2025 INSC 418

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4560-4563 OF 2025
(Arising out of SLP (C) Nos. 11779 – 11782 of 2022)

I.K. MERCHANTS PVT. LTD. & ORS. ... APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN & ORS. ... RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

Leave granted.

2. These appeals are filed against the judgments and orders dated 26.04.2022 and 02.05.2022 both passed by the Division Bench of Calcutta High Court[1] in G.A.No.6 of 2020 and A.P.D.No.63 of 2013 in C.S.No.467 of 1978. *Vide* order dated 26.04.2022, the High Court, while upholding and reaffirming the valuation of shares done by M/s. Ray & Ray at Rs.640/- per share, granted simple interest at 6% per annum on the enhanced valuation of shares, however, rejected the

[1] Hereinafter referred to as "the High Court"

prayer of the appellants for enhancement of interest rates, costs and damages, and accordingly, disposed of the said cases. Subsequently, *vide* order dated 02.05.2022, the High Court corrected the rate of interest from 6% to 5% per annum. Both the orders are assailed in these appeals, at the instance of the appellants herein.

3. On 25.07.2022, when the appeals were taken up for consideration by this Court, the learned counsel for the appellants confined the prayer made herein to the grant of an appropriate rate of interest, which was also recorded in the proceedings. In view of the same, we proceed to deal with these appeals only to the limited extent of grant of rate of interest for the difference in valuation of shares of Respondent No.2 *viz.*, Rajasthan State Mines and Mineral Ltd., formerly known as Bikaner Gypsums Ltd.[2], which shares were sold by the appellants to Respondent No.1 *viz*., State of Rajasthan, in 1973.

4. The relevant facts giving rise to the controversy involved herein are as follows:

4.1. Originally, the appellants preferred a suit being C.S.No.467 of 1978 before the High Court of Calcutta, and the same was subsequently amended, praying for a decree for Rs.4,34,21,553.00 against the Respondent No.1; in the alternative a decree for reasonable price of the shares of the appellants, after determination of

[2] For short, "the Company"

such price by the High Court; in the further alternative, cancellation of the transfer of shares belonging to the appellants to the Respondent No.1 and restitution of the original status and retransfer of those shares to the appellants on such terms to be determined by the High Court, and also interest and costs. On 14.08.2012, the learned Single Judge of the High Court, while rejecting the valuation reports produced by the parties, passed a preliminary decree, the operative portion of which reads as follows:

> *"There shall be a preliminary decree directing the defendants in particular the first defendant to appoint anyone of the following firms of Chartered Accountants, namely Price Water House, Ray & Ray, Lodha and Company of its choice as the valuer for the purpose of conducting an enquiry for ascertaining the fair and proper value of the said shares of the plaintiffs at the time when such shares were transferred to the first defendant by the plaintiffs and upon conclusion of such enquiry the plaintiffs shall be entitled to apply in this suit for obtaining a final decree for the amount, if found, due upon such enquiry.*
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> *However, the remuneration of the valuer shall be borne entirely by the defendants or rather the first defendant herein and the first defendant shall pay the remuneration of the valuer as and when such remuneration is payable or rather is agreed to be paid by the first defendant and accepted by the valuer. The plaintiffs shall be entitled to all the costs, charges and expenses of the enquiry proceedings before the valuer, certified for two counsel. Let the report of the valuer be made and published within a period of four months from the date of commencement of the enquiry.*
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> *There will also be a decree for costs of the suit assessed at Rs.1,50,000/- and the plaintiffs will be entitled to the costs over and above the court fees that the plaintiffs had to pay at the time of institution of the suit.*
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> *Needless to mention that the plaintiffs will also be entitled to interests on the final decree to be passed on the valuation to be made by the valuer appointed by the preliminary decree, if such valuation, however, goes in favour of the plaintiffs."*

4.2. Aggrieved by the aforesaid preliminary decree, the respondents herein preferred A.P.D.No.63 of 2013, in which, the appellants filed their Cross Objection. During the pendency of the appeal, the High Court, *vide* order dated 20.08.2019, noted that the dispute essentially was with regard to the valuation of shares, and in order to arrive at a settlement, appointed M/s. Ray & Ray Co. as valuer for the purpose of conducting an enquiry and ascertaining the proper value of the shares of the appellants as on the date, when such shares were transferred to the State Government. It was further directed that such valuation would be uninfluenced by previous valuation reports. Accordingly, the valuer M/s. Ray & Ray valued the shares at Rs.640/- per share and filed its report. However, the respondents refused to accept the said valuation. As a result of the same, the High Court proceeded to hear the matter on merits and passed a final judgment and order on 28.04.2021. The operative portion of the same reads as under:

> *"In those circumstances, this appeal and cross-objection are disposed of by declaring that the respondents/plaintiffs are entitled to Rs.640/- per share sold by them to the appellant and directing that each of the respondents/plaintiffs be paid by the appellant no.1 Rs.640/- per share of Bikaner Gypsums Ltd. (subsequently Rajasthan State Mines and Minerals Ltd.) sold by him to the appellant no.1 as valued by M/s. Ray and Ray less Rs.11.50/- per share already received by him/her within eight weeks of communication of this order. Considering the appellant is the government of Rajasthan, the respondents/plaintiffs shall only be entitled to interest at the rate of 5% simple interest per annum without yearly rests on the said amount from 8th July, 1975 till the date of payment.*
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> *The impugned preliminary judgment and decree dated 14th August, 2012 is modified to the above extent. In the facts and circumstances, the modified preliminary judgment and decree shall be treated as the final decree. The suit is decreed accordingly.*
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> *The application (GA 6 of 2020) is also disposed of by this order."*

