



  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

D.B. Civil First Appeal No. 318/2020

M/s Shalimar Electrical, Bazar No. 2, Bhilwara Statwdhari Pratishtan Through Satatwdhari Shri Satynarayan S/o Late Shri Ramchandra Ajmera, Aged About 58 Years, Occupation Business, R/o Bazar No. 2, Bhilwara Rajasthan

----Plaintiff/Appellant

Versus

M/s Kanchan India Limited, Through Managing Director M/s Kanchan India Limited, 19-20, Bhilwara Textile Market, Pur Road, Bhilwara Rajasthan

----Defendant/Respondent

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For Appellant(s) : Mr. Nirmal Solanki with  
Ms. Pragya Pandey

For Respondent(s) : Mr. Rajendra Sharma

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**HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA**  
**HON'BLE MR. JUSTICE BIPIN GUPTA**

**Judgment**

Date of hearing and conclusion of arguments	06.05.2026
Date on which the judgment was reserved	06.05.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	21.05.2026

**(Per Hon'ble Mr. Justice Bipin Gupta)**

1. The present Civil First Appeal has been preferred by the plaintiff-appellant assailing the judgment dated 23.10.2019, passed by learned Commercial Court, Ajmer, in Civil Suit No. 189/2018 (124/2014) CIS No. 123/2018, whereby the suit instituted by the plaintiff-appellant for recovery of amount has been partly decreed in its favour.



2. The controversy, in a narrow compass, is that a suit came to be filed by the plaintiff-appellant against the defendant-respondent for recovery of amount to the tune of Rs.10,24,017/-, contending therein that on 18.03.2008, the plaintiff-appellant, who was a dealer of M/s. Schneider Electric India Pvt. Ltd., received a purchase order from the defendant-respondent for supply of electric switchgear worth Rs. 60,43,356/-. The supplies were effected from 22.04.2008 till 19.05.2008. However, the defendant-respondent did not take delivery of the goods and, therefore, the plaintiff-appellant was compelled to store the goods at its premises/godown. Upon being asked the reason for not taking delivery of the goods, the defendant-respondent replied that the requirements had changed and, therefore, a fresh purchase order would be placed according to the new requirements.

2.1 On 13.08.2008, a fresh purchase order was issued for material amounting to Rs.44,51,000/-. In compliance with the fresh purchase order, material worth Rs.44,00,000/- was supplied from 20.08.2008 to 10.12.2008. However, the defendant-respondent paid only an amount of Rs.40,00,000/-. Thus, a remaining amount of Rs. 4,00,000/- was due and payable.

2.2 The plaintiff-appellant, in his plaint, claimed that in its books of account, against the said purchase order, a principal amount along with agreed interest amounting to Rs.8,30,774/- was outstanding. It was also pleaded that, against the purchase order dated 18.03.2008, since the material was not taken by the defendant-respondent, the plaintiff-appellant had to pay a penalty to M/s. Schneider Electric India Pvt. Ltd., amounting to





Rs.1,93,243/-. Thus, a suit was filed for recovery of total amount of Rs.10,24,017/-.

2.3 The defendant-respondent filed a detailed written statement admitting the fact of the purchase order for supply of switchgear worth Rs.60,43,356/-. It was further contended that the material supplied pursuant to the subsequent purchase order was not of standard quality and, therefore, a debit note of Rs.4,00,000/- was issued to the plaintiff-appellant. It was also contended that the penalty allegedly paid by the plaintiff-appellant to M/s. Schneider Electric India Pvt. Ltd., amounting to Rs.1,93,243/-, could not be recovered from the defendant-appellant, in absence of any privity of contract. On the aforesaid grounds, dismissal of the suit was prayed for by the defendant-respondent.

3. On the basis of the pleadings of the parties, the learned Commercial Court framed as many as eleven issues which reads as under:

"4. उभयपक्ष के उक्त अभिवचनों के आधार पर न्यायालय द्वारा निम्नलिखित विवाद बिन्दू विरचित किये गये:-

1. क्या पैरा 4 वादपत्र में वरियाता अनुसार प्रतिवादी कम्पनी को क्रयादेश अनुसार वादी ने प्रतिवादी को स्नाइडर इलेक्ट्रीक इण्डिया प्रा.लि. से कुल 37,82,97,760.60 पैसे का माल परिवहन के जरिये भेजा, जिसकी डिलेवरी प्रतिवादी ने प्राप्त करने से मना कर दिया, इसलिये वादी को अपने कार्य स्थल पर भण्डारन करना पड़ा?

