



CIVIL

Supreme Court Clarifies The Principles For Grant Of Pendente-Lite Interest

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In a recent judgment^[1], the Hon'ble Supreme Court (“**SC**”) has refused to grant pendente-lite interest to an aggrieved party despite holding that such party was entitled to refund on the amount forfeited due to non-performance of contractual stipulations. Whilst doing so, the SC clarified the principles that govern the grant of interest to parties sought under section 34 of the Code of Civil Procedure, 1908.

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Factual Background

In 1990, the Ministry of Urban Development (the Respondent No.2) initiated a project to develop approximately 71 acres of land in New Delhi through the Housing and Urban Development Corporation Ltd. (“**HUDCO**”), the Respondent No.1. HUDCO invited bids for various plots, including a site designated for a five-star hotel and an adjoining car park, both to be leased for 99 years. M/S. Tomorrowland Technologies Exports Limited, the Appellant, emerged as the highest bidder for this property, leading to an allotment letter issued on 31st October 1994 in its favour. The payment structure required the Appellant to remit certain amounts for the hotel site and the car parking space, respectively, in three instalments. The first instalment was duly paid by the Appellant. Pertinently, as per the terms of the allotment letter, an Agreement to Sub-Lease was to be executed by HUDCO in favour of the Appellant.

Disputes arose when HUDCO failed to execute the necessary documents and secure the requisite statutory clearances under the Urban Land (Ceiling and Regulation) Act, 1976 and the Income Tax Act, 1961. This failure impeded the execution of the Agreement to Sub-Lease, as also the fact that HUDCO had not obtained a perpetual lease from the Respondent No.2 in respect of the larger site. Consequently, the Appellant sought legal recourse, filing a suit before the Hon'ble Delhi High Court (“**HC**”) seeking an extension for making the necessary payment and an injunction to prevent cancellation of the allotment by HUDCO. The HC issued a conditional stay order requiring the appellant to deposit a partial amount by 8th April 1996, a condition the Appellant did not fulfil. Subsequently, on 2nd May 1996, HUDCO cancelled the allotment and forfeited the entire amount paid and invited fresh bids wherein Leela Hotels Limited emerged as the successful bidder. Pertinently, the space for the car park was also allotted to Ansal Properties & Industries Limited (“**APIL**”) in respect of the development to be carried out over a different portion of the larger site. APIL also withheld payments with respect to their allotment letter on the ground that they had to share the car parking space with the Appellant, due to which APIL was granted interest free extension of instalment payments.

The Appellant filed a subsequent suit in the district court, to declare the cancellation as null and void and consequently sought possession of the property. The Appellant also filed an application before the HC seeking withdrawal of the suit pending before it. However, this application was rejected. Ultimately, the suit before the HC was dismissed as withdrawn unconditionally.

The Ld. Trial Court ruled in favour of the Appellant in the subsequent suit, and passed a decree declaring HUDCO's cancellation as unlawful under section 34 of the Specific Relief Act, 1961^[2]. It was further decreed that HUDCO was guilty of committing a breach of the terms of the allotment letter and that the Appellant was discriminated against and denied parity with APIL. HUDCO appealed this decision before the regular appellate court, which was dismissed. Therefore, HUDCO appealed the dismissal before the HC, in a Regular Second Appeal, which was allowed. The HC overturned the Ld. Trial Court's findings, and dismissed the appellant's suit as not maintainable since the Appellant had subsequently amended its suit and removed the prayer seeking possession of the property in order to avoid payment of court fees. The same was mandatory as per section 34 of the Specific Relief Act, 1961. Aggrieved by the same, the Appellant approached the Hon'ble Supreme Court.

Analysis By The Supreme Court

The SC's deliberation centred on two pivotal questions:

1. Whether HUDCO was in breach of its reciprocal contractual obligations towards the Appellant.
2. Whether the Appellant was entitled to a refund of the forfeited amount, along with interest.

In respect of the first issue, the SC observed that HUDCO was in clear breach of its obligations, as it had failed to obtain necessary statutory clearances mandated under clause 5 (vi) of the allotment letter. The SC further observed that a conjoint

reading of clauses 5 (viii) and 5 (ix) show that HUDCO was obligated to execute the Agreement to Sub-Lease upon the receipt of the first instalment from the Appellant and on grant of necessary statutory approvals. It was further observed that HUDCO was not in a position to execute the Agreement to Sub-Lease even in case it received the statutory approvals as there was no perpetual lease in its favour by the Respondent No.2. Thus, HUDCO was incorrect in demanding the payment of the remaining instalments from the Appellant. HUDCO was also not entitled to develop the 5-star hotel site as was revealed in an arbitration award secured by Leela Hotels Limited due to the fact that the revised layout plan was yet to be approved. Finally, it was noted that the Appellant was not treated in the same manner as APIL, as the latter was in receipt of interest-free extension which ought to have been granted to the Appellant as well.

The next aspect which the SC deliberated on was whether the Appellant was entitled to refund the forfeited amount to the Appellant, along with interest on the same. In this regard, the SC first noted that having held that HUDCO was guilty of breach of its obligations, the Appellant was entitled to refund of the forfeited amount. Additionally, the SC observed that the Appellant would not be entitled to interest on the refund as per the principles enshrined in section 34 of the Code of Civil Procedure, 1908^[3]. Relying on the constitution bench decision in the case of *Central Bank of India v. Ravindra*^[4], and the conduct of the Appellant in first not depositing the amount directed by the HC towards the *status quo* order and second in the amendment made to the reliefs sought before the Ld. Trial Court so as to avoid payment of appropriate court fees, the SC held that the Appellant was not entitled to equitable reliefs towards *pendente-lite* interest.

Accordingly, the SC set aside the decision of the HC to the limited extent that the Appellant was entitled to refund of the forfeited amount on account of the illegality of HUDCO in cancelling the allotment as explained earlier.

Conclusion

In the opinion of the authors, the present decision offers a nuanced outlook on the principles of awarding interest to aggrieved parties *pendente-lite* as provided under the principles of equity and section 34 of the Code of Civil Procedure, 1908. It is noteworthy to mention that parties usually seek interest as a matter of course in proceedings filed by them, however, the grant of the same is in the discretion of the courts and is governed by principles of equity.

^[1] Tomorrowland Ltd. v. HUDCO Ltd., 2025 SCC OnLine SC 309. The coram comprised of Surya Kant and Ujjal Bhuyan, JJ. The judgment was authored by Surya Kant, J.

^[2] The provisions of section 34 of the Specific Relief Act, 1963, is as follows:

“Chapter VI

DECLARATORY DECREES

34. *Discretion of court as to declaration of status or right.*—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.”

^[3] The provisions of section 34 of the Code of Civil Procedure, 1908, is as follows:

“Interest

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 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 59[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.”

[\[4\]](#) (2002) 1 SCC 367