4.3. Being dissatisfied with the aforesaid judgment and order dated 28.04.2021, both Respondent Nos.1 & 2 filed two separate appeals *viz.*, CA.Nos.6145 and 6144 of 2021 [SLP (Civil) Nos.13905/2021 and 13606/2021] respectively, and the appellants filed C.A.No.6146 of 2021 [SLP (Civil) No.14330/2021]. By a common order dated 01.10.2021, this Court allowed all the appeals by setting aside the order dated 28.04.2021 and remanding the matter to the High Court to deal with the objections and cross objections on the issue of valuation alone, as per the report of M/s. Ray & Ray and to take a view on the same. Pursuant to the clarification application *viz*., M.A.No.1840 of 2021 in C.A. No.6146 of 2021 filed by the appellants, this Court *vide* order dated 26.11.2021 *inter alia* observed as follows:

> *".... On hearing learned counsel for parties, we are not inclined to open a pandora's box once again and are clear that we have remitted on the issue of the valuation report. However, the consequences of the same would be that the applicant(s) before us would naturally have a right to agitate the issue of interest and costs which is a sequitur arising from the delay in the finalization of the amount payable to the respondent(s). ..."*

4.4. In light of the aforesaid orders, the matter was reheard by the High Court and the impugned judgment and order came to be passed on 26.04.2022, the operative portion of which, reads as under:

> *"I am of the view that the valuer has given a very reasonable opinion.*
> *I uphold and reaffirm the valuation.*
> *With regard to the claim of the respondents for interest, because of the long pendency on the matter, the interest burden on the Government of Rajasthan is for a period of about 50 years on the above valuation. Taking this length of time and the total interest burden on the appellant No.1, in my view, 6% per annum simple*

> *interest on the enhanced valuation of the shares will more than adequately compensate the respondents. We reject the prayer for enhancement of the interest rate.*
> *The appeal is disposed of accordingly.*
> *The judgment and decree of this Court dated 28th April 2021 is reaffirmed."*

Subsequently, the interest portion was corrected from 6% to 5% per annum, by order dated 02.05.2022.

4.5. With the above background, the appellants have come up with these appeals before us.

5. According to the learned counsel for the appellants, payment of interest owing to the delay in remittance of the fair value of the shares to the appellants is a right recognized in law. Further, the principle underlying the award of interest on the monies entitled to be recovered by a party is simply compensation for the time value of money i.e., compensation for interdicting the investment of that sum at the time when it was due to be paid. In support of the same, the learned counsel relied on the following decisions of this court:

(i) *Union of India v. Tata Chemicals Ltd*[3], wherein it was held that the obligation to refund money received and retained without right implies and carried with it the right to interest.

(ii)*Fertilizer Corporation of India Ltd and others v. Coromandal Sacks Private Ltd*[4], in which, it was held that 'neither a penalty nor a punishment but the normal

[3] (2014) 6 SCC 335
[4] (2024) 8 SCC 172

accretion on capital, due to the wilful withholding of the payment towards the claim, resulting in continuous injury until such payment is made or in other words, until the claim is realized'; and

(iii)Civil Appeal No.17 of 2025 in SLP(C) No.10338 of 2023 titled as '*Bernard Francis Joseph Vaz and others v. Government of Karnataka and others'*, it was observed as follows:

> "*…it cannot be gainsaid that the appellants have been deprived of their legitimate dues for almost 22 years ago. It can also not be controverted that money is what money buys. The value of money is based on the idea that money can be invested to earn a return, and that the purchasing power of money decreases over time due to inflation. What the appellants herein could have bought with the compensation in 2003 cannot do in 2025. It is, therefore, of utmost importance that the determination of the award and disbursal of compensation in case of acquisition of land should be made with promptitude".*

5.1. It is further submitted that the appellants were deprived of the fair value of their shares, which were compulsorily acquired by the State Government for a period of more than 50 years due to the faulty valuation commissioned by it. Therefore, payment of interest on the valuation which has been upheld till this Court, follows as a matter of course.

5.2. The learned counsel also submitted that Section 34(1) of the Civil Procedure Code explicitly provides that a rate higher than 6% can be granted in case of a money decree arising out of commercial transactions. Explanation I to section 34(1) defines a "commercial transaction" as one connected with industry, trade or business of the party incurring the liability. In the present case, the

liability has arisen on account of compulsory acquisition by the state Government of the shares of the appellants in Bikaner Gypsums, which was renamed as Respondent No.2 and has consistently earned revenues for the State Government being a profit-making company between 1974 till 2020. However, without any justification, the High Court awarded only simple interest at the rate of 5% per annum, which will not compensate the appellants for the time value of the cost of shares, and is hence, whimsical and arbitrary.

5.3. It is further submitted that despite giving assurance to the appellants that they will be allowed to make a representation before the valuer by letters dated 27.04.1973 and 06.08.1973, the Respondent No.1 rescinded on this assurance *vide* letter dated 03.07.1974 and that, a copy of the valuation report dated 28.08.1974 was not supplied to the appellants and their objections thereto were not invited. Though appellant no.1 requested to return the shares if a fair valuation was not possible *vide* letter dated 10.04.1975, the respondents neither conducted a fair valuation nor returned the shares. Further, the respondents failed to comply with the order dated 20.08.2019 of this Court, as a result of which, the time granted by this court for submission of the report had to be extended on two occasions. Even after dismissal of the appeals of the respondents by this Court, the appellants have not been paid the principal sum, till date. Thus, the respondents have not only breached the contract, but also caused delay at every stage of proceedings in making payment of sums legally due to the appellants.

