

Neutral Citation No. - 2024:AHC:154659

Judgment reserved on : 12.08.2024

Judgment Delivered on : 23.09.2024

Court No. - 34

Case :- WRIT - C No. - 27185 of 2022

Petitioner :- Uttar Pradesh Awas Evam Vikas Parishad And Another
Respondent :- State Consumer Disputes Redressal Commission And
2 Others

Counsel for Petitioner :- Nipun Singh

Counsel for Respondent :- Bal Mukund

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri Nipun Singh, learned Counsel for the petitioners and Sri Bal Mukund, respondent no.3 (practicing Advocate of this Court) in person.

2. Brief facts of the case are that respondent no.3 applied for registration in MIG 45/75 type house under Dev Prayagam Scheme of U.P. Awas Evam Vikas Parishad, Allahabad and deposited Rs.20,000/- as registration amount. In the lottery draw held on 23.02.2005, respondent no.3 was allotted house No.A-110 by the Awas Evam Vikas Parishad. An allotment letter dated 30.07.2005 was issued to respondent no.3 imposing condition that respondent no.3 shall deposit Rs.1,92,956/- upto 31.08.2005 and remaining amount of Rs.2,63,300/- along with interest at the rate of 13% was to be deposited in 120 monthly installments. Respondent no.3 applied for no objection certificate for taking loan from the Bank on the said house allotted to him accordingly, on 30.08.2005, no objection certificate was issued in favour of respondent no.3. After taking the loan from the bank, Respondent no.3 deposited an amount of Rs.4,52,325/- with the petitioners. Respondent no.3 had submitted an application before the petitioner no.2 for execution of sale deed as well as for delivery of

possession of the house in question. In pursuance of the application filed by respondent no.3, a letter dated 25.5.2006 was issued by petitioner no.2 stating that final costing of the house has not been made by the costing section as such execution of sale deed and delivery of possession of the house is not possible. Respondent no.3 again filed an application dated 13.02.2008 for refund of his deposited amount and cancellation of allotment of the house. The total deposited amount of Rs.4,72,990/- has been refunded to respondent no.3 on 04.03.2008. Respondent no.3 filed a complaint on 14.05.2008 before the respondent no.2 with the prayer that petitioners be directed to pay compound interest at the rate of 18% per annum on the amount of Rs.4,72,990/- from the date of payment, i.e., 13.09.2005 to the date of actual refund, i.e., 02.05.2008. The aforementioned complaint was registered as complaint No.258 of 2008 before respondent no.2. Petitioners filed his written statement to the complaint filed by respondent no.3. Respondent no.2 vide order dated 22.5.2010 allowed the complaint and directed the petitioners to pay 15% interest after calculation on the amount of Rs.4,72,990/- from the date of deposit till the date of final payment to the respondent no.3. Petitioners challenged the order dated 22.5.2010 by way of appeal before respondent no.1 which was registered as Appeal No.1292 of 2010. In the aforementioned appeal and interim order dated 02.08.2010 was passed staying the effect and operation of the order dated 22.5.2010 with the condition that petitioners shall deposit Rs.1,00,000/-. In compliance of the interim order dated 02.08.2010, petitioners have deposited the amount of Rs.1,00,000/- on 16.08.2010. Respondent no.3 filed his reply in the aforementioned appeal filed by petitioners. Respondent no.1 vide order dated 01.02.2017 dismissed the appeal filed by the petitioners. Respondent no.3 filed an execution case before the respondent no.2 for execution of the order dated 22.05.2010 which was registered as execution Case No.50 of 2010.