2. क्या पैरा 5 वादपत्र में वरियता अनुसार वादी ने प्रतिवादी को सप्लाई किये गये माल के भुगतान स्वरूप स्नाइडर इलेक्ट्रीक इण्डिया प्रा. लि. को इस पैरा में वर्णित विभिन्न बैंके भेजे लेकिन उक्त बैंक अनादरित हो गये?





3. क्या पैरा 7 वादपत्र में वर्णितानुसार प्रतिवादी कम्पनी द्वारा दिनांक 13.08.2008 को दिये गये नवीन क्रय आदेश की पालना में वादी फर्म ने दिनांक 14.08.2008 को 32 लाख व 12 लाख रुपये का माल डिलीवर किया, जिसके भुगतान स्वरूप प्रतिवादी ने वादी को कुल चालिस लाख रुपये के विभिन्न बैंक दिये, और इस प्रकार कुल 44 लाख रुपये का माल भेजा, जिसके बदले में चालिस लाख रुपये वादी को प्राप्त हुए, और इस प्रकार चार लाख रुपये बकाया रहें?

4. क्या वादी प्रतिवादी से दावा कृत 10,24,017/- रु प्राप्त करने का अधिकारी है?

5. क्या पैरा 3 लिखित कथन में वर्णितानुसार क्वालिटी का माल ना भेजकर घटिया किस्म का माल भेजा जिसे प्राप्त करने से प्रतिवादी ने सद्भाविक रूप से मना कर दिया, जिसमें प्रतिवादी का कोई दोष नहीं है?

6. क्या पैरा 8 लिखित कथन में वर्णितानुसार प्रतिवादी का मैं, स्नाइडर इलेक्ट्रीक इण्डिया प्रा.लि. से कोई अनुबंध नहीं हुआ, तथा ना ही उसने वादी को कभी अग्रिम भुगतान किया, अतः वाद खारिज किये जाने योग्य है?

7. क्या वादी द्वारा अनफेयर ट्रेड प्रेक्टिस की जा रही है, अतः वादी, प्रतिवादी से कोई राशि प्राप्त करने का अधिकारी नहीं है?

8. क्या वादी को कोई वाद हेतुक प्राप्त नहीं है?

9. क्या पैरा 11 लिखित कथन में वर्णितानुसार वाद कालातीत होने से खारिज किये जाने योग्य है?

10. क्या पैरा 16 लिखित कथन में वर्णितानुसार स्नाइडर इलेक्ट्रीक इण्डिया प्रा.लि. आवश्यक पक्षकार है, जिसके अभाव में वाद अपोषणीय है?

11. अनुतोष "

3.1 In support of its pleadings, the plaintiff-appellant examined two witnesses and produced various documents in evidence. On





the other hand, the defendant-respondent examined only one witness in support of his case.

3.2 Issue Nos.1 and 3 were decided in favour of the plaintiff. Issue No.2 was decided against the plaintiff. Issue No. 4 was partly allowed in favour of the plaintiff wherein it was held entitled to receive the outstanding amount of Rs.4,00,000/- along with agreed interest @ 24% from the date of service of notice i.e. 01.12.2011. Issue No. 5 was decided against defendant. Issue No. 6 was partly allowed in favour of the defendant. Lastly, Issue Nos. 7 to 10 were also decided against defendant.

3.3 Upon appreciation of the oral and documentary evidence available on record and after hearing learned counsel for the parties, the learned Commercial Court vide order dated 23.10.2019 partly decreed the suit and held that the plaintiff-appellant entitled to recover a sum of Rs.4,00,000/- from the defendant-respondent along with interest @ 24% per annum from 01.12.2011 i.e. the date of issuance of notice.

4. Being aggrieved by the judgment dated 23.10.2019, the present plaintiff-appellant has preferred the instant appeal before this Court.

5. Learned counsel for the plaintiff-appellant, at the outset during the course of arguments, has confined his pleadings only to the extent of interest awarded by the learned Commercial Court @ 24% per annum from the date of the notice being issued by the plaintiff-appellant i.e. 01.12.2011 rather than from the October, 2008 when the goods were delivered to the defendant-respondent in pursuance of the purchase order. Learned counsel for the plaintiff-appellant contended that the learned Commercial Court





erred in deciding Issue Nos. 2 and 6 against the plaintiff-appellant and further, failed to decide Issue No. 4 entirely in favour of the plaintiff.