5.4. It is also submitted that had the money payable by the Respondent No. 1 been invested in any other shares, gold, fixed deposit or land in the year 1973, the said money would have been enhanced manifold. Since 1973-74 till 2020, the Respondent No. 2, which is a profit-making company, earned several thousand rupees as gross profit and hence, they are not entitled to any sympathy on the ground of being State. Thus, according to the learned counsel, there is no justification for award of a rate of interest lower than commercial rates for the fair value of the share of the appellants.

5.5. Referring to the decision of this court in *Alok Shanker Pandey v. Union of India*[5], it is submitted that during the relevant point of time, the rate of interest was 15% and hence, the appellants are entitled to receive interest at least @ 15%.

5.6. Thus, the learned counsel submitted that the appellants are entitled to receive the principal of Rs.3,46,79,373/- with interest @ 15% on monthly rest basis; and interest @ 15% on monthly rest basis on the aforesaid amount till the date of realization of the claim. In case, the respondents fail to pay the principal amount and interest @ 15% on monthly rest basis, the Respondent No.1 may be directed to pay a further interest at the rate of 15% as penal interest over and above the amounts to be paid in terms of the above till the payment is made.

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[5] (2007) 3 SCC 545

6. On the other hand, the learned counsel for the Respondent No. 1 / State of Rajasthan, submitted that the facts would clearly indicate that the amount was neither in debt nor for any damages, which normally entails interest. Due to gross mismanagement, the Respondent No. 2 (company) was going down, and it ultimately got merged with the State Government. The shareholders, who were responsible for the mismanagement of the Company, are now going to get a very handsome amount in terms of the valuation on 31.03.1973 at a huge sum of Rs.640/- per share for a subscribed share price of Rs.10/- per share against the original claim of Rs.70.50 per share.

6.1. Adding further, it is submitted that in the suit, the appellants initially claimed only for Rs.70.50 per share, in 1978. Subsequently, they sought amendment with regard to enhancement of valuation of share, which was ordered in 2001, i.e., 23 years later. Thus, the exorbitant interest sought in 2001 cannot be said to be computed from the year 1973. It is also submitted that the appellants / shareholders, who did not subscribe at Rs.10/- per share for fresh infusion of capital, have now got the valuation of Rs.640/- per share, on the same date and therefore, they have not been prejudiced in any manner.

6.2. Denying the allegation that the shares of the appellants had been compulsorily acquired by the State Government, the learned counsel submitted that the events as unfolded during 1969 to 1973 would amply demonstrate that it is owing to mismanagement of the Company that the State had to intervene and

infuse further capital in the Company. The State had infused sufficient funds, but still the company could not be revived or sustained by the then management. It is in this context that the shares were acquired by the State. Therefore, it is not a case of compulsory acquisition of shares, but a case of infusion of capital, and getting equity in return just to keep the company afloat; and the rate of interest has to be determined in the said background only.

6.3. It is submitted that the second part of Section 34 states that the interest from the date of decree till the date of payment cannot exceed 6%. The Explanation states that the rate of interest may exceed 6% p.a. if it is a 'Commercial transaction'. According to the learned counsel, the State was not engaged in any industry, trade or business and there was complete absence of motive of profit in the action taken by them. In fact, it was incurring losses, and the investment made to keep the loss-making Company unit afloat cannot be termed as a 'Commercial transaction'. Therefore, the interest rate should not exceed @ 5% as determined by the High Court.

6.4. Referring to the decision of this Court in *Manalal Prabhudayal v. Oriental Insurance Co. Ltd.*[6], it is submitted that Appellate Courts should not interfere with the discretion exercised by the lower Courts to award interest unless the same is arbitrary and capricious. Hence, the High Court correctly exercised its

[6] (2009) 17 SCC 296

jurisdiction to award simple interest at 5% per annum, which does not suffer from any infirmity.

6.5. It is also submitted that the High Court has reaffirmed the judgment and decree dated 28.04.2021 which was set aside by this court by order dated 01.10.2021, without any modification and the same does not have any legal sanctity. Thus, the High Court has not passed any specific order with regard to the interest from the date of the institution of the suit till the date of decree, and from the date of decree till the date of the payment. It has merely stated that 5% p.a. shall be calculated. Therefore, the order of the High Court relating to rate of interest is reasonable and the same need not be interfered with by this court.

7. In addition to the above submissions made on the side of the Respondent No.1, the learned counsel for the Respondent No.2 / Rajasthan State Mines and Minerals Ltd., submitted that the transfer of shares to the State by the company in the year 1973 was for the reason as the company was facing financial difficulties to run its business and further, the shareholders were not possessing faith in the company and therefore, the company decided to bring the public issue at Rs.10/- per equity share, but the appellants were not ready to purchase the shares even at such rate. Thereafter, the litigation to decide the fair price of the share was initiated by the appellants in 1978 by demanding a sum of Rs.70.50 per equity share, but later, on the basis of valuation by a private valuer M/s. Naresh Lakhotia & Company, amended their plaint and claimed Rs.874/- per share. It is

worth mentioning that the valuer M/s.Naresh Lakhotia & company and M/s.Ray and Ray are not the valuer appointed by the ICAI. Thus, the appellants are only entitled to the fair price of the share as on April 1973 and not the interest thereon.

7.1. It is further submitted that there was no contract in respect of payment of interest between the parties. In such circumstances, section 34 of the Civil Procedure Code would govern the field, which does not provide for any compound interest of any kind. That apart, Section 34 clearly mandates interest @6% per annum for the principal sum adjudged (both during pendency and till date of payment). Therefore, the question of compound interest does not arise.

