

**IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE**

**CS No. 79 of 2006**

**M/s Sibco Investment Pvt. Ltd.  
VERSUS  
Small Industries Development Bank of India**

BEFORE

**The Hon'ble Justice  
HARISH TANDON**

Appearance:

Mr. Malay Ghosh, Adv,  
Mr. Amaresh Bag, Adv,  
Mr. Jayak Gupta, Adv,  
Mr. Rajarshi Dutta, Adv.

..... For the Plaintiff.

Mr. Joy Saha, Sr. Adv,  
Mr. Gaurab Kumar Basu, Adv,  
Mr. Aniruddha Mitra, Adv.

.....For the Respondent.

Judgment On : 13.03.2015

**HARISH TANDON, J :**

This is a simple suit for money on account of delayed payment of the principal sum and the agreed interest. The facts adumbrated in the plaint runs as under:

The Plaintiff-Company purchased the bonds in the form of promissory note issued by the defendant which are termed as 13.50% SIDBI Bonds 2003 (4<sup>th</sup> Series) and 12.50% SIDBI Bonds 2004 (5<sup>th</sup> Series) from one Shanker LaL Saraf on 1<sup>st</sup> July, 1998. It is undisputed that the aforesaid bonds are tradable in the market and can be purchased by any person from the holder of the said bonds. It is also undisputed that the bonds forming 4<sup>th</sup> series shall carry an interest @ 13.50% and the bonds forming 5<sup>th</sup> series carry an interest @ 12.50% in all such cases. The interest is payable on half-yearly basis on/or before 21<sup>st</sup> day of June and 21<sup>st</sup> day of December of every year. The 5<sup>th</sup> series bonds were agreed to be redeemed on 21<sup>st</sup> December, 2004 whereas the 4<sup>th</sup> series bonds were to be redeemed on 21<sup>st</sup> December, 2003. The Plaintiff-Company purchased 15 such bonds on which the interest was payable @ 13.50% and 26 bonds on which the interest is payable @ 12.50% and all such bonds carries a face value of ten lakhs each. The aforesaid 41 bonds were purchased on an aggregate price of Rs. 3.69 crores on 1<sup>st</sup> July, 1998 by the Plaintiff-Company from the said Shanker Lal Saraf. The Bonds were deposited with the defendant on July 2, 1998 at its place of business at 11, Dr. U.N. Brahmachari Street, Kolkata with the request to enface the name of

the Plaintiff-Company on the said bonds. On refusal to register and/or record the name of the Plaintiff-Company by the defendant on the ground that M/s CRB Capital Market Ltd; had gone into liquidation proceeding who appeared to be one of the holder of the said Bonds prior to the purchased by the said Shanker Lal Saraf and the said proceeding was initiated at the instance of the Reserve Bank of India, the Plaintiff-Bank filed a writ petition being W.P. No. 1456 of 1998 before this Court seeking a mandamus upon the defendant to transfer the aforesaid bonds in favour of the Plaintiff-Company and also to pay the interest as agreed in the said bonds.

The writ petition was ultimately disposed of holding that the writ is not the proper remedy and permitted the petitioner to approach the Company-Court being the High Court at Delhi seeking intervention in the liquidation proceeding initiated against the said M/s Capital Market Ltd. Though the appeal was preferred against the said order but it was not proceeded with. On the request of the Plaintiff-Company, the said Shanker Lal Saraf filed an application in the liquidation proceeding before the High Court at Delhi claiming that the aforesaid transactions should be treated

as outside the purview of the liquidation proceeding under the Companies Act, 1956.

