

Case No. 41

1998-3-L.W. 16.2

MADRAS HIGH COURT

11th June, 1998/Original Side Appeal No.48 of 1993

**Shivaraj Patil and
M. Karpagavinayagam, JJ.**

M/s Bangalore Water Suppl and Sewerage Board, Cavery Project Division,
by its Executive Engineer.

Vs

M/s Sugesan & Co. (P) Ltd., 38, Rajaji Road, Madras - 1.

Money suit - interest for pre suit period - governed by the terms of the agreement - for interest after filing of suit and after decree - matter governed by Section 34 of C P C -discretion of courts to award interest based on facts of each case.

Held : It must be noted, that the bills Exs. P9 etc. in this case which have been given to the defendant by the plaintiff, indicate that the rate of interest to be charged by the plaintiff is 24% per annum on the outstanding amount after 15 years from the date of bill and until realisation. It is, therefore, to be concluded that though in the agreement, the rate of interest is not mentioned, it is mentioned in the bills, and in the letters and the legal notice which was sent by the plaintiff on 27.05.1982 and received by the defendant on 31.05.1982.

AIR 1961 S.C.990 = 1961(1) SCJ 569;
AIR 1994 Bombay 48 (D.B.);
1964 An.W.R. 229;
AIR 1989 Delhi 107; and
(1980) 93 L.W. 769 = AIR 1981 Madras 94 (D.B.);
87L.W. 298 = 1974-I-MLJ 334; - Referred to.

It is well-settled that interest for the period prior to the suit is payable under an agreement or usage or under the Interest Act. After the institution of the suit the award of interest is governed by provision of Section 34 of the Code of Civil Procedure. Under this section, after institution of the suit, the court has discretion to

order payment of interest at such rate as it deems reasonable, on the principal sum adjudged, exceeding 6% per annum, where the liability has arisen out of a commercial transaction, not exceeding the contractual rate of interest.

It cannot be disputed that in the present case, the liability has arisen out of a commercial transaction, and that under Section 34 of C.P.C., a wide discretion has been conferred on the Courts in the matter of grant of interest. It is equally true that the discretion is to be exercised on sound judicial principles, Section 34 deals with two stages in regard to the grant of interest, viz., (1) from the date of the suit to the date of the decree, i.e., *pendente lite* interest; and (2) from the date of decree to the date of realization, i.e., future interest or further interest. As the Apex Court holds, *pendente lite* interest can be awarded at such rate as the court deems reasonable. Under the proviso to Section 34 the rate such further interest may exceed 6% per annum, but such rate shall not exceed the contractual rate of interest.

As laid down in the judgment of Division Bench reported in 87 L.W. 298 = 1974-1-M.L.J.334 no hard and fast rule can be laid down either with reference to the percentage of interest or with reference to the nature of interest, whether simple or compound, for the purpose of determining whether the rate of interest charged in a particular case was excessive or not. Therefore, the exercise of the judicial discretion in fixing the rate of interest would squarely depend upon the facts and circumstances of each and every case.

Section 34 of C.P.C leaves it to the discretion of the Court as to what interest is to be decreed by way of *pendente lite* interest. So far as future interest or further interest is concerned, that too is left entirely to the discretion of the Court, but subject to a limit of 6%. However, the added proviso would remove the limit to the future interest in a case arising out of commercial transaction. But, the proviso does not take away the discretion left to the Court, nor does it limit the scope of exercise of such discretion. The judicial discretion in this regard must depend upon consideration of all the attending facts and circumstances including the circumstance that the amount decreed was in respect of a liability arising out of a commercial transaction. The exercise of such discretion shall necessarily be judicial and reasonable. The interest of justice would be met by fixing the rate of interest at 12% per annum which is reasonable, from the date of the suit till the date of realisation of the suit amount.

Held: further: "we have no reason to differ from the finding by the learned single

Judge to the effect that though the notice was issued under section 80 C .P.C., the notice must be deemed to have been issued in terms of Section 126 of Bangalore Water Supply and Sewerage Act, inasmuch as all the details with regard to the claim, the amount due and the facts required to be incorporated in the suit have been clearly given in the notice. It is settled law that the quoting of wrong section would not disentitle the party to exercise their right as conferred on them under the Act. Therefore, the notice shall be construed to be valid and the same has been issued in conformity with law".

O.S. Appeal allowed in part

Mr. G. Narasimhalu for Appellant.