7.2. It is ultimately submitted that the appellants have already got the price of their share at Rs.11.50 per equity share and they are only entitled for the difference of amount as upheld by this Court and therefore, the appellants are not entitled to higher rate of interest than 5% awarded by the High Court.

8. As a riposte, the learned counsel for the appellants submitted that the Respondent No. 1 has attempted to make out a new case for the first time through their reply, alleging that there was mismanagement by the shareholders of the Respondent No. 2; that, the appellants after a period of 23 years, claimed an exorbitant sum towards value of shares, Respondent No. 2 was a loss-making company, *etc*.

8.1. The learned counsel further submitted that the respondents never challenged the order dated 15.09.2001 granting leave to the appellants to amend their plaint in CS No.467 of 1978, but sought to urge that the proceedings were delayed due to amendment. That apart, the contention that the Respondent No. 2 was a loss making one, is utterly false and contrary to the record; and the appellants have placed on record the profit made by Respondent No.2 between 1974 till 2000, which comes to Rs.40,165,790,819. It is also an incorrect statement that the Government infused lots of fund during management of the company by the shareholders including the appellants. According to the appellants, other than giving one or two bank guarantees, the Respondent No.1 had never funded the company. Thus, according to the learned counsel, such new allegations are not maintainable. All the issues between the parties had attained finality except the issue of interest payable to the appellants, which has been raised in the present appeals.

8.2. It is also submitted that the High Court *vide* order dated 28.04.2021 specifically directed that interest will be paid from 08.07.1975 till the date of payment. Therefore, the learned counsel prayed this court to allow these appeals and grant appropriate rate of interest to the appellants.

9. We have considered the submissions made by the learned counsel appearing for the parties and perused the records carefully and meticulously.

10. The genesis of the case arises from a five-decade long litigation concerning the valuation of shares of Respondent No. 2 which were sold by the appellants to Respondent No.1. The issue relating to valuation of shares has become final in view of dismissal of SLP (C) Diary Nos. 27115/2022 and 24887/2022 filed by Respondent Nos. 1 and 2 respectively, *vide* orders dated 05.12.2022 and 12.12.2022 passed by this court.

11. As already stated, the only issue remains to be considered by us in the present round of litigation is the rate of interest on the enhanced valuation of shares as determined by the High Court and affirmed by this court.

12. Taking note of the interest burden on the State for 50 years on the valuation of shares, the High Court had granted simple interest @ 5% per annum, by judgments and orders dated 26.04.2022 and 02.05.2022 which are impugned herein. According to the appellants, the transactions *viz.*, transfer of shares were commercial in nature. Whereas, the respondents stated that they were not engaged in any industry, trade or business for profit purposes and the investment made was only to keep the loss-making Company unit afloat, and hence, the transactions cannot be treated as commercial transactions. Here, it cannot be disputed that there has been a transaction of trade, *viz*. sale and purchase of goods, which clearly implies a commercial transaction between the parties. The term "Public Interest" denotes a wider concept with its genus rooted to the welfare of the public at large, with different species attributable to individual and specific

impact, depending upon the concept and the subject under consideration. It deals with the impact of a policy decision on the society. Generally, public interest is anathema to commercial transactions. However, by exception, when the terms are oppressive or one-sided, they are to be termed as unconscionable, arbitrary and by application of externalities, public interest will have to lean towards the individual who has been wronged, as such contracts are deemed to take away the fairness, affecting the free consent required to culminate into a valid contract. The constitutional courts, under such circumstances will be armed with Article 14 to strike down such contracts or to pass appropriate decrees or orders. It will be useful to refer to the judgment of this court in *Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another*[7], wherein, it was held as follows:

> *"82. The position under the American Law is stated in "Reinstatement of the Law-Second" as adopted and promulgated by the American Law Institute, Volume II xx which deals with the law of contracts, in Section 208 at page 107, as follows:*
> *"**Section 208**. Unconscionable Contract or Term*
> *If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result."*
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> *In the Comments given under that section it is stated at page 107:*
> *"Like the obligation of good faith and fair dealing (S 205), the policy against unconscionable contracts or terms applies to a wide variety of types of conduct. The determination that a contract or term is or is not unconscionable is made in the light of its setting, purpose and effect. Relevant factors include weaknesses in the contracting process like those involved in more specific rules as to contractual capacity, fraud and other invalidating causes; the policy also overlaps with rules which render particular bargains or terms unenforceable on*

[7] (1986) 3 SCC 156: MANU/SC/0439/1986

grounds of public policy. Policing against unconscionable contracts or terms has sometimes been accomplished by adverse construction of language, by manipulation of the rules of offer and acceptance or by determinations that the clause is contrary to public policy or to the dominant purpose of the contract'. Uniform Commercial Code $ 2-302 Comment 1.... A bargain is not unconscionable merely because the parties to it are unequal in bargaining position, nor even because the inequality results in an allocation of risks to the weaker party. But gross inequality of bargaining power, together with terms unreasonably favourable to the stronger party, may confirm indications that the transaction involved elements of deception or compulsion, or may show that the weaker party had no meaningful choice, no real alternative, or did not in fact assent or appear to assent to the unfair terms."

There is a statute in the United States called the Universal Commercial Code which is applicable to contracts relating to sales of goods. Though this statute is inapplicable to contracts not involving sales of goods, it has proved very influential in, what are called in the United States, "non-sales" cases. It has many times been used either by analogy or because it was felt to embody a general accepted social attitude of fairness going beyond its statutory application to sales of goods. In the Reporter's Note to the said Section 208, it is stated at page 112:
"It is to be emphasized that a contract of adhesion is not unconscionable per se, and that all unconscionable contracts are not contracts of adhesion. Nonetheless, the more standardized the agreement and the less a party may bargain meaningfully, the more susceptible the contract or a term will be to a claim of unconscionability."

