

PETITIONER:
M/S JAGDISH RAI & BROTHERS

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT: 19/03/1999

BENCH:
S.Rajendra, S.N.Phukan

JUDGMENT:

RAJENDRA BABU, J. :

A claim has been made for grant of interest in respect of an amount awarded pursuant to arbitration in an application under Section 29 of the Arbitration Act, 1940 read with Section 34 CPC. However, such a claim does not seem to have been made before the Court of the Sub-Judge when the proceedings were pending for making the award the rule of the court. The Subordinate Judge passed a decree in terms of the award and against which an appeal was filed in the High Court. When that appeal was pending in the High Court an application was made as stated earlier but was rejected firstly on the ground that the appellant is not entitled to award of interest when such a claim had not been made before the court of the Sub-Judge by challenging the award and secondly on the ground that when interim relief was granted against the order making the award a rule of the court to make payment to an extent of 50% which could be withdrawn after furnishing security to the satisfaction of the court and having withdrawn the money the appellant would not be entitled to claim interest.

There are four stages of grant of interest. Firstly, from the stage of accrual of cause of action till filing of the arbitration proceedings; secondly, during pendency of the proceedings before arbitrator; thirdly, future interest arising between date of award and date of the decree; and fourthly, interest arising from date of decree till realisation of award.

The claim for interest not having been made before the court in which proceedings for making the award the rule of the court were pending would certainly dis-entitle the appellant for making such a claim during first three stages of pre-arbitration and post-arbitration that is between award and filing of application inasmuch as several considerations will have to be examined before award of interest and at what rate. Therefore, when the award had not been challenged for not granting interest, the award could not be upset to that extent. The view taken by the High Court appears to be correct to that extent. However, that is not the end of the matter. The High Court ought to have further examined whether the appellant was entitled to any interest after the decree was made in terms of the

award. The courts have taken the view that award of interest under Section 34 CPC is a matter of procedure and ought to be granted in all cases when there is a decree for money unless there are strong reasons to decline the same. In the present case the appellant had made a claim for interest before the arbitrator but the same had been denied and no reasons are forthcoming thereto. Whatever that may be, at any rate after the Sub-Judge made an award the rule of the court the decree ought to contain a provision for making payment of interest. If such payment had not been made, appropriate correction of the decree could be ordered to be made when an application had been made before the High Court.

We are conscious of the fact that the appellant had not preferred any appeal against the order made by the court of Sub-Judge which made the award the decree of the court but did not grant any interest. Even so, the grant of interest being a matter of procedure and the appellant having made an application before the High Court in that regard, we do not think there is any impediment to grant the same by bringing decree of subordinate court in conformity with law, namely, by awarding appropriate interest.

The learned counsel for the appellant relied upon several decisions of this Court to state the proposition that such interest could be granted. It is unnecessary to make any detailed reference to them. We think it appropriate to modify the decree of the court of Sub-Judge by including a direction for payment of interest @ 12% per annum from the date when the award was made the decree of the court of Sub-Judge till realisation. The appeal is allowed to the extent indicated above. However, in the circumstances of the case, there shall be no orders as to costs.