

DRAVYA FINANCE PVT. LTD. & ANR.

v.

S.K. ROY & ORS.

(Review Petition (C) No.3538 of 2016 in Civil Appeal No. 8543 of 2009)

OCTOBER 26, 2016

**[ANIL R. DAVE, SHIVA KIRTI SINGH AND  
R. BANUMATHI, JJ.]**

*Review petition – Interest – Calculation and payment of interest by LIC to finance company – Date of payment of interest – On facts, acceptance of life insurance policies by petitioner-banking finance company as collateral security through assignment of insurance policies by borrower in favour of petitioner – Issuance of circulars by LIC for putting restrictions on assignment of insurance policies – Challenge to – Said circulars quashed by High Court – However, no order passed for grant of any interest – Filing of SLP by LIC – Interim order passed in favour of LIC whereby petitioners could get only temporary registration of assignment in its favour but could not file any death claim or maturity claim during the pendency of the appeal – Subsequently pronouncement of final order – Provisional registrations made permanent and interim orders recalled – LIC to pay interest at the prevailing bank rate (without penal interest) as per relevant provisions – Thereafter, filing of contempt petition against LIC – Said petition treated as limited review petition in view of the apparent omission in the final order in not mentioning as to from what date, LIC was liable to pay interest – Date from which interest to be calculated and paid by LIC to the petitioners in terms of final order – Held: Interest would be payable only on or after the date of pronouncement of interim order by this Court imposing certain restrictions on the petitioners' right to lodge death claims or maturity claims for appropriate amounts – LIC to pay interest at the prevailing bank rate (without penal interest) from 30 days after the date of death or date of maturity relating to the life insurance policy concerned or from the date of pronouncement of interim order, whichever is later.*

A            **CIVIL APPELLATE JURISDICTION: Review Petition (C) No. 3538 of 2016 in Civil Appeal No. 8543 of 2009.**

From the Judgment and Order dated 23.04.2007 of the High Court of Judicature of Bombay at Mumbai in Writ Petition No. 3282 of 2004.

B            Shyam Divan, Sr. Adv., Nirman Sharma, Puneet Singh Bindra, Aslam Ahmed, Rohan Kaushal, Advs. for the Appellants.

Mukul Rohatgi, AG, Ashok Panigrahi, Surajit Bhaduri, Santosh Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

C            **SHIVA KIRTI SINGH, J.** 1. Heard learned counsel for the parties.

2. Although this petition is labelled as a contempt petition arising out of Civil Appeal No.8543 of 2009, by order dated 26<sup>th</sup> September, 2016, the contempt proceedings were closed and the petition is now being treated only as a limited review petition for answering a short but significant question as to from what date, the interest needs to be calculated and paid by the LIC to the petitioners in terms of final order dated 10<sup>th</sup> December, 2015 in Civil Appeal No.8543 of 2009. The last but one paragraph of the Order dated 10<sup>th</sup> December, 2015 is relevant for appreciating the issue relating to interest indicated above. That paragraph runs as follows :-

F            “It is further clarified that in view of the disposal of this Appeal, in the circumstances mentioned above, the Appellant will be liable to pay interest at the prevailing Bank rate (without penal interest) as per Section 8 sub-section (5) of the Insurance Regulatory and Development Authority (Protection of Policy Holder Interest) Regulations, 2002. The disposal of this Appeal is without prejudice to other Appeals in which arguments have been closed.”

G            3. It will also be apposite to extract the Order passed in this case on 26<sup>th</sup> September, 2016 which is as follows :-

“On hearing the parties, we find that the order passed by this Court on 10<sup>th</sup> December, 2015 in C.A.No.8543 of 2009 has been substantially or may be fully complied with except that a dispute

H

has arisen with regard to interpretation of observations made at the end of that Order relating to payment of interest at the prevailing bank rate. The dispute requires an answer as to the 'the date' from which the interest should be calculated. A

In our considered opinion, this dispute raises questions of equity between the parties to be adjusted on account of earlier orders passed in C.A.No.8543 of 2009 and the language used in the Order dated 10<sup>th</sup> December, 2015. It will be appropriate to consider the issue not under Contempt Jurisdiction but in Review Jurisdiction. Therefore, the contempt proceedings are closed. B

For that purpose, we direct that this Contempt Petition shall now be treated as limited Review Petition and may be listed in Court on 18<sup>th</sup> October, 2016 i.e. on a non-misc. day. C

It is further recorded that the petitioners may accept whatever amount Life Insurance Corporation (LIC) is ready to pay as interest without prejudice to their claims which may be determined by way of Review. D

It goes without saying that the petitioners will be entitled to pursue their remedy by approaching LIC with further particulars/materials in respect of the cases which are still pending for settlement." E