The position has been thus summed up by John R. Pedan in "The Law of Unjust Contracts" published by Butterworths in 1982, at pages 28-29:
"...Unconscionability represents the end of a cycle commencing with the Aristotelian concept of justice and the Roman law iaesio enormis, which in turn formed the basis for the medieval church's concept of a just price and condemnation of usury. These philosophies permeated the exercise, during the seventeenth and eighteenth centuries, of the Chancery court's discretionary powers under which it upset all kinds of unfair transactions. Subsequently the movement towards economic individualism in the nineteenth century hardened the exercise of these powers by emphasizing the freedom of the parties to make their own contract. While the principle of pacta sunt servanda held dominance, the consensual theory still recognized exceptions where one party was overborne by a fiduciary, or entered a contract under duress or as the result of fraud. However, these exceptions were limited and had to be strictly proved. It is suggested that the judicial and legislative trend during the last 30 years in both civil and common law jurisdictions has almost brought the wheel full circle. Both courts and parliaments have provided greater protection for weaker parties from harsh contracts. In several jurisdictions this included a general power to grant

relief from unconscionable contracts, thereby providing a launching point from which the courts have the opportunity to develop a modern doctrine of unconscionability. American decisions on Article 2. 302 of the UCC have already gone some distance into this new arena. The expression "laesio enormous used in the above passage refers to "laesio ultra dimidium vel enormous which in Roman law meant the injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject-matter, as for example, when a vendor had not received half the value of property sold, or the purchaser had paid more then double value. The maxim "pacta sunt servanda" referred to in the above passage means "contracts are to be kept".

83. It would appear from certain recent English cases that the courts in that country have also begun to recognize the possibility of an unconscionable bargain which could be brought about by economic duress even between parties who may not in economic terms be situate differently (see, for instance, Occidental Worldwide Investment Corpn. v. Skibs A/S Avanti 1976 (1) L Rep. 293, North Ocean Shipping Co. Ltd. v. Hyundai Construction Co. Ltd. 1979 Q.B. 705, Pao On v. Lau Yin Long 1980 A.C. 614 and Universe Tankships of Monrovia v. International Transport Workers Federation 1981 (1) C.R. 129, reversed in 1981 (2) W.L.R. 803and the commentary on these cases in Chitty on Contracts, Twenty-fifth Edition, Volume I, paragraph 486).

84. Another jurisprudential concept of comparatively modern origin which has affected the law of contracts is the theory of "distributive justice". According to this doctrine, distributive fairness and justice in the possession of wealth and property can be achieved not only by taxation but also by regulatory control of private and contractual transactions even though this might involve some sacrifice of individual liberty. In Lingappa Pochanna Appelwar v. State of Maharashtra and Anr. MANU/SC/0236/1984 : [1985]2 SCR 224 this Court, while upholding the constitutionality of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, said (at page 493):

"The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudence know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed 'distributive justice'. The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: 'From each according to his capacity, to each according to his needs'. Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief

or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements."

85. When our Constitution states that it is being enacted in order to give to all the citizens of India "JUSTICE, social, economic and political", when Clause (1) of Article 38 of the Constitution directs the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life, when Clause (2) of Article 38 directs the State, in particular, to minimize the inequalities in income, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations, and when Article 39 directs the State that it shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment and that there should be equal pay for equal work for both men and women, it is the doctrine of distributive justice which is speaking through these words of the Constitution.

86. Yet another theory which has made its emergence in recent years in the sphere of the law of contracts is the test of reasonableness or fairness of a clause in a contract where there is inequality of bargaining power. Lord Denning, M.R., appears to have been the propounder, and perhaps the originator - at least in England, of this theory. In Gillespie Brothers & Co. Ltd. v. Roy Bowles Transport Ltd. 1973 (1) Q.B. 400 where the question was whether an indemnity clause in a contract, on its true construction, relieved the indemnifier from liability arising to the indemnified from his own negligence, Lord Denning said (at pages 415-6):

"The time may come when this process of 'construing' the contract can be pursued no further. The words are too clear to permit of it. Are the courts then powerless? Are they to permit the party to enforce his unreasonable clause, even when it is so unreasonable, or applied so unreasonably, as to be unconscionable? When it gets to this point, I would say, as I said many years ago:
there is the vigilance of the common law which, while allowing freedom of contract, watches to see that it is not abused': John lee & Son (Grantham) Ltd. v. Railway Executive 1949 (2) All. E.R. 581, 584. It will not allow a party to exempt himself from his liability at common law when it would be quite unconscionable for him to do so."

In the above case the Court of Appeal negatived the defence of the indemnifier that the indemnity clause did not cover the negligence of the indemnified. It was in Lloyds Bank Ltd. v. Bundy 1974 (3) All E.R. 757 that Lord Denning first clearly enunciated his theory of "inequality of bargaining power". He began his discussion on this part of the case by stating (at page 763):

"There are cases in our books in which the courts will set aside a contract, or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall. Hitherto those exceptional cases have been treated each as a separate category in itself. But I think the time has come when we should seek to find a principle to unite them. I put on one side contracts or transactions which are voidable for fraud or misrepresentation or mistake. All those are governed by settled principles. I go only to those where there has been inequality of bargaining power, such as to merit and intervention of the court."