Mr. Kesavanath Devay, for Mr. D. Anandan for Respondent.

JUDGMENT - M. Karpagavinayagam, J.

The defendant in the suit C.S.No. 417 of 1982 has filed this appeal aggrieved by the Judgment and decree dated 16.10.1992 passed by the learned single Judge on the original side of this Court. For convenience we shall refer to the parties as described in the plaint, in this Judgment.

2. Since the learned single Judge has narrated the facts of the case in sufficient details, we do not consider it necessary to state them again elaborately. However, we shall state them briefly for immediate understanding of the case in nutshell, and to appreciate the submissions made by the learned counsel for parties.

3. The plaintiff filed the suit for recovery of sum of Rs. 9,43,763/- and for costs, stating that in September, 1979 the defendant invited tenders for clearing the shipping consignments of steel plates weighing about 5500 M.T. through Madras Port as per schedule of the tender documents. The plaintiff submitted its tender quoting Rs.86.90 per M. 7. as their service charges for clearing the goods. Subsequently, by negotiation between the plaintiff and the defendant the rate was reduced to Rs.83.90 per M.T. However the said reduced rate was exclusive of all type of charges for crantage operation; and the storage charge at Rs.4.00 per M.T. per calendar month or part thereof, would be charged for storage exceeding two months, remained unchanged.

4. There were further negotiations, and the terms and conditions stipulated in the plaintiff's letter dated 24.10.1979 and 27.10.1979 were agreed by the parties to

be treated as part of the contract. The defendant by his letter dated 09.11.1979 accepted the plaintiff's tender as negotiated. The plaintiff took up the work. The clearing operations of every consignment were supervised by the officials of the defendant whenever deemed necessary. In the clearance of the very first consignment of the steel plates, the Assistant Engineer of the Defendant, by the letter dated 29.1.1980, requested the plaintiff to engage private cranes for the entire cargo, and stated that the rates for service would be discussed with competent authorities. He also confirmed that the plaintiff would be entitled to claim private crange changes. The Chief engineer of the defendant, by telegram dated 19.02.1980 permitted the plaintiff to use private cranes if the Madras Port Trust cranes were not available.

5. On 07.02.1980 an Agreement was signed between the parties incorporating the terms and conditions of the bargain. In that agreement it was made clear that the amendment, additions, alterations, as per plaintiff's letters dated 24.10.1979 and 27.10.1979 shall form part of the said agreement. The letter dated 24.10.1979 gave schedule of rates for crange operations, and that the said rates were in addition to the rate of Rs.83.90 per M.T. as remuneration for the services. On enquiry the Madras Port Trust clarified that the steel plates could be loaded on vehicles only by using crane power and not by manual means. It was agreed between the parties, in order to avoid delay in clearance and consequent levies by Madras Port Trust, to clear the goods by using private cranes.

6. The plaintiff on 01.02.1980 submitted further tender to the defendant for clearance of 1500 tones of steel billets at the Madras Harbour and transporting the same to Bangalore. The defendant by its letter dated 20.02.1980 accepted the tender at the same rates as were accepted for clearing and forwarding the steel plates. The plaintiff carried on the clearing operations at Madras Port on behalf of the defendant as per the two agreements, and they transported the same to Bangalore, and Submitted their bills between 02.02.1980 an 12.11.1980. The defendant made part payments and the defendant failed and neglected to pay the balance due as also the security deposit and earnest money deposits.

7. The plaintiff carried out the clearing operations at Madras Port from time to time as agreed and furnished the bills to the defendant for payment. It was also agreed that payments would be made in two or three days from the receipt of each bill between 02.02.1980 and 12.11.1980. After adjusting the debits and credits, the plaintiff demanded payment of Rs.5,92,616.60 by various letters and telegrams. There was no response for a very long time. However, by the letter dated 17.11.1981

the Executive Engineer of the defendant stated that after securing relevant records from the office of the Chief Engineer, the plaintiff's claim would be admitted.

