

**IN THE COURT OF SH. ARUN SUKHIJA,**  
**ADDITIONAL DISTRICT JUDGE – 07, (CENTRAL DISTRICT)**  
**TIS HAZARI COURTS, DELHI.**

**RCA NO.:- 5/20**

**UNIQUE CASE ID NO.:- 54/2020**

**IN THE MATTER OF :-**

- 1) **Shri Rajesh Kukreja**  
S/o Sh. Hakim Rai Kukreja  
Sole Proprietor of Kukreja Medicos, Shop no. 9,  
Central Market, Dakshinpuri,  
New Delhi-110062.
- 2) **M/s. Kukreja Medicos,**  
Shop no. 9,  
Central Market, Dakshinpuri,  
New Delhi-110062. ...Appellants/Plaintiffs

**VERSUS**

- 1) **Delhi Transport Corporation,**  
A Government of India Undertaking,  
I.P.Estate, New Delhi  
Through its chairman,
- 2) **Union of India,**  
Through Secretary,  
Ministry of Transport  
(Surface Transport),  
Transport Bhawan, Parliament Street,  
New Delhi-110001. ...Defendants/Respondents

**APPEAL UNDER SECTION 96 OF C.P.C. FOR SETTING ASIDE  
IMPUGNED JUDGMENT & DECREE PASSED BY LD. CIVIL  
JUDGE-06 (CENTRAL) ON 13.11.2019 IN SUIT NO. 771/2019  
TITLED AS RAJESH KUKREJA AND ANR. VS. DELHI  
TRANSPORT CORPORATION AND ANR.**

**Date of institution of the Appeal : 17.03.2020**  
**Date on which Judgment was reserved : 14.07.2020**  
**Date of Judgment : 24.07.2020**

**::- J U D G M E N T -::**

The Appellants were Plaintiffs and the respondents were defendants. The appellants and respondents are respectively referred in this Judgment according to their original status before the trial court. The suit of the Plaintiffs/Appellants was decreed on 13.11.19 by the Ld. Trial Court in favour of the plaintiffs and the Ld. Trial Court had awarded Rs.2,13,155.21p along-with the interest @ 6% from date of the suit i.e. 21.12.1988 till realization. The plaintiffs are dissatisfied and aggrieved by the award of very low interest of 6% per annum in the aforementioned judgment and decree.

It is submitted and argued by the Ld. Counsel for Plaintiffs/Appellants that for the commercial transactions, Section 34 CPC provides for an interest which 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 nationalised banks in relation to commercial transactions. The lending rates of nationalized banks as per the Reserve Bank of India taken from their official website ([www.rbi.org.in](http://www.rbi.org.in)) are the highest minimum lending rate during the period from the year 1988 to 2019 is 19% and the lowest is 8 %, the average being 13.5%.

It is apposite to mention here that the Ld. Trial Court has dismissed the suit of the Plaintiffs on the ground of Limitation by Judgment dated 22.11.2001, which was assailed by the Plaintiffs before the Hon'ble High Court in RFA No.135/2002 and alongwith the said RFA, the Plaintiffs have also filed CM No.364/2002 and by the said CM, the Plaintiffs have also prayed before the Hon'ble High Court to permit to lead the additional Evidence. The relevant portion of the said Order dated 05/04/2011 passed by the Hon'ble High Court with respect to allowing the said application and remanding back the matter is reproduced herein for apt understanding:-

*“4. Together with this appeal, the appellant had filed an application under Order 41 Rule 27 CPC (CM No.364/2002), seeking leave of the Court to place on record the original counter foil of the cheque deposit receipt dated 24.01.1986, in respect of last cheque bearing No.AH-023194 drawn on Syndicate Bank, I.P. Estate, New Delhi for a sum of Rs.20,000/- and also certified copy of statement of account bearing No.CA-324.*

*“5. The original documents have been placed on record. In view of the fact that there is no serious opposition to this application, the application (CM No.364/2002) is allowed. Liberty is granted to the appellants to lead additional evidence before the Ld. Trial Court.*

*“6. At this stage, counsel for the parties submit that the matter may be remanded back to the appropriate court for hearing, as all the issues have not been decided on merit by the trial court. Accordingly, impugned Judgment and decree is set aside. The matter is remanded back to the trial court. The trial court will frame issue with regard to maintainability of the suit on the ground of limitation. Parties will be entitled to lead evidence, on this issue.*

