Privy Council Appeal No. 65 *of* 1936

Bengal Appeals Nos. 15 *of* 1934, *and* 8 *of* 1935

Bengal Nagpur Railway Company, Limited - - *Appellants*

v.

Ruttanji Ramji and others - - - - *Respondents*

Ruttanji Ramji and others - - - - *Appellants*

v.

Bengal Nagpur Railway Company, Limited - - *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1937

Present at the Hearing :
LORD ALNESS.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

These consolidated appeals arise out of an action brought by the plaintiffs to recover, from the Bengal Nagpur Railway Company, Limited (hereinafter referred to as "the railway"), a certain sum of money on account of the price of the work done by them for the railway. The circumstances which have led to the litigation may be shortly stated.

On the 31st March, 1920, one Ramji Madhoji (described hereinafter as the contractor), the predecessor in interest of the plaintiffs, entered into three contracts with the railway for doing earth work, bridge work and miscellaneous work respectively, in the construction of a branch railway line known as Amda Jamda branch. The terms of each contract, which were embodied in a document variously described as schedule of works or schedule of rates, prescribed, *inter alia,* the rates at which payments were to be made to the contractor for various items of work to be done by him.

In May, 1920, the contractor commenced work in the section of the line allotted to him; but he soon found that, owing to the wild and uninhabited nature of the locality through which the line had to pass, and to other local disadvantages, it was difficult to induce labourers from distant

places to come and work there; and he encountered many other difficulties. He did not take long to realise that the rates specified in the schedules were wholly inadequate and asked for their enhancement. The railway recognised the reasonableness of the claim and enhanced the rates in August, 1920, and framed new schedules of rates. But the contractor refused to sign the revised schedules, as he considered even the new rates to be inadequate. He was, however, asked to continue the work and on the 5th October, 1920, he received from the assistant engineer of the railway a letter in these terms:—

> " As there appears to be a certain amount of discontent with regard to the schedules of rates for this Sub-Division and as I have received several letters containing proposals as to what the rates should be I wish to bring to your notice the following points which have been conveyed to me by the District Engineer as a result of his last inspection:—
>
> " 1. It is not the policy of the Bengal Nagpur Railway to cause loss to their contractors by paying them final rates at which they cannot make a profit.
>
> " 2. Work has scarcely been started at present and it is far too early to judge whether a further increase in rates is necessary. The final rates necessary cannot be determined until the work is in full swing.
>
> " 3. Any representations which you may have to make will be sympathetically considered after a good effort has been put forth (say for six months) which will enable an estimate to be made of the actual expenses incurred."

This letter was followed by another letter in December, 1920, which sanctioned a further increase in certain rates mentioned in the schedule of rates. Even this revision of rates was unacceptable to the contractor, but the railway entered the revised rates in the printed schedules without obtaining the consent of the contractor. The work, however, continued and was completed early in 1925; the contractor receiving payments periodically on the basis of periodical statements of accounts or bills called " on account bills."

It appears that during the progress of the work and even after its completion attempts were made by the parties to settle finally the rates at which payment should be made to the contractor for the various items of work done by him, but these attempts proved abortive. The contractor, in the meanwhile, having died, his representatives brought the present action for the recovery of the money due to them; and the main point in dispute, upon which the parties have produced voluminous evidence, is whether the rates as specified in the original schedules were abandoned with the consent of the parties. The Trial Judge holds that the oral and documentary evidence adduced by the parties, confirmed, as it is, by their conduct, leads to the conclusion that " the original scheduled rates were abandoned by the mutual consent of the parties." On appeal, the learned Judges of the High Court, upon a fresh examination of all the relevant circumstances, have endorsed that conclusion in clear and emphatic terms.

Now, the issue determined by the Courts in India is one of fact, and their Lordships do not think that there is any valid reason for departing from the general rule which forbids a fresh examination of facts for the purpose of disturbing concurrent findings by the lower Courts. It may be that the Courts below, in arriving at the same result upon the evidence, have not been influenced by precisely the same considerations, but that circumstance would not furnish any ground for disregarding the rule which has been usually followed by the Board.

Their Lordships must, therefore, take it as established that the original rates were abandoned with the consent of both the parties. It is also clear that the railway proposed to substitute for those rates certain enhanced rates, but the proposed increase was considered inadequate by the contractor and was not accepted by him. The result was that, while the old rates had disappeared, there were no new rates to take their place. The contracts employing the contractor to perform certain work for the railway, however, remained in operation; and it is obvious that the contractor did the work for the railway, and that the latter accepted that work.

The question is how the price of that work should be determined. In their Lordships' opinion, the amount, which the contractor is entitled to recover from the railway, should be determined on the basis of fair and reasonable rates. Adopting this principle the Trial Judge assessed the price of the work done by the contractor at Rs.87,839, but on appeal the High Court have reduced it to Rs.66,980/10/6. This amount has not been challenged by the learned counsel in their arguments at the Bar, and their Lordships must, therefore, accept the conclusion of the High Court that the plaintiffs are entitled to recover from the railway Rs.66,980/10/6.

The railway was liable to pay this amount to the plaintiffs on the 26th July, 1925, and they claim interest on the money for the period during which it was withheld from them.