He then referred to various categories of cases and ultimately deduced therefrom a general principle in these words (at page 765):

"Gathering all together, I would suggest that through all these instances there runs a single thread. They rest on 'inequality of bargaining power'. By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought- to bear on him by or for the benefit of the other. When 1 use the word 'undue' 1 do not mean to suggest that the principle depends on proof of any wrongdoing. The one who stipulates for an unfair advantage may be moved solely by his own self-interest, unconscious of the distress he is bringing to the other. I have also avoided any reference to the will of the one being 'dominated' or 'overcome' by the other. One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the straits in which he finds himself. Again, I do not mean to suggest that every transaction is saved by independent advice. But the absence of it may be fatal. With these explanations, 1 hope this principle will be found to reconcile the cases."

87. Though the House of Lords does not yet appear to have unanimously accepted this theory, the observations of Lord Dip lock in A. Schroeder Music Publishing Co. Ltd. v. Macaulay (Formerly Instone) 1974 (1) W.L.R. 1308 are a clear pointer towards this direction. In that case a song writer had entered into an agreement with a music publisher in the standard form whereby the publishers engaged the

song writer's exclusive services during the term of the agreement, which was five years. Under the said agreement, the song writer assigned to the publisher the full copyright for the whole world in his musical compositions during the said term. By another term of the said agreement, if the total royalties during the term of the agreement exceeded 5,000 the agreement was to stand automatically extended by a further period of five years. Under the said agreement, the publisher could determine the agreement at any time by one month's written notice but no corresponding right was given to the song writer. Further, while the publisher had the right to assign the agreement, the song writer agreed not to assign his rights without the publisher's prior written consent. The song writer brought an action claiming, inter alia, a declaration that the agreement was contrary to public policy and void. Plowman, J., who heard the action granted the declaration which was sought and the Court of Appeal affirmed his judgment. An appeal filed by the publishers against the judgment of the Court of Appeal was dismissed by the House of Lords. The Law Lords held that the said agreement was void as it was in restraint of trade and thus contrary to public policy. In his speech Lord Diplock however, outlined the theory of reasonableness or fairness of a bargain. The following observations of his on this part of the case require to be reproduced in extenso (at pages 1315-16):

"My Lords, the contract under consideration in this appeal is one whereby the respondent accepted restrictions upon the way in which he would exploit his earning power as a song writer for the next ten years. Because this can be classified as a contract in restraint of trade the restrictions that the respondent accepted fell within one of those limited categories of contractual promises in respect of which the courts still retain the power to relieve the promisor of his legal duty to fulfil them. In order to determine whether this case is one in which that power ought to be exercised, what your Lordships have in fact been doing has been to assess the relative bargaining power of the publisher and the song writer at the time the contract was made and to decide whether the publisher had used his superior bargaining power to exact from the song writer promises that were unfairly onerous to him. Your Lordships have not been concerned to inquire whether the public have in fact been deprived of the fruit of the song writer's talents by reason of the restrictions, nor to assess the likelihood that they would be so deprived in the future if the contract were permitted to run its full course.

It is, in my view, salutary to acknowledge that in refusing to enforce provisions of a contract whereby one party agrees for the benefit of the other party to exploit or to refrain from exploiting his own earning power, the public policy which the court is implementing is not some 19th-century economic theory about the benefit to the general public of freedom of trade, but the protection of those whose bargaining power is weak against being forced by those whose bargaining power is stronger to enter into bargains that are unconscionable. Under the influence of Bentham and of laissez-faire the courts in the 19th century abandoned the practice

of applying the public policy against unconscionable bargains to contracts generally, as they had Formerly done to any contract considered to be usurious; but the policy survived in its application to penalty clauses and to relief against forfeiture and also to the special category of contracts in restraint of trade. If one looks at the reasoning of 19th-century judges in cases about contracts in restraint of trade one finds lip service paid to current economic theories, but if one looks at what they said in the light of what they did, one finds that they struck down a bargain if they thought it was unconscionable as between the parties to it and upheld it if they thought that it was not.

So I would hold that the question to be answered as respects a contract in restraint of trade of the kind with which this appeal is concerned is: "Was the bargain fair?" The test of fairness is, no doubt, whether the restrictions are both reasonably necessary for the protection of the legitimate interests of the promisee and commensurate with the benefits secured to the promisor under the contract. For the purpose of this test all the provisions of the contract must be taken into consideration."

Lord Diplock then proceeded to point out that there are two kinds of standard forms of contracts. The first is of contracts which contain standard clauses which "have been settled over the years by negotiation by representatives of the commercial interests involved and have been widely adopted because experience has shown that they facilitate the conduct of trade". He then proceeded to state, "If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable." Referring to the other kind of standard form of contract Lord Diplock said (at page 1316):

"The same presumption, however, does not apply to the other kind of standard form of contract. This is of comparatively modern origin. It is the result of the concentration of particular kinds of business in relatively few hands. The ticket cases in the 19th century provide what are probably the first examples. The terms of this kind of standard form of contract have not been the subject of negotiation between the parties to it, or approved by any organisation representing the interests of the weaker party. They have been dictated by that party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services, enables him to say: 'If you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it'.

To be in a position to adopt this attitude towards a party desirous of entering into a contract to obtain goods of services provides a classic instance of superior bargaining power."