8. While so the plaintiff was surprised to receive a letter dated 20.05.1982 from the defendant repudiating the claim of the plaintiff of Rs.2,93,025.21 for crantage and Rs.151.25 as Madras Port Trust overtime charge, and Rs.650/- as Survey charges. The counsel for the plaintiff sent a notice to the defendant dated 27.05.1982 refuting the contentions of the defendant as regards the said charges and claiming payment. Since the plaintiff was deprived of the money, and as the bills sent to the defendant contained a specific condition that interest would be charged at 24% per annum on the outstanding after 15 days from the date of the bill until realization, the plaintiff claimed interest from the defendant on account of the contract for the steel plates at Rs.2,52,231.60 and on account of steel billets at Rs.98,914.93. Thus the plaintiff totally claimed a sum of Rs.5,92,616.60 towards principle and a sum of Rs.3,51,146.53 towards interest.

9. The defendant filed a detailed written statement denying the claim of the plaintiff and explaining about the terms of the contract. The defendant denied that it was liable to pay crantage charges as claimed in the plaint. It contended that the notice dated 27.05.1982 given by the plaintiff to the defendant prior to the suit was not in conformity with Section 126 of the Bangalore Water Supply and Sewerage Act. The defendant also contended the plaintiff was not entitled to claim interest.

10. Based on the pleadings of the parties following were the issues framed :-

- i. What are the terms of the contract between the parties in respect of the clearing and delivery operations of the consignment?
- ii. Whether the defendant is liable to pay crantage charges as claimed in the plaint?
- iii. Whether the defendant is liable to pay clearing and transport charges in respect of 1500 M.T. of steel billets?
- iv. Whether the plaintiff has to account for Rs.46,345.40/- as contended in the written statement?
- v. Whether the plaintiff is entitled to claim interest and, if so, at what rate?
- vi. Whether the notice dated 27.05.1982 given by the plaintiff to the defendant prior to the suit is in conformity with Sec.126 of the Bangalore Water Supply and Sewerage Board Act?
- vii. Whether the defendant is not liable to pay any amount to the plaintiff towards the suit claim as contended in the written statement?
- viii. To what relief, the parties are entitled?

11. The learned single Judge, in the light of the evidence placed before him, both oral and documentary, decreed the suit of the plaintiff for a sum of Rs.23,91,694.50 with further interest at the rate of 24% per annum on the sum of Rs.5,92,616.60 from the date of decree till date of realization. Costs were also awarded in the suit by Judgment and decree dated 16.11.1992 which are include in this appeal.

12. While deciding the issues framed as referred to above, the learned single Judge has given the following findings:-

(1) The plaintiff and the defendant had agreed for the clearance of the steel plates and steel billets from Madras Harbour and for transporting the same to Bangalore, the place of the defendant, at the rate of Rs. 83.90 per M.T. clearance charge.

(2) The plaintiff was permitted by the defendant to use private cranes for handling the goods due to the non availability of the Madras Port Trust cranes. Therefore, the defendant is liable to pay crange charges in respect of all the four operations.

(3) The defendant is liable to pay the clearance charges, crange charges and transport charges in respect of steel plates and steel billets.

(4) The allegation in the written statements that the plaintiff has to account for Rs.46,345.40 which was refunded by Madras Port Trust towards crange charges because of the non-user of the Port Trust cranes, is baseless. Hence, the plaintiff is not bound to give credit to for the said sum.

(5) The plaintiff has given bills to the defendant indicating the interest to be charged by the plaintiff at the rate of 24% per annum. The defendant has never disputed the same. Therefore, the plaintiff will be lawfully entitled to claim interest at 24% per annum, more so when the transaction between the plaintiff and the defendant was of the commercial nature.

(6) Though the suit notice was sent by the plaintiff to the defendant claiming the amount under Section 80 C.P.C instead of Section 126 of the Bangalore Water Supply and Sewerage Act giving the defendant two months time to answer the claim, the said notice must be said to be quite in conformity with law, as the quoting of wrong section would not invalidate the notice.

13. Mr. G. Narasimhalu, the counsel appearing for the appellant would broadly press into service the following three main contentions:-

(i) There are only three carnage operations. This is clear even from Ex.P.3, a letter dated 24.07.1979. The plaintiff quoted in this letter the rates for only three carnage operations. The learned single Judge without considering the said docu-

ment, came to the wrong conclusion that there are four carnage operations, as claimed in the plaint.

(ii) The suit was not properly laid. Prior to the filling of the suit, the plaintiff issued notice purporting to be one under Section 80 C.P.C. instead of Section 126 of Bangalore Water Supply and Sewerage Act.

