

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 28 of 2022
(Arising out of O.A. 451 of 2001 in DRT-1, Hyderabad)

**THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

Housing And Urban Development Corporation Limited (HUDCO), a Company registered under the Companies Act, 1956 (a Government of India Undertaking) and having its registered office at "HUDCO Bhawan", India Habitat Centre, Lodhi Road, New Delhi – 110 003 and carrying on business, inter alia, from one of its Regional Office at 5-10-193, 1st Floor, HACA Bhavan, Hyderabad – 500 004.

... Appellant

-Versus-

1. M/s. Maniraja Constructions, a partnership firm represented through its Managing Partner, having its registered office at Hotel Ayodhya Complex Lakdikapool, Hyderabad – 500 004;
2. Sri V. Venkateswara Rao, son of Balaraj Gupta, residing at 6-3-630/A, Anandnagar Colony, Khairatabad, Hyderabad;
3. Smt. V. Manemma, wife of Balaraj Gupta, residing at 6-3-630/A, Anandnagar Colony, Khairatabad, Hyderabad;
4. Smt. L. Chandrakala, wife of L. Omprakash Gupta, residing at 6-3-630/A, Anandnagar Colony, Khairatabad, Hyderabad;
5. Smt. V. Vijaya lakshmi, daughter of V. Balraj Gupta, residing at 6-3-630/A, Anandnagar Colony, Khairatabad, Hyderabad;
6. Life Insurance Corporation of India, a Corporation established by the Act of Parliament (Act No. XXXI of 1956) having its Central Office at Yogakshama, Jeevan Bima Marg, Bombay – 400 021 and having one of its Zonal Office at Hyderabad viz. South Central Zonal Office at "Jeevan Bhagya Building, Secretariat Road, Saifabad, Hyderabad – 500 463.

... Respondents

Counsel for the Appellant	...	Ms. Poetry Dutta
Counsel for Respondents No. 1 to 5	...	Mr. Nemani Srinivas
Counsel for Respondent No. 6	...	Ms. Sanjukta Ray

JUDGMENT : 26th September, 2023

THE APPELLATE TRIBUNAL :

Instant appeal has arisen against judgment and order dated 26th November, 2018, passed by Learned DRT-I Hyderabad in O.A. No. 451 of 2001 (Housing And Urban Development Corporation Limited -vs- M/s. Maniraja Constructions & Others); whereby the O.A. 451 of 2001 was allowed against Respondents No 1 to 5 for recovery of Rs.3,86,56,950.00 along with pendent lite and future interest at the rate of 6% per annum from the date of filing of the Original Application till realization of the amount. O.A. was dismissed against Defendants No. 6 to 11.

2. As per the pleadings of the parties O.A. 451 of 2001 was filed by the Appellant for recovery of Rs.3,86,56,950.00 against the Respondents which was decided against the Respondents No. 1 to 5.

3. After contest, O.A. was allowed by the Learned DRT for recovery of Rs.3,86,56,950.00. Respondents No. 1 to 5, were held jointly and severally responsible for the same. Interest at the rate of 6% per annum simple from the date of filing of the O.A. till realization was also granted.

4. Appellants are aggrieved on the issue of interest rate, as allowed by the Learned DRT, and preferred the appeal on a limited point of interest.

I have heard the Learned Counsel for the parties and perused the record.

5. At the very outset, it would be pertinent to mention that the Respondents have not filed any appeal against the

impugned judgment. As far as Respondents are concerned, they have accepted the verdict of the Learned DRT.

6. Learned Counsel for Appellant submits that the Learned DRT has erroneously allowed interest at the rate of 6% per annum simple while the interest rate claimed was 20% per annum with quarterly rests. It is further submitted that no reasons have been assigned for allowing interest at the rate of 6% per annum hence the finding recorded by the Learned DRT is erroneous.

7. Learned Counsel for Respondents submits that it is the discretion of the Learned DRT to grant pendent lite and future interest as provided under Section 34 CPC. Learned DRT has exercised its jurisdiction by allowing interest at the rate of 6% per annum simple which is in accordance with law.

8. In the *Central Bank of India -vs- Ravindra & Others [(2002) 1 SCC 367]* Constitution Bench of the Hon'ble Apex Court has interpreted Section 34 of the C.P.C. which reads as under :

"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 the 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:

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or

advanced by nationalised banks in relation to commercial transactions.”

It was held that the used of the word 'may' in Section 34 confers discretion on the Court to award or not to award interest or to award interest at such rate as it deems fit. Such interest, so far as future interest is concerned, may commence from the date of the decree and may be made to stop running either with payment or with such earlier date as the court thinks fit. It was held in paragraph 55 Sub-para (8) that :

“(8) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC de hors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.”

Discretion vested with the Court has to be exercised fairly judicially and for reasons.

9. In the present case a certificate was issued for a sum of Rs.3,86,56,950.00 against Respondents No. 1 to 5. Interest at the rate of 6% per annum simple was granted pendent lite and future from the date of filing of the O.A. till realization. Learned DRT has not dealt with the issue of interest judiciously rather abruptly in paragraph 17 of the impugned judgment and order. It is mentioned that interest of justice would be met if interest at the rate of 6% per annum simple pendent lite and future is granted.

10. Appellant claimed interest at the rate of 20% per annum with quarterly rests. It was the agreed rate of interest. In the present case loan was sanctioned on 15th March, 1996 for an amount of Rs.3.30 lac. O.A. was filed in 2001 for recovery of R Rs.3,86,56,950.00. An approximate amount of Rs.56.00 lac was claimed as principal by the Appellant. Now in terms of the law laid down by the Hon'ble Apex Court in the case of Central Bank of India (supra) since the Learned DRT has awarded interest at the rate of 6% without assigning any reason, I find it appropriate that the component of interest is disproportionate with the component of the principal sum actually advanced. In such circumstances, it would be appropriate that the rate of interest should be enhanced to 9% (nine percent) per annum simple on the amount of Rs.3,86,56,950.00 from the date of filing of the O.A. till the date of realization. Accordingly, the impugned judgment and order is partly modified to that extent.

O R D E R

Appeal is allowed and the impugned judgment and order dated 26th November, 2018, is modified to the extent that the Appellant would be entitled for recovery of Rs.3,86,56,950.00 with interest at the rate of 9% simple from the date of filing of the O.A. till final realization of the claim amount from Respondents No. 1 to 5. Rest of the findings of the judgment of the Learned DRT is confirmed.

No order as to costs.

File be consigned to Record room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Order dictated, signed, dated and pronounced in open Court.

(Anil Kumar Srivastava,J)
Chairperson

Dated: September, 2022
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