

# Is Section 34(2) Of The Civil Procedure Code Fair and Just?

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## Abstract

The provisions of Section 34 (2) of Civil Procedure Code appear to deny equitable relief to the Decree Holder even when there is inordinate delay in payment of the decretal amount by the Judgement Debtor delays. Although the Supreme Court has held on the grounds of equity that the DH must be awarded interest for the period from the date of the decree till the date of actual realisation. The Law Commission (2001) in its Report No. 178 had recommended an amendment to Section 34 of CPC in order to make the said provisions consistent with the principles of equity. No action has been taken so far for implementing the said recommendation.

## Is Section 34(2) of the Civil Procedure Code Equitable?

Courts are often required to compute and award interest to a Plaintiff in a suit for recovery of money and compensation (which may or may not involve repossession of leased property in addition to compensation for overstay). Such interest may be variously called compensation or mesne profits by Courts. Typically, it relates to the period from the date of filing of civil suit until the date of the decree.

Section 34 of the Civil Procedure Code 1908 (hereafter CPC), which deals mainly with the pre-suit mesne profit 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 nationalized banks in relation to commercial transactions.

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

After a decree is passed in favour of the Plaintiff, it is expected that the Defendant would pay up the decretal amount within the period that may be specified in the decree itself; in which case, there is no room for the

Plaintiff claiming any further interest pendente lite or post-decreemesne profit. However, there is every likelihood that the Defendant may delay payment of the decretal amount to the Plaintiff for one or the other reason and in such a situation, the Plaintiff

needs to be paid some compensation for the delay in receiving his money, which is further interest or interest pendente lite or post-decree mesne profit. Ideally, the Court, at the time of passing the decree itself should specify the rate of interest to be applied for the delay in payment of the decretal amount, which would enable the Executing Court to recover from the Defendant the amount of post-decree mesne profit in addition to the decretal amount.

The Plaintiff may have claimed post-decree mesne profit in the plaint but the Trial Court may have inadvertently omitted to pass any orders in that behalf, in which event, the Decree Holder (DH, hereafter) may apply for correction under the provisions of Section 152 of CPC.

If the Trial Court had rejected the prayer for interest pendente lite in the decree; the DH, then, must take recourse to filing an appeal against the decree under Rule 11 of Order XLI.

Section 34 (2) of CPC, deals with a situation where the Trial Court may remain silent on the issue of interest pendente-lite. This may happen because the plaint may not have included a prayer for post-decree mesne profit. The plaint may not include a prayer for post-decree mesne profit. It reads thus:

“(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest and a separate suit therefor shall not lie.”

The position arising out of the provisions of Section 34(2) appears to be contrary to the well-established notions of equity. The Judgment Debtor (JD, hereafter) can derive undue benefit by delaying execution of the decree by employing dilatory tactics. After all, it is common knowledge that the execution proceedings in India move at a very slow pace and the hapless DH may have to litigate a few more years for enjoying the fruits of the decree.

The Law Commission in its Report No. 178 (2001) has opined as under: “So far as post-decree interest is concerned, we have to first refer to Section 34(2). It states that where the decree is silent as to post-decretal interest, it must be deemed to have been refused. As stated earlier, the Commission is of the view that there is no justification whatsoever for a person who has suffered a decree, to refuse to pay interest merely because the decree is silent. The existing provisions of Section 34(2) which are akin to a principle of constructive res judicata do not appear to render justice to the decree-holder. A judgment for money is treated in England as a judgment-debt upon which interest is payable. The post decretal interest as introduced in 1985 in England is 15% under the Judgment Debts (Rate of Interest) Order, 1985. Under Section 44 of the Administration of Justice Act, 1970, the Court cannot award a different rate for the period after the decree (see Annual Practice, 1991 Vol. 1 page 61). (See also Halsbury's Laws of England, Vol. 26, 4th Ed. Para 553). Under American law too, post-decretal interest is mandatory under Title 28 (see American Jurisprudence, Vol. 45 para 62), even though the judgment does not contain any specific recital to that effect.

We propose to amend sub section (2) of section 34 by providing that where the judgment and decree are silent with respect to payment of further interest on the principal sum from the date of decree to the date of payment or other earlier date, the decree holder may apply to the Court within 30 days from the date of judgment before the Court which passed the decree to pass an order with regard to the further interest payable from the date of decree to the date of payment or other earlier date.