By a judgment dated 17<sup>th</sup> December, 2004, the Delhi High Court held that the subject bonds are beyond the purview of the liquidation proceeding and directed the said Shanker Lal Saraf to put up the matter before the defendant. After the delivery of the said judgment on 11<sup>th</sup> January, 2005, the Plaintiff-Company communicated the order of the Delhi High Court to the defendant demanding the completion of all the formalities for redemption and payment of interest as all the bonds have crossed the maturity date. Since the redemption and the payment of interest requires the presentation of the original bonds, the defendant asked the Plaintiff-Company to submit the original bonds which were duly submitted on 17<sup>th</sup> February, 2005. The defendant made the payment not only the principal amount but also the interest calculated up to the date as promise in the said bond to the Plaintiff-Company. Such payment was made on 21<sup>st</sup> February, 2005 under a cover letter of the even date wherefrom it appears that certain amount on account of TDS was also deducted. By a letter dated 24<sup>th</sup> February, 2005, the Plaintiff-Company raised an

objection over the rate on which the TDS was deducted. Which was accepted by the defendant as it issued a further warrant covering a sum of Rs. 58,86,833/- on the account of excess deductions of the TDS. According to the plaint case, at the time of audit, it was detected that the interest was calculated up to 31<sup>st</sup> October, 2005 and a protest was ultimately lodged through a letter dated November 10, 2005. In the said letter not only the calculation of the interest was disputed but a further demand was raised on account of interest on delayed payment of the principal amount and the agreed interest. On both the allegations, the defendant refused to accede the demand made by the plaintiff in its letter dated November 23, 2005. The Plaintiff-Company, therefore, claims a decree for a sum of Rs. 3,25,54,483/- as per the particulars given in Paragraph 33 & 34 of the plaint.

The defendant in his written statement did not deny the entitlement of the plaintiff for the principal as well as the interest agreed in the said Bonds but have disputed the claim on account of delayed payment or in other words, delayed redemption of the aforesaid Bonds. It is categorically stated that a liquidation proceeding was initiated against CRB Capital Market Ltd; who at

one point of time was the holder of the aforesaid Bonds and sold it to the said Shanker Lal Saraf on February 20, 1997 and April 7, 1997. The Reserve Bank of India issued a facsimile dated June 9, 1997 advising the defendant not to affect any transfer, register any lean or otherwise deal with such security invested by CRB Capital Market Ltd; and its Group Companies without prior permission of the Official Liquidator appointed by the Hon'ble High Court at Delhi. Since the said Shanker Lal Saraf as well as the Plaintiff-Company was pressing hard for enfacing their name on the said Bond, a clarification was sought on December 23, 1997 by the defendant from the RBI seeking advice for further action in the matter on January 29, 1998. The RBI advised the defendant to take up the matter with the Official Liquidator which was accordingly done on April 3, 1998.

It is categorically stated by the defendant that several reminders were made till July 18, 2001 but did not receive any reply from the Official Liquidator in this regard. It is, thus, stated that because of the embargo imposed by RBI, the defendant was prevented in acting contrary to the said directions. It is further stated that because of the pendency of the writ petition before this

Court, the matter was not taken up and, therefore, neither the interest nor the redemption was paid. It is a specific stand of the defendant that after the order passed by the Delhi High Court in a liquidation proceeding, the Plaintiff's name was enfacred on the said Bond and was paid the principal as well as the interest up to the date of redemption and, therefore, there is no latches, negligence and delay on the part of the defendant to honour the Bonds to the Plaintiff-Company.

On the strength of the respective pleadings, the learned Advocates representing the respective parties were heard and following issues were framed:

- 1) Whether the suit is barred by waiver, acquiescence, estoppel or principles analogous thereto?
- 2) Whether there has been accord and satisfaction between the parties in respect of the transactions, which form the subject matter of the suit?
- 3) Whether in view of orders passed in C.A. No. 1380 of 1998 and C.A. No. 1834 of 2000 the present suit is not maintainable?
- 4) Whether there has been any delay or failure on the part of the defendant in registration or enfacement of the bonds?
- 5) Whether there was a belated payment by the defendant of the bond value and whether plaintiff is entitled to interest on belated payment of the principal amount at the rate of interest mentioned in the bond from the date of maturity with half-yearly rest or any other rate till the date of payment as claimed in the paragraphs 33 and 35 of the plaint?