During pendency of aforementioned execution case, respondent no.3 filed a calculation chart claiming additional 15% interest on the deposited amount till 06.07.2019 which comes to Rs.3,02,821/-. Petitioners filed his reply in the aforementioned execution case denying the claim of respondent no.3 which has been set up in calculation chart filed before respondent no.2. Respondent no.2 issued recovery certificate against the petitioner for Rs.3,02,821/- under impugned order dated 01.01.2010. Against the impugned order dated 01.01.2010, petitioners filed a revision before respondent no.1 which was registered as Revision No.4 of 2020. Respondent no.1 vide order dated 30.01.2010 stayed the recovery proceedings against the petitioners but subsequently vide order dated 15.03.2021, the revision filed by the petitioners was dismissed by respondent no.1. Petitioners filed a revision before National Consumer Disputes Redressal Commission, New Delhi against the impugned order dated 15.03.2021 which was registered as Revision Petition No.647 of 2021. The aforementioned revision was dismissed as not maintainable vide order dated 24.11.2021. Hence, this writ petition for the following reliefs:-

“i. issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 15.03.2021 passed by the respondent no.1 (Annexure no.1 to the writ petition);

ii. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 01.01.2020 passed by the respondent no.2 (Annexure no.2 to the writ petition);

iii. Issue a writ, order or direction in the nature of mandamus directing the respondents not to attach/seize the bank account of the petitioners in pursuance of the impugned orders dated 01.01.2020 and 15.03.2021;

iv. Issue any other order or direction, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.”

3. This Court vide order dated 12.10.2022 entertained the matter and passed the following inter order:

“The petitioners have preferred the present petition inter-alia with the prayer to quash the order dated 15.03.2021 passed by the respondent no.1 namely State Consumer Disputes Redressal Commission, U.P., Lucknow as well as order dated 01.01.2020 passed by the respondent no. 2 namely District Consumer Forum, Prayagraj.

It is argued that pursuant to the award given by the District Consumer Forum, Prayagraj, interest has already been paid to the claimant/respondents but inspite of the same in the execution proceedings directions were given by the respondent no.2 to make the interest on the payment of delayed interest.

It is argued that the aforesaid part of the order passed by the respondent no.1 is absolutely illegal.

Matter requires consideration.

Issue notice to respondent no. 3. Steps be taken within ten days.

All the respondents are granted six weeks' time to file counter affidavit.

Petitioner will have two weeks thereafter to file rejoinder affidavit.

List after the exchange of affidavits.

Till the next date of listing, the order dated 15.03.2021 passed by the respondent no.1 namely State Consumer Disputes Redressal Commission, U.P., Lucknow as well as order dated 01.01.2020 passed by the respondent no. 2 namely District Consumer Forum, Prayagraj shall remain stayed.”

4. In pursuance of the order dated 12.10.2022, the parties have exchanged their affidavits.

5. Learned Counsel for the petitioners submitted that respondent no.2 while awarding interest at the rate of 15% did not consider that petitioners are providing house/land to the applicants, who have applied in the scheme formulated by it and the land/house was allotted to the applicants on no profit and no loss basis. He further submitted that respondents have failed to consider that 15% interest, i.e., Rs.3,02,821/-. On the deposited amount which was claimed by the respondent no.3 till 06.07.2019 is unjustified and illegal, as such the same cannot be allowed in favour of respondent no.3. He further submitted that respondent no.3 himself made an application dated

13.02.2008 for refund of the deposited amount and for cancellation of allotment of the house accordingly, the total deposited amount was refunded to respondent no.3 by the petitioners without any deduction. He further submitted that respondent no.3 has failed to deposit the installment amount within time and the procedure prescribed for depositing the installments cannot be changed in any circumstance. He further submitted that respondent no.3 is not entitled to get any interest on the amount deposited by him after 17.04.2008 because his amount was refunded to him without any deduction by the petitioners. He further submitted that petitioners had already paid the entire amount of interest on the deposited amount to the respondent no.3 till the date of payment in compliance of the orders dated 22.05.2010 and 01.02.2017 passed by respondent no.1, therefore, respondent no.3 is not entitled to get any further amount of interest. He further submitted that there is no provision under the law to award interest on interest. He further submitted that respondents have committed manifest error of law by going behind the final award of the executing court. He further submitted that in view of the provisions contained under Section 34(2) of the Code of Civil Procedure, the claim of additional interest made by respondent no.3 on the deposited amount, is liable to be rejected. He further submitted that no interference is required in the matter and the writ petition is liable to be dismissed. He further placed reliance upon the judgment of Hon'ble Apex Court reported in **2024 SCC OnLine SC 1898, D. Khosla and Company v. Union of India**, in order to demonstrate that interest is payable on the principal sum adjudged and not on the interest part of the award.