4. Since the issue under dispute is very narrow one, it is not necessary to refer to facts in detail. It is sufficient to notice that the first petitioner is a non-banking finance company engaged in the business of lending money against collateral security. It accepts life insurance policies as collateral security through assignment of insurance policies by borrower in favour of the petitioners. On 22<sup>nd</sup> October, 2003 and 2<sup>nd</sup> March, 2005, LIC issued two circulars for putting restrictions on assignment of insurance policies with a view to prevent "trading" in policies. The circulars were challenged before the Bombay High Court through two writ petitions filed in the year 2004. They were allowed by quashing the two circulars vide judgments and orders dated 22<sup>nd</sup> March, 2007 and 23<sup>rd</sup> April, 2007 respectively. No order for grant of any interest was passed by the High Court nor the petitioners appealed against such orders. F G

5. LIC challenged the judgments of Bombay High Court by way of S.L.P.(C) Nos.8918 and 10783, both of 2007. This Court passed H

A interim order in favour of LIC and, as a result, the petitioners could get only temporary registration of assignment in its favour but could not file any death claim or maturity claim during the pendency of the Civil Appeal No. 8543 of 2009 arising out of SLP against the petitioners. Ultimately, by the final order dated 10<sup>th</sup> December, 2015, Civil Appeal against the  
B petitioners was disposed of on the basis of undertakings furnished on affidavit which were accepted by the Court on account of agreement accorded to the terms of the undertaking by the learned senior counsel for the LIC. The provisional registrations were made permanent and the interim orders passed on 4<sup>th</sup> April, 2008 were recalled. The LIC was thus required to process the claim applications or maturity applications  
C as well as fresh applications for registration in accordance with the order dated 10<sup>th</sup> December, 2015 and in that context, this Court observed that LIC will be liable to pay interest at the prevailing bank rate (without penal interest) as per relevant provisions in the regulations of 2002.

D 6. It may be indicated, at this stage only, that the other appeals in which arguments had been concluded also came to be finally dismissed against the LIC on 29<sup>th</sup> December 2015. As a result, the judgment of the High Court of Bombay declaring the circulars ultra vires stood confirmed.

E 7. The present contempt petition came to be filed against the LIC. As noticed above, the same was closed on 26<sup>th</sup> September, 2016 but this Court directed it to be treated as a limited review petition because of an apparent omission in the final order dated 10<sup>th</sup> December, 2015 in not mentioning as to from what date, the LIC will be liable to pay interest at the prevailing bank rate (without penal interest).

F 8. On behalf of the petitioners, Mr. Shyam Divan, learned Senior Advocate placed reliance upon various sub-regulations of Regulation 8 to suggest that as per statutory regulations, the interest should be payable after 30 days from the date of maturity of the policy or date of death in case where the insured died during the pendency of the policy.

G 9. On the other hand, learned Attorney General appearing on behalf of LIC pointed out that the High Court did not grant any relief by way of interest and, therefore, equity can be taken care of by ordering payment of interest only at a reasonable rate from 4<sup>th</sup> April, 2008 when this Court passed an interim order but without prejudice to the ultimate rights of the parties and, as a result, temporary registration of assignment  
H became possible.

10. He strongly advocated for reducing the rate of interest from bank rate to that of savings bank rate on the plea that there was no intentional delay caused by the LIC and, therefore, its interest should also be protected while adjusting the equities through grant of interest. A

11. As is evident from order passed in this case on 26<sup>th</sup> September, 2016, the present dispute relates only to a question of adjustment of equities between the parties on account of earlier interim order as well as the language used in the order dated 10<sup>th</sup> December, 2015. The exercise that needs to be undertaken is really one of modification of the order dated 10<sup>th</sup> December, 2015, necessitated because of obvious omission in supplying the date from which the interest should be calculated. Since the High Court did not grant any relief by way of interest and the petitioners did not challenge the said judgment and order, we find merit in the submission of learned Attorney General that interest will be payable only on or after 4<sup>th</sup> April, 2008 when this Court imposed certain restrictions on the petitioners' right to lodge death claims or maturity claims for appropriate amounts. B  
C  
D

12. However, since the interim order of this Court has stood in the way of the petitioners from getting its money claims against LIC within due time and the money has remained with the LIC because of interim arrangement enforced by this Court, it will not be proper to reduce the bank rate as ordered already. Accordingly, we modify the last but one paragraph of final order dated 10<sup>th</sup> December, 2015 passed in Civil Appeal No. 8543 of 2009. It shall be so read as to include a clause that the LIC will be liable to pay interest at the prevailing bank rate (without penal interest) from 30 days after the date of death or date of maturity relating to the life insurance policy concerned or from 4<sup>th</sup> April, 2008, whichever is later. E  
F

13. This matter is disposed of accordingly. We hope and trust that the LIC will discharge its liabilities as per this order with promptitude and without any unnecessary delay.

Nidhi Jain

Review Petition disposed of. G