

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : CODE OF CIVIL PROCEDURE**

CS(OS) 1225/2007

DATE OF DECISION: December 1, 2008

M/S VOLTAS LIMITED and ANR. ....Plaintiffs  
Through: Mr. D.S. Chauhan and Ms. Ruchi Singh,  
Advocates.

versus

UNION OF INDIA and ORS. EC ....Defendants  
Through: Ms. Zubeda Begum, Advocate

HON'BLE MS. JUSTICE REVA KHETRAPAL

JUDGMENT

REVA KHETRAPAL, J.

CS(OS) 1225/2007 and IA Nos.12722/2007 [u/O-37 R-3(5) read with Section 151 CPC on behalf of the defendant No.3] and 12724/2007 [u/O-37 R-3(5) read with Section 151 CPC on behalf of the defendant No.2]

1. The present suit for recovery of a sum of Rs.22,81,822/- (Rupees Twenty Two Lacs Eighty One Thousand Eight Hundred Twenty Two only) has been filed by the plaintiff under the provisions of Order XXXVII of the Code of Civil Procedure (hereinafter referred to as the 'Code') which is based upon a written contract between the parties, viz. the invoices raised by the plaintiffs upon the defendants from time to time for the execution of various purchase orders for supply and installation of air-conditioners by the plaintiff No.1.

2. Two applications, being IA 12722/07 and IA 12724/07 were filed by the defendant Nos.2 and 3 for leave to defend the suit. However, during the pendency of the said applications, the following order was passed by this Court on 24th March, 2008:- “Counsels for the parties state that during the pendency of the present proceedings, the plaintiffs have received the principal amount due and payable thus leaving the issue of interest. They state that the issue of interest may be referred to the mediator to enable the parties to arrive at a negotiated settlement. Accordingly, the matter is referred to the Delhi High Court Mediation and Conciliation Centre. The parties along with their respective counsels are directed to appear before the Mediator to be appointed by the Delhi High Court Mediation and Conciliation Centre on 04.4.2008, at 4.30 P.M. The learned Mediator shall have discussions with the parties and make efforts for arriving at a negotiated settlement. The parties shall ensure that the officers competent to take decision in the case shall remain present before the Mediator on the date fixed. A report shall be submitted by the learned Mediator before the next date. List on 07.5.2008, in the category of “Directions”, for reporting settlement, if any. A copy of this order be given to counsels appearing for the parties. .... ..”

3. The matter was accordingly referred to the Mediation and Conciliation Centre to enable the parties to arrive at a negotiated settlement in respect of the interest due and payable by the defendants to the plaintiffs. Such efforts however proved futile and the issue of interest is, therefore, left to be adjudicated by this Court. In this view of the matter, leave to defend the suit on this limited aspect alone is granted to the defendants 2 and 3. Both the aforesaid applications stand allowed to this extent only.

4. I have heard the learned counsel for the parties, Mr.D.S.Chauhan, Advocate for the plaintiffs and Ms.Zubeda Begum, Advocate for the defendants, the defendants having opted not to file any written statement/s.

5. The learned counsel for the plaintiffs contends that in view of the fact that the defendants have unduly delayed the payment of the legitimate dues of the plaintiffs, the plaintiffs are entitled to interest including pendente lite and future interest on the principal amounts due. The counsel further contends that despite there being the existence of a mutually agreed term that the payment shall be made against installation or within 45 days from the date of delivery, whichever is earlier, a period of about two years had gone by since the completion of the contract by the plaintiffs without the defendants

making any payment. The plaintiffs were, therefore, left with no option except to file the present suit on 04.07.2000. The defendant still not having cared to make the payment of the due amounts to the plaintiffs, have rendered themselves liable to pay interest to the plaintiffs on the overdue amount at the rate of 15% p.a., which is the bare minimum rate of interest charged by the scheduled banks on lending.

6. The plaintiffs' claim for interest is contested by the defendant, who state that no interest is payable to the plaintiffs and that, in any case, the claim for interest at the rate of 15% p.a. is exorbitant.

7. The learned counsel for the plaintiffs has drawn my attention to the tender floated by the defendant No.2 inviting bids from reputed manufacturers and other dealers for the purchase of 122 numbers of window type AC units of 1.5 ton capacity and 122 numbers of 5 KVA stabilizers of standard make. The defendant No.3 was the implementing agency.

8. The learned counsel has also drawn my attention to the bid offer of the plaintiff company M/s. Voltas Limited whereunder the payment term mentioned by the plaintiff No.1 was 90% against the delivery and the balance 10% within 30 days after the delivery, but, he points out, that in the course of negotiations after the opening of price bids on 13th May, 2005, the plaintiff No.1, inter alia, agreed for payment against installation or within 45 days from the date of delivery, whichever is earlier. The said communication bearing reference No.CABD/VS/D014/05/05 dated 13.05.2005 reads as under:- “VOLTAS LIMITED Ref.: CABD/VS/D014/05/05 Date: 13.05.2005 To, The Addl. Commissioner of Police Prov. and Logistics 5, Rajpur Road, New Delhi. Sub: Your requirement of air conditioners Dear Sir, As per the discussion had with you and tender committee, we hereby confirm that: (1) Installation cost of Rs.200/- can be read as Nil. (2) Balance terms; payment terms “ Payment should be made against installation or within 45 days from the date of delivery, whichever is earlier. (3) Warranty “ Three years from the date of installation. Thanking you and assuring our best services at all times. Regards, sd/- Vivek Srivastava Area Sales Manager Voltas Limited”

9. The learned counsel further contends that the plaintiffs' claim for interest at the rate of 15% p.a. is based on the invoices placed on the record, which stipulate that over due payments will carry an interest at the rate of 15% p.a.. Thus, the defendants are liable to pay the interest at the aforesaid rate to the

plaintiff No.1, which as calculated on the principle amount of Rs.3,15,095.75 (already paid) from 16.09.2005 till the date of the institution of the suit, works out to Rs.80,350/-. Likewise, the plaintiff No.2 on the total principal amount of Rs.14,62,780/- (already paid), is entitled to interest at the rate of 15% from the defendants, which as calculated on the aforesaid principal amount, comes to Rs.4,23,597/- from the date of the installation of the air conditioners, that is, 23.06.2005 till the date of the institution of the suit. Additionally, both the plaintiffs are also entitled for pendente lite and future interest at the aforesaid rate of 15% p.a.

10. The law is well settled that where the terms and conditions on the invoices stipulate that interest at a certain rate per annum is payable, the said interest constitutes the agreed rate of interest. Accordingly, the submission of the learned counsel for the defendants that in the instant case there was no agreed rate of interest and the claim for interest of the plaintiffs at the rate of 15% p.a. is exorbitant, must be rejected, as the conditions of invoices stipulate the rate of interest. [See: AIR 2004 Delhi 186 : M/s. Dura Line India Pvt. Ltd. Vs. BPL Broadband Network Pvt. Ltd.]

11. Accordingly, the plaintiffs are held to be entitled for interest at the rate of 15% on the principal amounts from the date the principal amounts became due and payable till the date of realization. CS(OS) 1225/2007 and I.A.Nos.12722/2007 and 12724/2007 stand disposed of in the above terms.

Sd/-  
REVA KHETRAPAL,J