(iii) The learned single Judge erred in awarding interest at 24% per annum. When the plaintiff has not proved the claim of interest at 24% even as damages, the learned single Judge merely on the basis of the argument of the plaintiff cannot come to the conclusion that the Nationalised Banks are advancing the loans to the persons at the rate of 24% per annum and that therefore, the defendant cannot have any grudge paying interest at the same rate on the amount due to the plaintiff.

14. Mr. Kesavanath Devay, the counsel appearing for the respondent/plaintiff in justification of the findings given by the learned single Judge would contend by pointing out various portions of the judgment and relevant documents, that the conclusion arrived at by the trial Court was valid and unassailable.

15. Both the counsel in support of their respective contentions, cited several authorities, which we shall see later.

16. Mr. G. Narasimahalu, though would argue on various points, as put forward before the trial Court, would submit at great length the three main points as referred to above. Even among the three contentions, the learned counsel for the appellant would lay much stress and emphasis on the contention relating to the awarding of interest at the rate of 24% per annum, which is, according to him, most unreasonable. He would further point out that the said rate of interest was neither found in terms of agreement nor on any evidence to show that the defendant accepted for the said interest through any correspondence.

17. Before dealing with this contention regarding interest, let us, at the outset, deal with the other two aspects.

18. There is no dispute about the fact that the plaintiff was appointed as clearing agent of the defendant in respect of the number of steel plates and steel billets which were unloaded from the vessels at Madras Port. As per the agreement, the plaintiff should transport the steel plates and steel billets from the wharf of the Madras Port after they were unloaded from the vessel, to the plaintiff's yard for stacking and then to transport the goods from there to Bangalore, the place of the defendant.

19. Though it is the contention of the defendant that the rate at Rs.83.90 fixed as clearing charges is inclusive of the charges, which the plaintiff might incur in the crange operations for loading and unloading, Ex P2, dated 03.10.1979 and Ex. P14 dated 01.02.1980 which are tenders would clearly state that the above rate is exclusive of all the types of crange operations. According to Ex.P.3, the letter dated 24.10.1979, the plaintiff intimated the defendant that in case Madras Port cranes are not available for delivery, then whenever private cranes are engaged, the changes quoted in the said letter may be confirmed for clearance of sted plates. The plaintiff established the clear consent for the said request by the defendant on the strength of Ex. P28, the letter dated 29.1.1980 sent by D.W.I, the Assistant Engineer of the Defendant Board and also the telegram dated 19.02.1980 (Ex.P29)

20. These documents and the admission made by D.W.1 in the cross-examination with reference to these documents would clinchingly prove that the plaintiff was permitted by the board to use private cranes, as the Port Trust cranes were not available, in order to avoid the delay. Even in respect of the steel billets, Ex.P.44, the letter of the defendant dated 28-2-1980 would make it clear that the Board accepted the charges for billets at the same rate as was accepted for the steel plates. Therefore, as correctly held by the learned single Judge, the rate of Rs. 83.90 fixed as clearing charges would not be inclusive of the charges which the plaintiff had incurred in the carnage operations for loading and unloading.

21. The question now raised is, whether there were three operations or four operations?

22. It is in this context, it must be pointed out that though the defendant has mentioned that there are only three operations at the time of advancing arguments, in the written statement it is not stated so. It is only stated there that there were three stages of operations. However, in the light of the submission made by the counsel for the appellant with reference to the number of carnage operations, this Court has to necessarily go into the said question on the basis of the materials placed.

23. According to the plaintiff, the steel plates after unloading from the ship at the wharf, had to be stacked in the wharf and the said process needs the use of cranes. This is the first operation. The second operation is that the steel plates which were stacked in the wharf, had to loaded in the trucks. This also could be done only with the help of cranes. The third operation is that the steel plates loaded in the trucks

were taken to the plaintiff's yard and to be unloaded at the yard. This also was done with the use of cranes. Thereafter, the steel plates again were loaded in the trucks from the plaintiff's yard by the use of cranes of transporting to Bangalore. This is the fourth operation.

24. The counsel for the appellant would contend that the total number of operations would be three only, since the stacking of the goods and loading them in the trucks at the wharf would amount to one operation by the crane.

25. It must be pointed on that this plea put forward by the counsel for the appellant is not supported by any evidence. On the contrary, the reading of the evidence and relevant documents would reveal that the stacking of the goods at the wharf and loading the same in the trucks for being taken to the plaintiff's yard are two separate operations.