6. On the other hand, Mr. Bal Mukund, Advocate appearing in person (respondent no.3) submitted that there is no illegality in the impugned order, as such writ petition filed by the petitioner is liable to be dismissed. He further submitted that writ petition filed by the petitioners is not maintainable on the ground of alternative remedy.

He further submitted that there is laches in filing of the instant petition as reported by Stamp Reporter, as such writ petition is liable to be dismissed on the ground of laches. He further submitted that he had deposited Rs.4,03,324/- as well as miscellaneous charges for the allotted house after taking loan from the Bank of Baroda, but petitioners had not handed over the possession of the allotted house to the respondent no.3 accordingly, respondent no.3 has filed an application for refund of the deposited amount. He submitted that a complaint case was filed before District Consumer Forum by him for the hardship and injury caused to him. He further submitted that District Forum has directed for 15% interest on the sum of Rs.4,72,990/- from the date of deposit, i.e., 13.09.2005 to the date of actual refund, i.e, 02.05.2008. He further submitted that petitioner had not complied the District Consumer Forum order dated 22.05.2010 rather they have filed appeal before the State Commission which was dismissed vide order dated 22.5.2010. After dismissal of appeal by State Commission, District Forum had passed an order dated 01.01.2010 for issuance of recovery certificate against petitioners for Rs.3,02,821/- against the petitioners, but in place of making payment, the revision was filed before the higher forum which was dismissed as not maintainable. He further submitted that in view of the ratio of law laid down by Hon'ble Apex Court in the case reported in **2007 3 SCC 545, Alok Shanker Pandey v. Union of India and others**, the interest is not a penalty of punishment at all, but it is normal accretion on capital. He further submitted that impugned order has been rightly passed by the respondents, but petitioners have challenged the order in order to harass the respondent no.3 for no fault of him. He further submitted that writ petition is liable to be dismissed.

7. I have considered the argument advanced by learned counsel for the parties and perused the record.

8. There is no dispute about the fact that respondent no.3 was allotted

house by petitioners in the year 2005 and respondent no.3 has deposited Rs.4,52,325/- with the petitioners. There is also no dispute about the fact that on the application of the respondent no.3, the entire deposited amount has been refunded to respondent no.3 by the petitioners. There is also no dispute about the fact that respondent no.2 has directed to pay 15% interest on the amount of Rs.4,72,990/- from the date of deposit till the date of final payment to respondent no.3. There is also no dispute about the fact that in the execution case, recovery certificate against the petitioners has been issued for Rs.3,02,821/- under the impugned order dated 01.01.2020.

9. In order to appreciate the controversy involved in the matter, the perusal of Section 34(2) of the Code of Civil Procedure will be relevant which is 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 to be paid on the principal sum adjudged, from the date of the suit to the date of decree at a rate not exceeding twelve percent. per annum, 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 twelve percent. per annum as the Court deems reasonable on such principal sum, from the date of the 100 decree to the date of payment or to such earlier date as the Court deems 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 twelve percent., per annum, but shall not exceed the contract rate of interest or where there is no contractual rate, the rate at which monies are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation.- I In this sub section, "nationalized banks" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

Explanation.- II A transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where a judgment and decree are silent with respect to the payment of interest

on such principal sum from the date of the decree to the date of payment or other earlier date, the decree holder may apply to the Court which passed the decree for an order in relation to the liability of the judgment debtor to pay interest for the said period and as to the rate at which interest is payable for the said period and the Court shall pass a reasoned order on the said application and in case interest is awarded, the Court shall amend the judgment and decree in accordance with the said order.