- 6) Whether the defendant was liable to pay interest on quantified periodical interest on each bond from due dates till the date of payment at the agreed rate of interest or at any other rate till the date of payment as claimed in the paragraphs 34 and 35 of the plaint?
- 7) Whether the claim of the plaintiff in the suit is on account of interest on interest, and if so, whether the plaintiff is entitled to claim the same?
- 8) Whether the plaintiff is entitled to the claims made in the plaint or any other relief?"

Both the parties have relied upon the documents and tendered the same at the time of their respective depositions. Certain documents are marked exhibits on admission some with objection. The evidence shall be scrutinized at the time of dealing with the issues framed in the suit and, therefore, is not separately recorded.

Mr. Bose, the learned Advocate for the petitioner submits that immediately after the purchase of the subject Bonds, the same was lodged with the defendant for recording their name and periodical payment of the interest but the defendant showed reluctance to register the name of the plaintiff though they were bound to effect the same under the Law. He further submits that there was no dispute on the ownership of Shanker Lal Saraf and, therefore, disputes could not have been raised at the time of lodging the

Bonds purchased from Shanker Lal Saraf by the Plaintiff-Company and if there is a delay on illusory disputes in redeeming the Bonds, the plaintiff is entitled to an interest at the rates indicated in the subject Bonds. He strenuously submits that the facsimile issued by the Reserve Bank of India (RBI) on June 9, 1997 is a mere communication and not a circular/guideline having statutory flavour. On Section 45MB & Section 45MC of the Reserve Bank of India Act, 1934, it is submitted that in case of violation of the said provision or failure to comply with any direction or order given by the RBI under the provision of the said Act, the Non-Banking Financial Company cannot accept any deposit. The RBI is empowered to make an application for winding up of such defaulting Non-Banking Financial Company under the Companies Act, 1956 on incapability to pay its debt; disqualification to carry on the business of Non-Banking Financial Institution by virtue of under Section 45 IA; Non-Banking Financial Institution is prohibited from receiving deposit by an order which has been enforced for a period of not less than 3 months or the continuance of the Non-Banking Financial Company is detrimental to the Public Interest or to the interest of depositors of the Company. According to him, such facsimile cannot be treated as an order or directions

and, therefore, was not binding on the defendant. He strenuously submits that the Delhi High Court in a liquidation proceeding initiated by RBI categorically held that the subject Bonds are beyond the purview of the said liquidation proceeding and, therefore, payment of the principal and the accrued interest after the period of redemption was deliberately done by raising a frivolous disputes. He thus submits that those Bonds are in the nature of promissory note with clear agreement that an interest @ 13.50% and 12.50% shall be paid and any unreasonable delay beyond the redemption period entitles the depositors to be paid an interest at the agreed rates till the payment of the redemption amount. He submits that even after receiving the facsimile i.e. 9<sup>th</sup> June, 1997, the defendant paid an interest to the said Shanker Lal Saraf up to the period of 20<sup>th</sup> June, 1997 which shows the defendant was aware that the said facsimile is neither a direction nor an order putting any fetter on them to pay the periodical interest as agreed and the redemption value on maturity. It is, therefore, submitted that admittedly, the payment is made beyond the maturity period and, therefore, the petitioner is entitled to an interest as claimed in the suit at the rate indicated in the subject Bonds.