26. Ex.P.28, the letter given by D.W.1 clearly shows that the stacking, loading in the trucks at the wharf and unloading of the plaintiff's yard are the three operations for which the plaintiff was permitted to use the cranes. No doubt it is true that in Ex.P.28 there is no reference about the fourth operation. This is clarified in the evidence of D.W.1 who stated that the confirmation for engaging the cranes for the fourth operation would be given after the clearance of the steel plates from the plaintiff's yard. However, the fact remains, as per Ex.P 28 the stacking at the wharf and loading at the trucks after removing from the wharf are two different operations. Therefore, as pointed out by the trial Court, Ex.P 28 would establish that the plaintiff was permitted to use the private cranes for all the operations for which the defendant had agreed to pay the carnage charges and there were four operations and not three operations, as submitted by the counsel for the appellant.

27. As regards the validity of the notice as put forward by the counsel for the appellant, it has already been dealt with by the trial Court in detail . According to the counsel, the said notice Ex. P27 dated 27-5-1980 was issued under Section 80 of C.P.C. and not under Section 126 of Bangalore Water Supply and Sewerage Act; as the notice was not issued under Section 126, there was no valid notice and as such, the suit was not properly laid.

28. On comparison of Section 80 C.P.C. with Section 126 of Bangalore Water Supply and Sewerage Act, the trial Court found that both the sections are quite similar to each other. Both the sections would contemplate that the suit cannot be validly instituted until the expiration of the period of two months next after the notice in

writing has been delivered to the authorities concerned. If the suit is filed before the expiry of the said period, the suit has to be dismissed as not maintainable. The object of both the sections is the same. What has to be considered is whether the notice gives sufficient information as to the nature of the claim such as would enable the authority who received the notice to avert the litigation.

29. In this case, the suit was laid by the plaintiff more than two months after 31-5-1982, the date on which the notice Ex.P.27 was received by the defendant. It is to be further noted that there is no reply at all from the defendant for the notice Ex.P.27. Therefore, we have no reason to differ from the finding by the learned single Judge to the effect that though the notice was issued under Section 80 C.P.C., the notice must be deemed to have been issued in terms of Section 126 of Bangalore Water Supply and Sewerage Act, inasmuch as all the details with regard to the claim, the amount due and the facts required to be incorporated in the suit have been clearly given in the notice. It is settled law that the quoting of wrong section would not disentitle the party to exercise their right as conferred on them under the Act. Therefore, in our view, the notice shall be construed to be valid and the same has been issued in conformity with law.

30. The next and most important aspect is relating to the rate of interest. According to the counsel for the appellant, the details of the rate of interest were not mentioned in the terms of the agreement nor in the letter correspondence between the parties. But, it must be noted, as pointed out by the counsel for the respondent, that the bills Exs. P9 to P 13 and P15 to P19 for the period between 2.2.1980 and 12.11.1980 which have been given to the defendant by the plaintiff, would indicate that the rate of interest to be charged by the plaintiff is 24% per annum after 15 years from the date of bill and until realisation. Even in the notice Ex. P 27 dated 27.5.1982, sent through lawyer which was held to be valid in the earlier paragraphs, it is stated as follows:

"I am, therefore, instructed to call upon you, by my clients, which I hereby do, to remit to my clients the aforesaid sum of Rs. 5,92,616.60p with interest thereon at 24% p.a. up to date of payment within 60 days from receipt of this notice, failing which please note, my clients will institute a suit for recovery of the said sum after the expiry of 60 days from receipt hereof against you, without any further reference to you and holding you liable for all costs and consequences."

31. The above notice was admittedly received by the defendant on 31.5.1982. as

stated earlier, there was no reply for this notice by the defendant. Much earlier to this legal notice, the plaintiff sent a letter Ex P 21 dated 16.6.1981 stating that the defendant had failed to make payment to the plaintiff and that the plaintiff should not be found fault with for proceeding legally for the recovery of Rs. 5,91,956.60 together with interest, costs and expenses. For this letter, the Executive Engineer of the defendant Board chose to send Ex P 23 reply only on 17.11. 1981 stating that the plaintiff's claims would be admitted immediately on receipt of the relevant records. Despite this assurance, there was no move on the part of the defendant for settling the claims.

32. While so, the plaintiff was surprised to receive a letter Ex. P.26 dated 20-5-1982 from the defendant repudiating the claim of the plaintiff for the carnage charges. Only thereafter, the plaintiff through its counsel sent a notice Ex.P.27 dated 27-5-1982 to the defendant claiming the payment with interest at the rate of 24% p.a.