(3) The application referred to in sub-section (2) shall be filed within a period of 30 days of the date of judgment and decree in the suit and while computing the period for filing an appeal against the judgment and decree under the provisions of the Limitation Act, 1963, the period between the date of the 101 application referred to in sub-section (2) and the date of passing of the order thereon, shall also be excluded, irrespective whether any interest was awarded or not in such application."

The 144th Report of the Law Commission recommended in Chapter III that the court may be empowered to grant interest at a rate higher than the contractual rate, where the contractual rate is quite low, for the period during the pendency of the suit.

The Commission also noticed that section 79 of Negotiable Instruments Act, 1881 directs calculation of the contractual rate of interest until 'such date after the institution of the suit'. Some courts have held that the discretion given in section 34 will not, therefore, to apply while some other courts have held that section 79 of the Negotiable Instruments Act prevails. The Commission favored the view that the discretion under section 34 for pendente lite interest shall prevail and that section 79 of the Negotiable Instruments Act be amended by substituting the words "not later than the institution of the suit" for the words "such date after the institution of the suit" in section 79 of the Negotiable Instrument Act, 1881.

We are of the view on the first question that in the light of the proposal to increase the maximum interest up to 12% for the period during pendency of the suit, no further amendment as suggested in the 144th Report 102 is necessary. On the second question, we reiterate the same recommendation for amendment of section 79 of the Negotiable Instruments Act, 1881 as suggested in the 144th Report."

10. The perusal of Section 3(3) of The Interest Act, 1978 will be relevant which is as under:

“(3) Nothing in this section, -

(a) shall apply in relation to -

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or
(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect -

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

(ii) the provisions of rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the court to award interest upon interest.”

11. From the perusal of the provision as quoted above it is fully demonstrated that interest is payable on the principal sum and not on interest part of the award.

12. In the instant matter, the Consumer Forum has already ordered for interest at the rate of 15% from the date of deposit till the date of final payment, as such further order for interest on interest by issuing recovery certificate against the petitioner is wholly illegal.

13. The Hon'ble Apex Court in the case of **D. Khosla and Company (supra)** has held that interest is payable on the principal sum adjudged and not in the interest part of the award. Paragraph Nos.17, 18 and 23 of the aforementioned judgment will be relevant for perusal which are as under:-

“17. [Section 34](#) of the CPC provides that where the decree is for payment of money, the court may order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged. Again, the reading of the aforesaid Sub-Section (1) of [Section 34](#) CPC would reveal that the interest is payable on the principal sum adjudged and not on interest part of the award.

18. [The Interest Act, 1978](#) vide Sub-Section (3) of [Section 3](#) specifically lays down that nothing in [Section 3](#) which permits the court to award interest shall empower the court to award interest upon interest. It means that ordinarily the courts are not entitled to award interest upon interest unless specifically provided either under any statute or under the terms and conditions of the contract.

23. In the light of the above legal provisions and the case law on the subject, it is

evident that ordinarily courts are not supposed to grant interest on interest except where it has been specifically provided under the statute or where there is specific stipulation to that effect under the terms and conditions of the contract. There is no dispute as to the power of the courts to award interest on interest or compound interest in a given case subject to the power conferred under the statutes or under the terms and conditions of the contract but where no such power is conferred ordinarily, the courts do not award interest on interest.”

14. Considering the entire facts and circumstances of the case as well as the ratio of law laid down by Hon'ble Apex Court in **D. Khosla and Company (supra)**, the impugned orders dated 15.03.2021 passed by respondent no.1 and 01.01.2020 passed by respondent no.2 are liable to be set aside and the same are hereby set aside.

15. The writ petition is **allowed**.

16. No order as to costs.

Order Date :- 23.9.2024
A.N. Mishra