The learned Advocate for the defendant refutes the aforesaid contentions in saying that the Plaintiff-Company purchased the Bond on 1<sup>st</sup> July, 1998 and is, therefore, not entitled to the interest prior to the date of such purchase. It is strenuously submitted that the Defendant-Company being a Financial Institution are regulated and guided by the RBI and any instructions, circulars and guidelines issued by RBI are binding upon the defendant. According to the defendant, the facsimile issued by the RBI is, in effect, the guidelines/directions which binds the defendant as such directions/guidelines is statutory in nature as held in case of **ICICI Bank Ltd -v- Official Liquidator of APS Star Industries Ltd & Ors**; reported in **(2010) 10 SCC 1**. A plea of non-joinder of parties are taken as the heirs of Shanker Lal Saraf is not made a party in the proceeding by placing reliance upon a judgment of the Supreme Court in case of **Public Service Commission, Uttaranchal -v- Mamta Bisht & Ors**; reported in **(2010) 12 SCC 204**, **Competition Commission of India -v- Steel Authority of India Ltd & Anr**; reported in **(2010) 10 SCC 744** and **Chief Conservator of Forests, Govt of A.P. -v- Collector & Ors**; reported in **(2003) 3 SCC 472**. It is strenuously submitted that non-adherence of the circulars and/or directions of the Reserve Bank of India to the

Bank may not only attract an offence of criminal breach of trust by Public Servant but the civil consequences as well, as held in case of **Sudhir Shantilal Mehta –v- Central Bureau of India** reported in **(2009) 8 SCC 1**.

Lastly it is submitted that unless a specific case of capitalization of the interest in the principal sum is made out in the plaint, the claim for interest alone is not maintainable and placed reliance upon a judgment of the Supreme Court in case of **Central Bank of India –v- Ravindra & Ors**; reported in **(2002) 1 SCC 367**. To conclude, it is submitted that the claim of the plaintiff is not maintainable after receiving the redemption amount with accrued interest and having appropriated the same.

This Court finds that issues are intricately connected and, therefore, this Court proposes not to deal those issues in isolation, as the findings recorded hereinafter would sufficiently answer those issues.

The subject Bonds issued by the defendant are transferable and can be bought by a person from the register holder. In course

of the transaction affecting the subject Bonds, the CRB Capital Market Ltd was, at one point of time, the owner and Shanker Lal Saraf, since deceased, purchased the said Bond on February 20, 1997 and April 7, 1997 respectively and was paid the interest up to 20<sup>th</sup> June, 1997 as the interest payable under the said Bonds was to be on 21<sup>st</sup> day of June and 21<sup>st</sup> day of December every year. After the subject Bonds were sold to the present plaintiff, it was lodged with the defendant on 1<sup>st</sup> July, 1997 for effecting the transfer and onward payments of interest on periodical rests. The subject bonds are tradable in an open market and admittedly are purchased by the plaintiff upon payment of the sum of Rs. 3.69 crores from Shanker Lal Saraf. The defendant showed inability to affect the transfer as Reserve Bank of India initiated the winding up proceeding against CRB Capital Market Ltd under Section 45 MC 1 (d) of the Reserve Bank of India before the Delhi High Court. Prior to the initiation of the said proceeding, the RBI issued notification dated 10.04.1997 under Section 45MB of the RBI (Amendment) Act, 1997 directing the company not to sale, transfer, create charge or mortgage or dealing any manner with any of his profits and assets without the permission of the bank for a period of six months from the date of the said notification. On a winding up

petition having moved on 22<sup>nd</sup> May, 1997, the Company Court appointed Professional Liquidator. The RBI issued a letter to the bank not to deal with the subject bonds as the liquidator has treated the same as fraudulent preference under Section 531 of the Act. Precisely for such reason, the transfer could not be affected as the bank sought clarification from the RBI who subsequently advised to approach the Official Liquidator. A writ petition filed by the petitioner before the Calcutta High Court was disposed of without granting a relief of directing the defendant to effect the transfer as the Court noticed the winding up petition initiated against the CRB Capital Market Ltd from whom the said Shanker Lal Saraf purchased those bonds and relegate the plaintiff to raise such issues before the Company Court. Instead of moving the Company Court, the plaintiff filed an intra court appeal which was later on withdrawn. Though the plaintiff was permitted to approach the Company Court, it did not pursue the remedy before it; on the other hand, the Shanker Lal Saraf filed an interim application before the Company Court making the following prayers:

“(a) permit the Small Scale Industry Development Bank of India Ltd; respondent no.3 to give interest due and payable to the petitioner with respect to 25 SIDBI Bonds issued by it and duly registered in the name of the petitioner;

(b) permit the respondent no.3 to register transfer of 41 Bonds made by the petitioner in favour of the purchaser namely M/s SIBCO Investment (P) Ltd or their nominees with interest;

(c) permit Industrial Development Bank of India, respondent No.4 to give interest due and payable to the petitioner for the 6 IDBI Bonds issued by it and duly registered in the name of the petitioner;

(d) permit Industrial Development Bank of India, respondent No.3 to give principal amount along with interest due and payable to the petitioner for the 2 bonds which have matured and which are duly registered in the name of the petitioner;

(e) permit the respondent no.4 to register the transfer of six IDBI Bonds made by the petitioner in favour of the purchaser, namely, M/s K.P.C. Securities (P) Ltd or their nominee;

(f) pass such order or further order to which this Hon'ble Court may deem fit and proper on the facts and circumstances of this case.”

The interlocutory application was registered as CA No. 1380 of 1998 and was finally decided on 17<sup>th</sup> December, 2004. The Company Court held that the transaction forming the subject bonds was entered into much before the RBI notification dated 10<sup>th</sup> April, 1997 and, therefore, admittedly before the appointment of the Professional Liquidator. Ultimately it was held that it cannot be a fraudulent preference as the same was a genuine transaction between the parties, the Company Court ultimately concluded as under :

“14. This application is accordingly allowed. The respondents 3 and 4 shall pay the interest payable on these Bonds to the applicant till the time the applicant was owner of these Bonds. Since the applicant became owner of these Bonds, he had right to transfer of those Bonds also. Therefore, transfer sought by the applicant in the name of other parties shall also be carried out by the respondents 3 and 4 in favour of the subsequent purchasers, as mentioned in the prayer clause.”

The said order was duly communicated by the plaintiff on 11<sup>th</sup> January, 2005 (Ext-J) and asked for the payment of the principal together with the accrued interest after completing the formality of the discharge of the bonds. Immediately thereafter, the plaintiff withdrew the intra court appeal filed against the order disposing of the writ petition by this Court. On 17<sup>th</sup> February, 2005, the plaintiff received the original bonds which are the subject matter of the suit from the Calcutta Office and resubmitted the same on February 17, 2005 for payment of the principal amount of Rs. 4.10 crores along with the accrued interest. The defendant redeemed the said bonds and paid the principal and the interest after deducting TDS amounting to Rs. 7,06,88,398/- to the plaintiff. The plaintiff protested over the rate at which the TDS is deducted by the defendant and caused a letter dated 24.02. 2005 (Exbt-P) and demanded the refund of the excess amount. From the

said letter, it appears that the TDS was deducted @ 20.91% in place of 5.22% which was applicable. The defendant accepted the contention of the plaintiff and issued the warrants covering the excess payment on account of TDS on March 3, 2005 (Ext 'O'). Admittedly the plaintiff encashed the redemption value with interest without raising any demur and objection. It is only by a letter dated October 3, 2005, a demand was raised for interest on belated payment of principal amount and the interest. The defendant in its letter dated November 23, 2005 denied the payment of interest on delayed payment of principal and the interest which gave rise to the institution of the instant suit.

The argument as advanced by the plaintiff is as simple as that if the amount is unreasonably withheld, the defendant is bound to pay the interest at the rate agreed by between the parties in the subject bonds.

Though Section 3 of the Interest Act, 1978 confers power on the Court to allow interest in any proceeding for recovery of debt or damages or in any proceeding in which a claim for interest in respect of any debt or damages already paid is made but Sub-

section 3 thereof puts an embargo on the Court to award interest upon interest.