33. In this context, it is to be noticed that in the bills, viz, Ex.P.9 dated 2-2-1980, Ex.P.10 dsated 22-2-21980, Ex.P.11 dated 25-2-1980, Ex.P.12 dated 26-2-1980, Ex.P. 13 dated 5-4-1980, Ex.P.15 dated 28-3-1980, Ex.P.16 dated 14-4-1980, Ex.P.17 dated 14-4-1980, Ex.P.18 dated 5-5-1980 and Ex.P.19 dated 12-11-1980, it is specifically mentioned as "interest will be charged at 24% per annum on outstanding after 15 days from the date of this bill until realisation". On receipt of these bills, it is stated that the portion of the amount of these bills also has been paid by the defendant. It is, therefore, to be concluded that though in the agreement, the rate of interest is not mentioned, it is mentioned in the bills, the letters and the legal notice which was sent by the plaintiff on 27-5-1982 and received by the defendant on 31-5-1982.

34. It is pertinent to note, as indicated earlier, that there is neither reply for the said notice nor any indication in any of the letter correspondence denying the rate of interest. Even in the evidence of D.Ws.1 and 2 examined on behalf of the defendant, nothing was brought out that the defendant did not agree for the said rate of interest. P.W.1 in the chief examination would refer about the bills indicating the rate of interest printed therein. The only suggestion put to P.W.1 in the cross-examination is that the plaintiff is not entitled to claim such an exorbitant rate of interest. The answer for the said suggestion by P.W.1 is "it is only the commercial rate of interest". In such circumstances, we do not find merit in the submission made by the counsel for the appellant regarding the rate of interest.

35. Let us now refer to the authorities cited by the learned counsel for the appellant

In regard to the said aspect.

36. In Mahabir Prasad Rungta v. Durga Datta (A.I.R. 1961 S.C.990=1961 (1) S.C.J.569) the Apex Court would observe as follows:-

“There remains the question of interest, Interest for a period prior to the commencement of suit is claimable either under an agreement, or usage of trade or under a statutory provision or under the Interest Act for a sum certain where notice is given. Interest is also awarded in some cases by Courts of equity. (Bengal Nagpur Railway Co., Ltd. v. Rattanji Ramji and others, (1938) 1 M.L.J.640). In the present case no agreement about interest was made, nor was it implied. The notice which was given did not specify the sum which was demanded, and therefore, the Interest Act does not apply. The present case also does not fall within those cases in which Courts of equity grant interest. Learned counsel for Durga Datt claimed interest as damages, but it is well-settled that interest as damages cannot be awarded. Interest up to date of suit, therefore, was not claimable, and a deduction shall be made of such interest from the amount decreed. As regards interest pendente lite until the date of realisation, such interest was within the discretion of the Court.”

This decision would not be of any help to the appellant, since as stated earlier, in this case the interest for a period prior to the filing of the suit is claimable under the Interest Act for the sum at the rate of interest which is mentioned in the notice admittedly received by the defendant.

37. In State of Maharashtra v Saifuddin Mullaaffarali Saifi (A.I.R. 1994 Bombay 48) a division bench of the Bombay High Court would hold thus :-

“ The learned A.G.P. has drawn our attention to the Interest Act, 1978 (14/78) which governs the transaction where no interest has been stipulated nor usage has been established in that behalf. As we have observed here before that so far as the claim of interest is concerned, there is no condition whatsoever in the tender awarding or contemplating the payment of interest by the department to the contractor. Obviously, therefore, the claim of the contractor, would be governed by this Interest Act, 1978. In Section 3(1)(b) of the Interest Act, it is provided that in the proceeding for recovery of damages the court may allow interest to a person entitled to damages at the rate not exceeding the current rate of interest. Now, the current rate of interest has been defined in Section 2(b) of that act as the highest of the maximum rates at which the interest may be paid on different classes of Deposits by different classes of scheduled banks in accordance with the directions given or issued to the Banking

Companies, generally by the Reserve Bank of India under the Banking Regulation Act. The learned advocate for the respondent/contractor has vehemently urged that in the notice the claim has been put at 18%. Unfortunately, he has not tendered any evidence to show that these were the rates payable by the Bank on the loans given by Banks with which we are not concerned. On the other hand, ample evidence has been adduced on behalf of the defendant to show that the current rate of interest payable on the deposits was at the most 11% for three years Schedule is produced on record."