In as much as the time for filing an appeal against the main judgment and decree is 30 days under the Indian Limitation Act, 1963 where an appeal is preferred to a Court subordinate to a High Court it becomes necessary to make a further provision for extension of the period of limitation for filing an appeal against the main judgment and decree, in cases where an application is filed, within 30 days of the judgment before the Court

for passing an order in relation to post decretal interest as stated above. It is proposed to say that while computing the period for filing an appeal against the judgment and decree the period of 30 days for filing an appeal shall be counted from the date on which the Court passes an order on the application for grant of interest for the period after the decree. In the light of the above proposals section 34 is proposed to be recast as follows:

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 aforesaid recommendations of the law Commission have not been acted upon so far and the provisions of Section 34(2) of CPC have remained unimpeded. Courts, however, in several cases, appear to have taken a justice-oriented approach and equitable considerations have awarded interest in favour of the DH. For example, the Supreme Court in *Tahazhathe Purayil Sarabi Vs Union of India* (Civil Appeal No. 3568 of 2009) decided on 14<sup>th</sup> May 14, 2009) held as under:

" 20. In *Jagdish Rai & Brothers Vs. Union of India* [(1999) 3 SCC 257], this Court, while considering grant of interest in respect of an amount awarded in an arbitration proceeding under Section 9 of the Arbitration Act, 1940 read with Section 34 of the Civil Procedure Code, observed that there are four stages of grant of interest. Firstly, from the stage of accrual of cause of action till the filing of the arbitration proceedings; secondly, during pendency of the proceedings before the arbitrator; thirdly, future interest arising between the date of the award and the date of the decree; and fourthly, interest arising from the date of the decree till realization of the award. This Court held that although the claim for interest had been made before the Court in which proceedings for making the Award the Rule of the Court were pending, 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. This Court went on to observe that the Courts have taken a view that the award on interest under Section 34 of the Civil Procedure Code is a matter of procedure and ought to be granted in all cases where there is a decree for money unless there are strong reasons to decline the same. In the said

case, this Court modified the decree of the Court of the Subordinate 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 the Subordinate Judge, till realization.<sup>21</sup> A similar view was expressed by a Three Judge Bench of this Court in Hindustan Construction Co. Ltd. Vs. State of Jammu & Kashmir[(1992) 4 SCC 217].

22. Though, both the two aforesaid cases were in relation to Awards having been made under the Arbitration Act, a principle has been enunciated that in cases where a money award is made, the principles of Section 34 of the Civil Procedure Code and Section 3 of the Interest Act could be invoked to award interest from the date of the Award till the realisation thereof.

23. In the instant case, the claim for compensation accrued on 13th November, 1998, when Kunhi Moosa, the husband of the Appellant No.1, died on account of being thrown out of the moving train. The claim before the Railway Claims Tribunal, Ernakulam, (O.A.No.68/1999) was filed immediately thereafter in 1999. There was no delay on the part of the claimants/appellants in making the claim, which was ultimately granted for the maximum amount of Rs.4 lakhs on 26th March, 2007. Even if, the appellants may not be entitled to claim interest from the date of the accident, we are of the view that the claim to interest on the awarded sum has to be allowed from the date of the application till the date of recovery, since the appellant cannot be faulted for the delay of approximately 8 years in the making of the Award by the Railway Claims Tribunal. Had the Tribunal not delayed the matter for so long, the appellants would have been entitled to the beneficial interest of the amount awarded from a much earlier date and we see no reason why they should be deprived of such benefit. As we have indicated earlier, payment of interest is basically compensation for being denied the use of the money during the period which the same could have been made available to the claimants.

24. In our view, both the Tribunal, as also the High Court, were wrong in not granting any interest whatsoever to the appellants, except by way of a default clause, which is contrary to the established principles relating to payment of interest on money claims.

25. We, therefore, allow the appeal and modify the order of the High Court dated 24.5.2007 affirming the order of the Trial Court and direct that the awarded sum will carry interest @6% simple interest per annum from the date of the application till the date of the Award and, thereafter, at the rate of 9% per annum till the date of actual payment of the same.”

In several cases arising out of different statutes, particularly the Motor Vehicles Act and the Railways Act, where the issue of payment of interest pendente lite was involved; the High Courts have been consistently following the ratio laid down by the Apex Court in the aforesaid case. Even in a partition suit, the Nagpur Bench of the Bombay High Court in Gopal Vitthalrao Bamankar Vs Gajanan Vitthalrao Bamankar Second Appeal No.638 of 2017 decided on 5<sup>th</sup> July 2028; relied on the aforesaid ruling of the Apex Court and awarded interest pendente-lite to the DH. However, the sub-ordinate Courts (Executing Courts) are often seen to be rejecting claims by the DH for interest pendente-lite, by adopting a pedantic and restrictive interpretation of the provisions of Section 34(2) of CPC.

It is, therefore, high time that Section 34 of CPC is amended as recommended by the Law Commission in 2001 in their Report No. 178.