*“7. Appeal stands allowed....”*

The Hon'ble High Court had not set-aside the aforesaid Judgment and decree dated 22.11.2001 on the ground that the suit of the plaintiffs was within the Limitation period and/or findings of Judgment and decree dated 22.11.2001 were not correct. If, the Hon'ble High Court had not allowed the Plaintiffs to lead the additional evidence, then there was the probability that the Hon'ble High Court may have dismissed the suit on the ground of Limitation and confirmed the Judgment and decreed dated 22.11.2001 passed by the Ld. Trial Court. The Hon'ble High Court was gracious enough to allow the Plaintiffs to lead the additional evidence and further to remand back the matter, on the request of the parties, to the Ld. Trial Court as the Ld. Trial Court has not decided all the issues.

Thereafter, the Plaintiffs were allowed to lead the additional evidence, however, the Ld. Trial Court has again dismissed the suit of the Plaintiffs/Appellants mainly on the ground of Limitation by means of the Judgment and Decree dated 24.08.2017. The said Judgment and decree was again assailed and the appeal of the Appellant was allowed by this Court vide Appellate Judgment and decree 14.02.2019 and it was held that the suit of the Plaintiffs is within the Limitation period. The Ld. Trial Court has not decided the issues on the merits of the case, therefore, the matter was again remanded back to the Ld. Trial Court.

The Ld. Trial Court vide Judgment and decree dated 13.11.2019 had awarded Rs.2,13,155.21p along-with the interest @ 6% from the date of suit i.e. 21.12.1988 till realization in favour of the plaintiffs. The suit of the plaintiffs remained dismissed from 22.11.2001 till 05.04.2011. At the cost of repetition, on 05.04.2011, the Regular First Appeal was not allowed on the merits but on the ground of leading the additional evidence and on the request of parties to decide

the entire issues which also includes the issue of limitation. As discussed above, thereafter also, the suit of the Plaintiffs remained dismissed from 24.08.2017 till 14.2.2019.

It is also apposite to reproduce Section 34 of the Code of Civil Procedure, 1908:-

*“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 I.—In this Sub-section, “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).*

*Explanation II.—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.*

*(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 proviso to Section 34(1) CPC, nowhere, provides that the interest has to be mandatorily granted more than six percent. The word “may” is used in the proviso and proviso is nothing but an exception to the main provision. The main provision itself provides that interest may be granted “at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum”. The interest @ six per cent per annum is the maximum limit which is provided under Section 34(1) CPC and the Court may even grant the interest less than six percent per annum. However, in proviso, the Court has been granted discretion to grant interest more than 6 percent per annum but it is not mandatory for the Court to grant interest necessarily more than six per cent per annum while exercising powers under the proviso of the said Section. The interest has to be granted looking into the facts and circumstances of each case. The Ld. Trial Court has granted interest @ six percent per annum from the date of filing of the suit i.e. 21.12.1988 till realization i.e. more than 30 years, despite the fact that the suit remained dismissed from 22.11.2001 till 05.04.2011 and also from 24.08.2017 till 14.2.2019, still the Plaintiffs/Appellants are not satisfied.

In my considered view, there is no infirmity, in the impugned Judgment and decree dated 13.11.2019, as far as granting of rate of interest and the Ld. Trial Court has rightly exercised its discretion while granting rate of interest.

It is made clear that this Court has only dealt with the issue of granting of rate of interest by the Ld. Trial Court as the Appellants have challenged the said portion only. Looking into the facts of the case, this Court has not even issued the notice to Respondents/Defendants. It is further made clear that if, as and when, the Defendants/Respondents will challenge the Judgment and decree dated 13.11.2019

on merits of the case, then the same will be dealt in accordance with law and the present decision on the issue of grant of rate of interest would not be taken as confirmation of the Judgment and decree passed by the Ld. Trial Court on the merits of the case.

**RELIEF:**

In view of the discussions, as adumbrated above, I hereby pass the following

**::- FINAL ORDER -::**

1. The present appeal is dismissed.
2. The parties shall bear their respective costs of litigation qua this appeal.
3. The copy of this Judgment may kindly be sent forthwith to the Ld. Trial Court.

Decree-sheet in the Appeal be prepared accordingly, in terms of this Judgment.

Appeal file be consigned to record room after due compliance.

**Announced in the open court on this 24<sup>th</sup> day  
of July, 2020 through video conferencing.**

**(ARUN SUKHIJA)  
ADJ-07 (Central)  
Tis Hazari Courts, Delhi**