This case also does not apply to the facts of the case on hand for the reasons given below.

38. In the instant case, apart from the notice Ex.P.27, the bills marked in this case also would make it clear that the agreed rate of interest is 24% per annum. Moreover, the defendant did not adduce any evidence to show that the current rate of interest in commercial transactions is below 24%. In the very same decision as referred to above it is said that if the plaintiff can establish that this is a commercial transaction, then he can certainly agitate the question and say that he is entitled to the interest rate mentioned in the bills and the notice, which is the normal lending rate by the Banks. It is the specific case of P.W.1 during the course of cross-examination that it is a commercial transaction. There is no contra evidence adduced by the defendant.

39. In justification of the finding by the trial Court Mr.Kesavanath Devay, the counsel appearing for the respondent would cite some authorities, which we shall refer one by one.

40. In *Banda Venkata Subbarao v. Bala Subramanyam* (1964 II Andhra Weekly Reporter 229), the High Court of Andhra Pradesh would observe as follows.

"The learned Munsif, however, observed that it was common knowledge that a printed clause in the tradesman bill not create any liability on the part of the buyer to pay interest as stipulated under the said clause. It is not clear on what authority this proposition is based. For, the position is just the reverse, viz, when there is a stipulation in the bills as to payment of interest, the buyer is bound by the clause unless he pleads that it was not specifically brought to his knowledge. So that, if in Exhibits A-12 and A-11 there is the stipulation to pay interest at 12 per cent per annum, the inference would be that the buyer was bound by it, unless it was shown by

him that he had no knowledge of the said clause. That does not seem to be the case of the defendant.

This decision, in our view, does apply to the case on hand on all fours. Admittedly, it is stipulated in the bills marked in this case which have been received by the defendant would show that the interest is at 24% per annum. The defendant did not deny the knowledge about the same.

41. In view of the foregoing discussion and the decisions referred to above, there is no difficulty in coming to the conclusion that the plaintiff is entitled to claim interest at the rate of 24% per annum till the date of filing of the suit.

42. However, the counsel for the respondent would cite some more authorities, in order to stress his point that the plaintiff is entitled to the same rate of interest till the date of realisation of the suit amount.

43. In *Syndicate Bank v. M/s. W.B.Cements Ltd.* (A.I.R. 1989 Delhi 107), the single Judge of the Delhi High Court would observe thus:-

“In commercial transactions, grant of interest for period after passing of decree at the contractual rate ought to be rule and grant of interest at reduced rate a rate exception. The same principles should be applied for determining the reasonable rate pendent lite interest.”

44. In *K. Appa Rao v. V.L. varadaraj* (A.I.R. 1981 Madras 94 = (1980) 93 L.W.769), a Division Bench of this Court would hold regarding the fixing of the rate of interest for the period subsequent to the filing of the suit, as follows:-

“The general rule is that the rate of interest pendente lite should be at the contract rate unless there are circumstances which would disentitle the plaintiff to have the same. The burden is on the appellants to show such circumstances. Nothing has been spelled out before us so as to decline the award of interest at the contract rate from the date of suit till the date of decree.”

45. On the strength of these decisions, it is strenuously argued by the learned counsel for the respondent that there should not be any reduction from the contract rate for the period up to the point of realisation, as nothing has been made out by the defendant before the Court for the reduction of the rate of interest from the con-

tract rate.

46. In this connection, it shall be taken into account the observation made by the Apex Court in A.I.R. 1961 S.C. 990 = 1961 (1) S.C.J.569 supra), which is as follows:-

“As regards interest pendente lite until the date of realisation, such interest was within the discretion of the Court.”

47. Regarding the interest to be paid from the date of the suit till realisation, our attention is drawn to Section 34 of the Civil Procedure Code. Section 34 C.P.C. provides thus.

“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 principle sum adjudged, from the date of the suit to the date of 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, for 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 money are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I:.....

Explanation II: For the purpose of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2)

48. Thus, it is well-settled that interest for the period prior to the suit is payable under an agreement or usage or under the Interest Act. After the institution of the suit the award of interest is governed by provision of Section 34 of the Code of Civil

Procedure. Under this section, after institution of the suit, the court has discretion to order payment of interest at such rate as it deems reasonable, on the principal sum adjudged, exceeding 6% per annum, where the liability has arisen out of a commercial transaction, not exceeding the contractual rate of interest.