88. The observations of Lord Denning, M.R., in Levison and Anr. v. Patent Steam Carpet Co. Ltd. 1978 (1) Q.B. 69 are also useful and require to be quoted. These observations are as follows (at page 79):

"In such circumstances as here the Law Commission in 1975 recommended that a term which exempts the stronger party from his ordinary common law liability should not be given effect except when it is reasonable: see The Law Commission and the Scottish Law Commission Report, Exemption Clauses, Second Report (1975) (August 5, 1975), Law Com. No. 69 (H.C. 605), pp. 62, 174; and there is a bill now before Parliament which gives effect to the test of reasonableness. This is a gratifying piece of law reform: but 1 do not think we need wait for that bill to be passed into law. You never know what may happen to a bill. Meanwhile the common law has its own principles ready to hand. In Gillespie Bros. & Co. Ltd. v. Roy Bowles Transport Ltd. 1973 Q.B. 400, I suggested that an exemption or limitation clause should not be given effect if it was unreasonable, or if it would be unreasonable to apply it in the circumstances of the case. I see no reason why this should not be applied today, at any rate in contracts in standard forms where there is inequality of bargaining power."

89. The Bill referred to by Lord Denning in the above passage, when enacted, became the Unfair Contract Terms Act, 1977. This statute does not apply to all contracts but only to certain classes of them. It also does not apply to contracts entered into before the date on which it came into force, namely, February 1, 1978; but subject to this it applies to liability for any loss or damage which is suffered on or after that date. It strikes at clauses excluding or restricting liability in certain classes of contracts and torts and introduces in respect of clauses of this type the test of reasonableness and prescribes the guidelines for determining their reasonableness. The detailed provisions of this statute do not concern us but they are worth a study.

90. In Photo Production Ltd. v. Securicor Transport Ltd. 1980 A.C. 827 a case before the Unfair Contract Terms Act, 1977, was enacted, the House of Lords upheld an exemption clause in a contract on the defendants' printed form containing standard conditions. The decision appears to proceed on the ground that the parties were businessmen and did not possess unequal bargaining power. The House of Lords did not in that case reject the test of reasonableness or fairness of a clause in a contract where the parties are not equal in bargaining position. On the contrary, the speeches of Lord Wilberforce, Lord Diplock and Lord Scarman would seem to show that the House of Lords in a fit case would accept that test. Lord Wilberforce in his speech, after referring to the Unfair Contract Terms Act, 1977, said (at page 843):

"This Act applies to consumer contracts and those based on standard terms and enables exception clauses to be applied with regard to what is just and reasonable. It is significant that Parliament refrained from legislating over the whole field of contract. After this Act, in commercial matters generally, when the parties are not of unequal bargaining power, and when risks are normally borne by insurance, not only is the case for judicial intervention undemonstrated, but there is everything to be said, and this seems to have been Parliament's intention, for leaving the parties free to apportion the risks as they think fit and for respecting their decisions."

Lord Diplock said (at page 850-51):
"Since the obligations implied by law in a commercial contract are those which, by judicial consensus over the years or by Parliament in passing a statute, have been regarded as obligations which a reasonable businessman would realise that he was accepting when he entered into a contract of a particular kind, the court's view of the reasonableness of any departure from the implied obligations which would be involved in construing the express words of an exclusion clause in one sense that they are capable of bearing rather than another, is a relevant consideration in deciding what meaning the words were intended by the parties to bear."

Lord Scarman, while agreeing with Lord Wilberforce, described (at page 853) the action out of which the appeal before the House had arisen as "a commercial dispute between parties well able to look after themselves" and then added, "In such a situation what the parties agreed (expressly or impliedly) is what matters; and the duty of the courts is to construe their contract according to its tenor.

91. As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognized, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation. Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, Section 138(2) of the German Civil Code provides that a transaction is void "when a person" exploits "the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages . . . which are obviously disproportionate to the performance given in return." The position according to the French law is very much the same.

92. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential

development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

In the present case, the transaction, though commercial, is not between two businessmen or entities; the State and its instrumentality are parties to the contract

with better bargaining or imposing authority; and from the records, we find that there was no public interest in offering a lesser sum. Further, with the price fixed found to be unconscionable, this Court affirmed the enhanced price fixed by the High Court.

13. Pertinently, it is to be pointed out at this juncture that there was no agreement between the parties relating to grant of interest for the delayed payment. Even the exchange of communications between the parties remains silent on this aspect. In the absence of any agreement or contract, the provisions of Section 34 of the Code of Civil Procedure dealing with 'interest' would come into play, and the same is extracted below, for ready reference:

> *"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.*
>
> *(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."*

13.1. The above provision empowers the court to grant interest at three different stages of a money decree *viz*., (i) the court may award interest on the principal

sum claimed at a rate it deems reasonable, for the period before the suit was filed. Such interest is generally governed by agreements between the parties; (ii) The court may award interest on the principal amount from the date of filing the suit until the date of the decree, at a reasonable rate. Here, the court has full discretion to determine the interest rate based on fairness, commercial usage and equity; and (iii)the court may grant interest on the total decretal amount (principal + interest before decree) from the date of the decree until payment, at a rate not exceeding 6% per annum unless otherwise specified in contractual agreements or statutory provisions. However, if the claim arises from a commercial transaction, courts may allow interest at a higher rate based on agreements between the parties.