It is no longer *res integra* that if from the conduct as well as the agreement of the parties, the interest are payable on periodical rests and the same are capitalized with the principal, partakes character of a principal sum adjudged envisaged under Section 34 of the Code of Civil Procedure. There is no ambiguity in awarding the interest on the principal sum adjudged which includes the interest. The aforesaid principles can be fortified from the observations made in case of **Ravindra (supra)** wherein it is held:

**“36.** The English decisions and the decisions of this Court and almost all the High Courts of the country have noticed and approved long-established banking practice of charging interest at reasonable rates on periodical rests and capitalising the same on remaining unpaid. Such a practice is prevalent and also recognised in non-banking moneylending transactions. The legislature has stepped in from time to time to relieve the debtors from hardship whenever it has found the practice of charging compound interest and its capitalisation to be oppressive and hence needing to be curbed. The practice is permissible, legal and judicially upheld excepting when superseded by legislation. There is nothing wrong in the parties voluntarily entering into transactions, evidenced by deeds incorporating covenant or stipulation for payment of compound interest at reasonable rates, and authorising the creditor to capitalise the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalised sum for the succeeding period. Interest once capitalised, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower.”

Though the words 'interest' and 'compensation' are sometimes interchangeable but on such occasion, they have a distinct connotation. The interest in general term is the return or compensation for use or retention by one person of a sum of money belonging to other. It is an amount which is charged for use or forbearance of money after it has fallen due. Therefore, in order to claim the interest, there should be a capitalization of the principal and the interest payable on the due date discernible from the conduct or the agreement of the parties. The present case has simply proceeded on the basis of the recovery of interest without averring that the interest is charged not only on the principal but also on the interest component after capitalizing the same. The plain and simple case made out in the plaint is that the amount, both principal and interest, were paid beyond the maturity period and, therefore, the defendant is liable to pay the interest for delayed payment. Both the parties have argued much on the point, as according to the plaintiff, the defendant have unreasonably withheld the said amount, on the other hand, the defendant says that because of the embargo and restriction by the RBI and the pending proceedings, the maturity amount was not paid on the date of its maturity. The reliance appeared to have been made by

both the sides on the facsimile dated 9<sup>th</sup> June, 1997 issued by the RBI.

There is a clear stipulation against affecting any transfer, register any lien or otherwise deal with, the securities of CRB Capital Market Ltd with further stipulation that it should not be parted with the interest, dividend or principal without the permission of the Official Liquidator appointed by the High Court at Delhi. It further appears from the order passed by the Company-Court that there was a notification issued on 10<sup>th</sup> April, 1997 under Section 45 MB of the RBI (Amendment) Act, 1997 directing the Company not to sale, transfer, create charge or mortgage or deal in any manner with any of its profits and assets without the permission of the bank for a period of six months from the date of the said notification. The Official Liquidator was appointed on 22<sup>nd</sup> May, 1997 who subsequently treated the subject bonds as fraudulent preference under Section 531 of the Act. Though it was held that the transactions are genuine and cannot be declared as fraudulent preference at the instance of the Official Liquidator but the fact remains that there was some claim over the subject bonds. The RBI is empowered to control the management of the Banking

Company in certain situations and can lay down the parameters enabling Banking Companies to expend business and regulate the paid up capital, reserve funds, cash funds and above all policies in the matter of advances to be made by the Banking Companies and allocation of resources etc. The RBI is empowered by the Parliament to enact the policy and to issue directions/guidelines which have a statutory force, as held in case of **ICICI Bank Ltd (supra)**. The aforesaid proposition is further made clear by the Supreme Court in case of **Sudhir Shantilal (supra)** as under:

**“58.** Whether a circular letter issued by a statutory authority would be binding or not or whether the same has a statutory force, would depend upon the nature of the statute. For the said purpose, the intention of the legislature must be considered. Having regard to the fact that Reserve Bank of India exercises control over the banking companies, we are of the opinion that the said circular letter was binding on the banking companies. The officials of UCO Bank were, therefore, bound by the said circular letter.”