The suit for the recovery of the money due to them was commenced by the plaintiffs on the 29th November, 1927, and there can be no doubt that the award of interest from the date of the institution of the suit is governed by section 34 of the Civil Procedure Code. By that section it is provided that the Court may 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 as the Court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

The High Court have allowed interest at 6 per cent. per annum from the date of the decree of the Trial Court to the date of payment on the sum found due to the plaintiffs

at the date of the said decree, and this decision cannot be challenged. Nor can there be any objection to the order for the payment of interest from the date of the institution of the suit to the date of the decree. The rate of interest awarded by the High Court is, however, 9 per cent., and this rate would be excessive, if it depended only upon the rule contained in the Civil Procedure Code.

The crucial question, however, is whether the Court has authority to allow interest for the period prior to the institution of the suit; and the solution of this question depends, not upon the Civil Procedure Code, but upon substantive law. Now, interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest, as for instance, under section 80 of the Negotiable Instruments Act, 1881, the Court may award interest at the rate of 6 per cent. per annum, when no rate of interest is specified in the promissory note or bill of exchange. There is in the present case neither usage nor any contract express or implied to justify the award of interest. Nor is interest payable by virtue of any provision of the law governing the case. Under the Interest Act XXXII of 1839, the Court may allow interest to the plaintiff, if the amount claimed is a sum certain which is payable at a certain time by virtue of a written instrument. But it is conceded that the amount claimed in this case was not a sum certain. The Interest Act, however, contains a proviso that " interest shall be payable in all cases in which it is now payable by law." This proviso applies to cases in which the Court of Equity exercises jurisdiction to allow interest. As observed by Lord Tomlin in *Maine and New Brunswick Electrical Power Company, Limited* v. *Hart* ([1929] A.C. 631), " In order to invoke a rule of equity it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as, for example, the non-performance of a contract of which equity can give specific performance." The present case does not, however, attract the equitable jurisdiction of the Court and cannot come within the purview of the proviso.

The learned Judges of the High Court have allowed interest by way of damages caused to the plaintiffs for the wrongful detention of their money by the railway, but the question is whether this view can be sustained. There is a considerable divergence of judicial opinion in India on the question of whether interest can be recovered as damages under section 73 of the Indian Contract Act, where it is not recoverable under the Interest Act. Now, section 73 of the Indian Contract Act gives statutory recognition to the general rule that, in the event of a breach of a contract, the party who suffers by such breach is entitled to recover from the party breaking the contract compensation for any

loss or damage thereby caused to him. On behalf of the plaintiffs, reliance is placed upon illustration (*n*) to that section. The illustration, however, does not deal with the right of a creditor to recover interest from his debtor on a loan advanced to the latter by the former. It only shows that if any person breaks his contract to pay to another person a sum of money on a specific date, and in consequence of that breach the latter is unable to pay his debts and is ruined, the former is not liable to make good to the latter anything except the principal sum which he promised to pay, together with interest up to the date of payment. He is not liable to pay damages of a remote character. The illustration does not confer upon a creditor a right to recover interest upon a debt which is due to him, when he is not entitled to such interest under any provision of the law. Nor can an illustration have the effect of modifying the language of the section which alone forms the enactment.

As observed in *Jamal* v. *Moolla Dawood, Sons & Co.* (43 I.A. 6), section 73 is merely declaratory of the common law as to damages, and it has been held by the House of Lords in *London, Chatham & Dover Railway Company* v. *South Eastern Railway Company,* ([1893] A.C. 429), that interest cannot be allowed at common law by way of damages for wrongful detention of debt. The judgment of the Privy Council in the case of *Maine and New Brunswick Electrical Power Company, Limited* v. *Hart* (*supra*), dealt with a statute of New Brunswick, the relevant section of which was identical in terms with the Interest Act of India, and it was held in that case that the plaintiff was not entitled to interest at law, and, as the case did not attract the equitable jurisdiction of the Court, no rule of equity in regard to interest could have any application.

The law has, however, been amended in England by section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, empowering a Court of Record to award interest on the whole or any part of any debt or damages, at such rate as it thinks fit, for the whole or any part of the period between the date when the cause of action arises and the date of the judgment. But there has been no such amendment of the law in India.

For the reasons stated above their Lordships think that the plaintiffs have not established their right to recover interest prior to the date of the suit, but they must get interest under section 34 of the Civil Procedure Code at 6 per cent per annum on Rs·66,980, annas 10, and pies 6, the principal sum found to be due to them, from the 29th November, 1927, the date of the institution of the suit, to the 14th March, 1931, the date of the decree of the trial Court, and on the sum so adjudged, further interest at the same rate from the 15th March, 1931, until payment.

The result is that the appeal brought by the defendants is allowed only to the extent that the amount of interest awarded by the High Court to the plaintiffs is reduced as

stated above, but it is dismissed on all other grounds. The appeal preferred by the plaintiffs also is dismissed. On the question of costs it is to be observed that the defendants, while succeeding on the question of interest, have failed on all the main points raised by them. Having regard to the amount involved in each appeal and to the other circumstances of the case their Lordships consider that the defendants should pay to the plaintiffs one-half of the costs of the consolidated appeals, and they will humbly advise His Majesty accordingly.

(46811—3A) Wt. 8151—17 180 1/38 P. St. G. 338

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DELIVERED BY SIR SHADI LAL

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
Pocock Street, S.E.1.

1938