the extent to which he was denied interest on the arrears of salary. *Vide* judgment and decree dated January 17, 1990, the appeal filed by the State was dismissed but the cross objections filed by the plaintiff were accepted by the first appellate Court and it was ordered that the plaintiff would be entitled to payment of interest on the amount due at the rate of 6 per cent per annum till payment. The State challenged the judgment and decree

(1) Criminal Appeal No. 614-DB of 1980.

(2) A.I.R. 1985 S.C. 383.

of the first appellate Court through R.S.A. No. 1375 of 1990, which was dismissed *in limine* on July 31, 1990.

(3) In the instant appeal, the the plaintiff has assailed the judgment and decree of the first appellate Court whereby he was allowed interest at the rate of 6 per cent per annum only on the amount due till payment. He claims that he should have been allowed interest on the amount due at the rate of 15 per cent per annum till payment.

(4) In response to the notice issued by this Court, Shri O. P. Goyal, Additional Advocate General has put in appearance on behalf of the State of Punjab and stated that interest beyond 6 per cent per annum cannot be awarded in view of the mandatory provision of section 34 of the Code of Civil Procedure.

(5) Section 34 of the Code of Civil Procedure (for short, the Code) applies only where the decree is for payment of money'. The expression "decree is for the payment of money" as used in the section includes a claim for unliquidated damages. The interest that can be awarded to a plaintiff in a suit for money may be divided into three heads, according to the period for which it is to allowed, namely—

- (i) interest accrued due prior to the institution of the suit on the principal sum adjudged (as distinguished from the principal claimed);
- (ii) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, "at such rate as the Court deems reasonable."
- (iii) further interest on the principal sum adjudged from the date of the decree to the date of the payment or to such earlier date as the Court thinks fit, at a rate not exceeding 6 per cent per annum.

The interest can only be awarded on the principal sum and not on the principal and interest as on the date of the decree. However, the instant suit is not a suit for payment of money. Section 34 of the Code is not applicable in the instant case. Interest will be payable under the provisions of the Interest Act, 1978 (Act 14 of 1978) (hereinafter referred to as the Act). In dispartably, the Act applies to the State of Punjab. Under Section 3 of the Act, interest can be awarded even by way of damages. The respondent withheld the

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payment of salary to the plaintiff on illegal grounds and he was thus deprived of the use of the money. Interest can be awarded on the amount illegally withheld. In the instant case, interest of justice will be met if the plaintiff/appellant is allowed interest on the amount due at the rate of 12 per cent per annum instead of 6 per cent per annum as already allowed by the first appellate Court.

(6) For the reason aforesaid, the appeal succeeds, to the extent that the plaintiff-appellant will be entitled to interest on the amount due at the rate of 12 per cent per annum from June 15, 1982 till payment. There will be no order as to costs.

R.N.R.

Before : V. K. Jhanji, J.

AMAR KAUR (SMT.),—Appellant.

versus

HARDEV SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 430 of 1979.

30th May, 1991.

Limitation Act, 1963—S. 64—Specific Relief Act (47 of 1963)—S. 6—Suit for possession based on previous possession—Limitation for such suit.

Held, that a bare reading of Article 64 of the Limitation Act shows that where plaintiff was in possession of certain immovable property and was dispossessed by the defendant, then the suit for possession can be brought within 12 years from the date of dispossession. In order to succeed, the plaintiff must prove possession within 12 years and dispossession by the defendant. In such a situation the plaintiff is not necessarily required to file a suit under S. 6 of the Specific Relief Act. He can as well file a suit on prior possession within 12 years and title need not be proved unless the defendant can prove one.

(Para 10)

Regular Second Appeal from the decree of the Court of Shri Amarbir Singh Gill, Addl. District Judge, Ludhiana dated the 2nd day of September, 1978 affirming that of Shri Balbir Singh, P.C.S.,