49. It cannot be disputed that in the present case, the liability has arisen out of a commercial transaction, and that under Section 34 of C.P.C., a wide discretion has been conferred on the Courts in the matter of grant of interest. It is equally true that the discretion is to be exercised on sound judicial principles. Section 34 deals with two stages in regard to the grant of interest, viz., (1) from the date of the suit to the date of the decree, i.e., *pendente lite* interest; and (2) from the date of decree to the date of realisation i.e., future interest or further interest. As the Apex Court holds, *pendente lite* interest can be awarded at such rate as the court deems reasonable. Under the proviso to Section 34 the rate of such further interest may exceed 6% per annum, but such rate shall not exceed the contractual rate of interest.

50. As referred to earlier, the Division Bench of this Court in A.I.R. 1981 MADRAS 94=(1980)93 L.W. 769 (*supra*). Following the judgment of the other Division Bench reported in 1974-1.M.L.J. 334 = 87 L.W. 298 (N.A. Fernando v. Subbiah Iyer), clearly pointed out that on hard and fast rule can be laid down either with reference to the percentage of interest or with reference to the nature of interest, whether simple or compound, for the purpose of determining whether the rate of interest charged in a particular case was excessive or not. Therefore, the exercise of the judicial discretion in fixing the rate of interest would squarely depend upon the facts and circumstances of each and every case.

51. In our opinion, section 34 of C.P.C. leaves it to the discretion of the court as to what interest is to be decreed by way of *pendente lite* interest. So far as future interest or further interest is concerned, that too is left entirely to the discretion of the court, but subject to a limit of 6%. However, the added proviso would remove the limit to the future interest in a case arising out of a commercial transaction. But, the proviso does not take away the discretion left to the court nor does it limit the scope of exercise of such discretion. The judicial discretion in this regard must depend upon consideration of all the attending facts and circumstances including the circumstance that the amount decreed was in respect of a liability arising out of a commercial transaction. The exercise of such discretion shall necessarily be judicial and reasonable.

52. In the light of the principles as discussed above, the interest of justice would be met by fixing the rate of interest at 12% per annum which in our view, is reasonable from the date of the suit till the date of realisation of the suit amount.

53. To sum up our conclusions are these :-

(i) The plaintiff is entitled to claim for clearance charges at the rate of Rs.83.90 per M.T. as the parties had agreed for the clearance of the steel plates and steel billets from Madras Harbour to Bangalore in pursuance of the agreement.

(ii) The plaintiff is entitled for carnage charges in respect of four operations as the plaintiff was permitted by the defendant to use private cranes for handling the steel plates due to non-availability of the Madras Port Trust cranes.

(iii) The suit is maintainable, in view of the fact that the suit notice issued by the plaintiff to the defendant must be construed to have been validly issued under section 126 of Bangalore Water Supply and Sewerage Act giving two months time before filing the suit.

(iv) The rate of interest shall be calculated up to the date of the suit at 24% per annum as decided by the Trial Court and the decree passed to the said effect is confirmed.

(v) From the date of the suit till the date of realisation of the suit amount, the further interest shall be calculated at the rate of 12% per annum on the principal sum, which does not exceed the contractual rate as provided in Section 34 C.P.C.

(vi) The plaintiff would also be entitled to interest at 24% per annum not only on the amount due under the bills till the date of the suit but also on the earnest money and the security deposit which were withheld by the defendant without refund to the plaintiff, as decided by the trial court.

54. In the result the appeal is partly allowed. The decree and the judgement of the trial court is modified to the effect that the respondent/plaintiff is entitled to recover from the appellant/defendant a sum of Rs. 9,43,763.13 with further interest on Rs. 5,92,616.60 (principal sum) at the rate of 12% per annum from the date of plaint till realisation with costs of the suit. In the circumstances, there shall be no order as to costs in this appeal.

55. After we pronounced the order the learned counsel for the parties brought to our notice that some amount is deposited in the Court. If that be so, the appellant-defendant shall be liable to pay interest only upto the date of deposit and in case the amount in deposit is invested in any nationalized bank the interest earned on that amount to the extent the plaintiff was entitled, shall be paid to it. Payment if any, made already shall be adjusted towards the decree that may be drawn pursuant to this judgement of ours.