

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cont. Case (Cvl.) No.481 of 2022

Spencer Distilleries and Breweries (Pvt. Ltd.)

.... **Petitioner**

Versus

The State of Jharkhand & Ors. **Respondents**

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Shekhar Sinha, Advocate
For the State : Mr. Ratnesh Kumar, SC(L&C)-I

18/Dated: 13.12.2024

1. It is a case where the detailed order has been passed by this Court on 18.10.2024 followed the order dated 22.11.2024.
2. Admittedly, there is direction passed by the Writ Court directing the Secretary-cum-Commissioner, Excise and Prohibition Department, Govt. of Jharkhand to refund the money in question along with statutory interest.
3. The further admitted fact is that the said order has not been challenged before the Higher Forum.
4. It has been submitted that Letters Patent Appeal being L.P.A. No.512/2022 has been filed but the same has been dismissed for want of prosecution which also suggests and clarifies that the order passed by the Writ Court has attained its finality.
5. The part of the order with respect to the disbursement of the principal amount has been complied with but the statutory interest has not been paid.
6. Show cause notice filed on behalf of the concerned opposite

party.

7. Mr. Ratnesh Kumar, learned SC(L&C)-I appearing for the Opposite Party No.2 has placed the statement made at paragraph-9 to the show cause notice.

8. It has been submitted that opinion has been sought for payment of interest at statutory rates initially from the Law Department and other authorities, since, the Excise Laws do not provide as to what shall constitute the statutory interest.

9. A letter was sent to the Finance Department, which was also failed to clarify the matter.

10. The concerned file was moved to the Law Department for clarification, and thereafter, the file is with the Advocate General. As soon as the matter is clarified, the same shall be paid at the earliest and as per the statute.

11. This Court, by way of last indulgence, has adjourned the matter by giving chance to comply with the part of the order said to be complied with in its letter and spirit but, again, the time has been sought for to file further show cause in the light of the statement made at paragraph-9 to the show cause notice dated 19.11.2024.

12. This Court is failed to understand that once this Court has passed an order in exercise of power conferred under Article 226 of the Constitution of India, the part of the order has been complied with, But so far as the other part, i.e., statutory interest, as has been directed to be paid by the concerned opposite party in favour of the petitioner, has not been complied with, hence, this Court has adjourned the matter for

filing the show cause along with the compliance report said to be in compliance of the order in its letter and spirit.

13. The statement has been given at paragraph-9 that the Excise Law does not provide as to what shall constitute the statutory interest.

14. The affidavit has been filed by the Secretary of the concerned Department.

15. This Court is constrained to make an observation that how such statement can be made that the Excise Law does not provide as to what shall constitute the statutory interest.

16. It needs to refer herein that even in cases where no interest is provided under the statute, the Court, having regard to the provisions of the Interest Act, 1978 and Section 34 of the Civil Procedure Code, is entitled to grant interest in its discretion. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Thazhathe Purayil Sarabi v. Union of India, (2009) 7 SCC 372*** wherein it has been observed that when there is no specific provision for grant of interest on any amount due, the court and even tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil Procedure Code.

17. Section 3 of the Interest Act, 1978, inter alia, provided that in any proceedings for the recovery of any debt or damages the court may, if it thinks fit, allow interest to the person entitled to the debt or damages at a rate not exceeding the current rate of interest for the whole or part of the period from the date mentioned in any written notice given by the

person making a claim to the person liable that interest would be claimed from the date of institution of the proceedings.

18. As indicated hereinbefore, apart from the provisions of the Interest Act, Section 34 of the Civil Procedure Code also empowers the court to order interest on a decree for payment of money. For ready reference same is being quoted as under:

“34. Interest.—(1) Where and insofar 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 nationalised 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.”

19. It is settled view that interest be granted for the period during which the money was due, but could not be utilised by the person in whose favour an order of recovery of money was passed. Therefore,

interest is essentially a compensation payable on account of denial of the right to utilise the money due, which has been, in fact, utilised by the person withholding the same.