From the ratio laid down in the above reports, it is clear that once the RBI have issued directions in an action contrary thereto may not only attract the civil liability but may invite criminal breach of trust. The defendant was not sitting in slumber after receiving the said instructions but sought an advice immediately thereafter and was directed to approach the Official Liquidator. The

correspondences would galore that the defendants sought clarification from the Official Liquidator but did not receive any reply. Ultimately on 17<sup>th</sup> December, 2004, the application of the Shanker Lal Saraf before the Company-Court succeeded and within a short span of time, the redemption value along with interest was paid to the plaintiff. This Court did not agree the submission of the plaintiff that there was any deliberate attempt to delay the payment of the maturity amount by the defendant. It would be worth noting that in answer to the question no.80, the defendants' witness said that the accrued interest was transferred to the accrued interest head and, therefore, it was not utilized nor any benefit was taken therefrom.

At the bar, an argument is advanced on behalf of the defendant that the suit is bad for non-joinder of the parties. In fact, reliance is placed upon a judgement rendered in case of **Mamta Bisht (supra)** in these regards. At the time of framing the issues, none of the parties suggested any issue relating to non-joinder of necessary and proper parties.

This Court, therefore, do not want to go deep into the said aspect as having not taken in the pleading nor a specific issue was raised.

This Court cannot lose sight of, one fact that the plaintiff encashed the amounts received after the maturity without protesting that the interest is to be paid not till the date of maturity of those bonds but its actual payments.

The letter dated 24.02.2005 (Ext.P) would reveal that there was no whisper on the short payment of the principal as well as the interest but the objection was restricted on the deduction of the TDS at the higher rate and request was made to pay the difference. It is only on October 3, 2005, the claim of interest for delayed payment was raised by the plaintiff. The reference can be conveniently placed upon a judgment of the Supreme Court in case of **Bhagwati Prasad Pawan Kumar -v- Union of India** reported in **(2006) 5 SCC 311** wherein the Apex Court held that if the protest is not made before the encashment of the amount and it does not appear from the conduct of the parties that the such encashment

was made under protest, the plaintiff is prevented from raising an objection over the short payment in these words:

**“18.** Section 8 of the Contract Act provides for acceptance by performing conditions of a proposal. In the instant case, the Railways made an offer to the appellant laying down the condition that if the offer was not acceptable the cheque should be returned forthwith, failing which it would be deemed that the appellant accepted the offer in full and final satisfaction of its claim. This was further clarified by providing that the retention of the cheque and/or encashment thereof will automatically amount to satisfaction in full and final settlement of the claim. Thus, if the appellant accepted the cheques and encashed them without anything more, it would amount to an acceptance of the offer made in the letters of the Railways dated 7-4-1993. The offer prescribed the mode of acceptance, and by conduct the appellant must be held to have accepted the offer and, therefore, could not make a claim later. However, if the appellant had not encashed the cheques and protested to the Railways calling upon them to pay the balance amount, and expressed its inability to accept the cheques remitted to it, the controversy would have acquired a different complexion. In that event, in view of the express non-acceptance of the offer, the appellant could not be presumed to have accepted the offer. What, however, is significant is that the protest and non-acceptance must be conveyed before the cheques are encashed. If the cheques are encashed without protest, then it must be held that the offer stood unequivocally accepted. An “offeree” cannot be permitted to change his mind after the unequivocal acceptance of the offer.

**19.** It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the “offeree” was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand, if the evidence discloses that the “offeree” had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act.”

In view of the discussions made herein above, this Court does not find that the plaintiff is entitled to succeed in the suit.

The issues are thus answered as under:

- (i) Issue no. 1 is answered in affirmative.
- (ii) Issue no. 2 is answered in affirmative.
- (iii) Issue no. 3 is answered in negative.
- (iv) Issue no. 4 is answered in negative.
- (v) Issue no. 5 is answered in negative.
- (vi) Issue no. 6 is answered in negative.
- (vii) Issue no. 7 is answered in negative.
- (viii) Issue no. 8 is answered in negative.

The suit, therefore, fails with costs.

However, there shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

**(Harish Tandon, J)**