14. Furthermore, it is noteworthy to refer to the following case laws and the observations made therein concerning the issue involved herein:

(i) Clariant International Limited and another v. Securities & Exchange Board of India[8]

> *"Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory. In absence of any agreement or statutory provision or a merchantile usage, interest payable can be only at the market rate. Such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction."*

[8] 2004 (8) SCC 524

(ii) Alok Shanker Pandey (supra)

> *"We are of the opinion that there is no hard-and-fast rule about how much interest should be granted and it all depends on the facts and circumstances of each case. We are of the opinion that the grant of interest of 12% per annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount, the respondent should then in addition to the interest at the rate of 12% per annum also pay to the appellant interest at the same rate on the aforesaid interest from the date of payment of instalments by the appellant to the respondent till the date of refund of this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment.'*

(iii) Thazhathe Thazhathe Purayil Sarabi v. Union of India[9]

> *"25. 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 or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and/or awarded, 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.*
>
> *26. The courts are consistent in their view that normally when a money decree is passed, it is most essential 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.*
>
> *...*
>
> *30. As we have indicated hereinbefore, 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."*

(iv) Rampur Fertiliser Limited v. Vigyan Chemicals Industries[10]

> *"19. It was further held in Clariant International case [(2004) 8 SCC 524] that in the absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable*

[9] (2009) 7 SCC 372
[10] (2009) 12 SCC 324

jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in Kaushnuma Begum v. New India Assurance Co. Ltd. [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] , H.S. Ahammed Hussain v. Irfan Ahammed [(2002) 6 SCC 52 : 2002 SCC (Cri) 1263] and United India Insurance Co. Ltd. v. PatriciaJean Mahajan [(2002) 6 SCC 281 : 2002 SCC (Cri) 1294] and it was observed that: (Clariant International case [(2004) 8 SCC 524] , SCC p. 541, para 36)
"*36. ... Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable."*

20. In Assam Small Scale Industries Development Corpn. Ltd. [(2005) 13 SCC 19] also in terms of Section 34 of the Code, in relation to the transactions made prior to coming into force of the Act, simple interest at the rate of 9% per annum was granted taking the same to be bank rate at the relevant time.

21. Therefore, in view of the foregoing legal proposition, we hold that the High Court was not justified in granting interest at the rate of 18% per annum with monthly rests. Considering the facts and circumstances of the present case we direct that pendente lite and future interest at the rate of 9% shall be paid."

(v) M/s. Tomorrowland Limited v. Housing and Urban Development Corporation Limited and another[11]

"48. "The Appellant, of course, can seek award of interest under Section 34 of the CPC, which inter alia provides that "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."

49. "It is trite law that under Section 34 of the CPC, the award of interest is a discretionary exercise steeped in equitable considerations. The law in this regard has been succinctly discussed in the Constitution Bench judgment of this Court in Central Bank of India v. Ravindra & Ors.; (2002) 1 SCC 367, which states:
"Award of interest pendente lite or post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit, the component of interest is disproportionate with the

[11] 2025 LiveLaw (SC) 205

component of the principal sum actually advanced, the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline to award such interest. The discretion shall be exercised fairly, judiciously, and for not arbitrary or fanciful reasons."

58. "We are conscious of the fact that as a general principle, in commercial disputes, the award of interest pendente lite or post-decree is typically granted as a matter of course. This is because such interest serves to compensate the aggrieved party for the time value of money that was due but withheld during the legal process."

Thus, it is abundantly clear that the Courts have the authority to determine the appropriate interest rate, considering the totality of the facts and circumstances in accordance with law. That apart, the Courts have the discretion to decide whether the interest is payable from the date of institution of the suit, a period prior to that, or from the date of the decree, depending on the specific facts of each case.

15. Admittedly, the shares belonging to the appellants were transferred to the State Government in 1973. In 1978, the appellants instituted the suit claiming a valuation of Rs.70.50 per share. Thereafter, they sought an amendment increasing the valuation to Rs.874/- per share, based on the report of a private valuer M/s. Naresh Lakhotia & Co. The amendment sought was allowed on 12.09.2001. Subsequently, the appellants accepted the valuation of Rs.640/- per share as determined by M/s Ray & Ray, which was also ordered by the High Court and affirmed by this Court. It is also an admitted fact that the Respondent No. 1 agreed to pay a fair valuation for the shares to the appellants, but is yet to make the payment. Such being the scenario, wherein, the appellants having suffered a

delay of five decades in receiving the payment, are entitled to be reasonably compensated by way of interest. However, their claim of interest at 18% with quarterly rest or 15% with monthly rest, in the opinion of this court, is unreasonable and cannot be accepted as such quarterly or monthly rest is beyond the scope of Section 34.

16. Be it noted, while the discretion to award interest, whether pendente lite or post-decree, is well recognized, its exercise must be guided by equitable considerations. The rate and period of interest cannot be applied mechanically or at an unreasonably high rate without any rationale. Though it is not possible to arrive at the actual value of improvement or the inflation on the fair consideration, if paid at the relevant point of time, it is just and necessary that the rate of interest must be a reparation for the appellant. The Court must ensure that while the claimant is fairly compensated, the award does not become punitive or unduly burdensome on the Judgement Debtor. Therefore, the rate of interest should be determined in a manner that balances both fairness and financial impact, taking into account the "loss of use" principle and economic prudence, in the specific facts of each case.

17. Considering the prolonged pendency of the dispute regarding the valuation of shares, which has only been determined recently, and the substantial share amount involved, and also keeping in mind that this is a commercial transaction, and the entire burden of interest along with principal value falls upon the

Government, it is necessary in the present case to award reasonable interest, in order to strike a balance between the parties. Thus, in these peculiar facts and circumstances, we deem it fit, just and appropriate to award simple interest at the rate of 6% per annum from 8th July 1975, on the enhanced valuation of shares till the date of decree and interest at the rate of 9% per annum from the date of decree till the date of realisation. The interest shall be paid along with the amount due towards the enhanced value of the shares, after adjusting the amount already paid, to the appellants, within a period of two months from today.

18. Accordingly, all the appeals stand disposed of. The impugned judgments and orders passed by the High Court are modified to the extent indicated above. No costs. Connected Miscellaneous Application(s), if any, shall stand disposed of.

..... J.
[J.B. Pardiwala]

.....J.
[R. Mahadevan]

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