20. Further it is settled connotation of law that when a statute specifies or regulates the interest in that event, interest will be payable in terms of the provisions of the statute but when the statute is silent about interest, and there is no express bar about payment of interest, any delay in paying the money due would require award of interest at a reasonable rate on equitable grounds. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Union of India vs. Willowood Chemicals (P) Ltd., (2022) 9 SCC 341.***

21. It is, therefore, clear that the court, while making a decree for payment of money is entitled to grant interest at the current rate of interest, from the date of claim or from the date of the order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claimants.

22. Thus, the “statutory interest” is to be paid as per the accruing interest as applicable under the RBI Guidelines.

23. The word “statutory” since is there as a prefix to the interest word that does not mean that the Act to contain any rate of interest said to be statutory, so that, only that interest rate can be paid if contained in the applicable statutory provision.

24. The word “statutory interest” means that as per the RBI norms,

the statutory interest along with the principal amount is to be paid.

25. Further, once the Court has passed an order directing the respondent to make payment of principal amount along with statutory interest, it is none of the business of the authority to seek clarification from moving the file from one table to another or from one department to another, rather, the same if having with any confusion, an application ought to have been filed before the Court of law for seeking permission but the said step has not been taken.

26. It further appears from the statement made at paragraph-9 that such clarification has also sought for from the Finance Department of the State.

27. But, no clarification was given and cannot be given and according to the considered view of this Court, there cannot be any clarification with respect to the question which is said to be absurd question. Thereafter, the concerned file was moved to the Law Department for clarification and now, it has been stated that as of now, the file is before the learned Advocate General.

28. The question is that suppose any adverse opinion will be given, can the State take a view that the order passed by the Court of law will not be complied with? That is the big question, reason being that, the contempt is the proceeding between the Court and the Contemnor and the Contempt Court is to see regarding the majesty of the order passed by the Court of law.

29. The Court is not concerned with the compliance of the Court's order, as has been directed, rather, the Court is concerned to maintain

the majesty of the Court's order and to go, for the aforesaid purpose, under the procedure laid down under the Contempt of Courts Act, 1971.

30. The High Court is having with the power under Article 215 of the Constitution of India being the Court of Record but under constitutional framework, there is no procedure if a person has found to be in contempt of the order passed by the High Court and for that, Contempt of Courts Act, 1971 has been enacted upon.

31. The provision as contained under the Contempt of Courts Act, 1971 particularly Section 2(d)(e) deals with the definition of Contempt underlying two words, i.e., deliberate and willful and only then, the proceeding under the Contempt of Courts Act is to be initiated.

32. The word "deliberate" and "willful" is the paramount consideration to be taken for the purpose of proceeding under the Contempt of Courts Act, so as to maintain the majesty of the Court's order. Further, the punishment has been provided under Sections 11 and 12 of the Contempt of Courts Act.

33. The time which is being sought for to file further show cause in view of the fact that the matter is pending before the learned Advocate General, the same cannot be accepted for the reason that if the learned Advocate General will give the opinion, which will go contrary to the direction passed by the High Court, can it be allowed to be prevail upon.

34. The answer of this Court will be in negative, therefore, the prayer for time which is being sought for, is hereby, rejected.

35. In view of the discussion as made hereinabove, the show cause

filed by the concerned opposite party, is also, hereby, rejected.

36. It needs to refer herein that since the contempt proceeding is to be initiated if there is willful and deliberate non-compliance of the order passed by the High Court, then that parameter is to be taken into consideration.

37. Herein, two show causes have been filed and in both the show causes filed by two different functionaries of the State of Jharkhand, the ground has been taken that they are not in a position to understand what is the meaning of “statutory interest” which itself suggests that the concerned opposite parties are willingly and deliberately not complying with the Court’s order.

38. This Court, considering the aforesaid, *prima-facie* is of the view that it is a case where the proceeding for contempt is to be initiated.

39. Let notice be issued upon the opp. party no.2, in Form 1 under Rule 393 of High court of Jharkhand Rules.

40. Let the Secretary, Excise and Prohibition Department, Govt. of Jharkhand appear in-person for framing of charge.

41. Let this matter be listed on 10.01.2025.

(Sujit Narayan Prasad, J.)

Rohit/-