5.1 Learned counsel for the plaintiff-appellant contended that, while deciding Issue No. 2, the learned Commercial Court overlooked the clear admission made by the defendant-respondent, wherein it had specifically admitted in its statement that the plaintiff-appellant had dispatched the goods to the defendant-respondent, though it was claimed that the delivery was not received as the requirements of the defendant-respondent had changed and new purchase orders would be placed keeping in view the necessities. Learned counsel for the plaintiff-appellant drew attention of the Court towards the financial plight of the plaintiff-appellant wherein he was forced to keep the consignment in his godown as the defendant-respondent refused to take the delivery. Thus, learned counsel for the plaintiff-appellant contended that the learned Commercial Court ought to have awarded interest from October, 2008, keeping in view the delayed payments by the defendant-respondent.

5.2 Learned counsel for the plaintiff-appellant further referred to the purchase orders dated 18.03.2008 (Exhibit 4) and 13.08.2008 (Exhibit 11), which were also placed on record. Learned counsel for the plaintiff-appellant further submitted that the learned Commercial Court itself had decided Issue No. 3 in favour of the plaintiff-appellant and held that the defendant-respondent had failed to pay Rs. 4,00,000/- to the plaintiff-firm. Despite such finding, the learned Commercial Court has wrongly awarded interest from the date of issuance of notice i.e. 01.12.2011,





whereas the same ought to have been granted from October, 2008 itself as the learned Commercial Court had already observed that the defendant-respondent had failed to pay Rs. 4,00,000/- even though it had received the goods in the year 2008 itself, as reflected from the invoices i.e. Exhibits 13 and 15.

5.3 In view of the foregoing submissions, learned counsel for the plaintiff-appellant prayed that the present appeal be allowed, and the judgment dated 23.10.2019 be modified to the extent that the interest awarded @ 24% on delayed payment be imposed from the year 2008 and not from the date of issuance of notice.

6. Per contra, learned counsel for the defendant-respondent opposed the submissions advanced on behalf of the plaintiff-appellant and supported the judgment dated 23.10.2019 passed by the learned Commercial Court to the extent of grant of interest from the date of issuance of legal notice i.e. 01.12.2011. Learned counsel submitted that the learned Commercial Court has rightly exercised its discretion in determining the date from which interest would be calculated and no interference was warranted by this Court.

6.1 Learned counsel for the defendant-respondent further submitted that admittedly there existed serious disputes regarding the commercial transaction on account of the specific objections being raised by the defendant-respondent time and again regarding the change in the requirements of the defendant-respondent as well as the quality of the goods not being upto the mark. Learned counsel thus contended that the defendant-respondent had specifically stated regarding the quality and specifications of the material supplied pursuant to the subsequent





purchase order dated 13.08.2008<sup>8</sup> and had accordingly issued a debit note of Rs.4,00,000/- to the plaintiff-appellant. Thus, the amount claimed by the plaintiff-appellant was never admitted by the defendant-respondent and remained disputed throughout.

6.2 Learned counsel for the defendant-respondent further submitted that no written agreement or concluded contract was produced on record to establish that the parties had mutually agreed for payment of interest from the date of supply of goods or from October, 2008. It was contended that in absence of any contractual stipulation regarding commencement of interest, the learned Commercial Court had rightly granted interest only from the date when the defendant-respondent was formally called upon to make payment through legal notice dated 01.12.2011.

6.3 Learned counsel for the defendant-respondent further argued that mere issuance of invoices by the plaintiff-appellant could not automatically entitle it to claim interest from the year 2008. The invoices relied upon by the plaintiff-appellant were unilateral documents prepared by the plaintiff-firm itself and there was no evidence on record to show that the defendant-respondent had expressly accepted the conditions mentioned therein regarding levy of interest on delayed payment. In absence of any acknowledgment or assent by the defendant-respondent, the claim for retrospective interest from October, 2008 was wholly unjustified.

6.4 In view of the aforesaid submissions, learned counsel for the defendant-respondent prayed that the present appeal, being devoid of merit, deserves to be dismissed.





7. Heard learned counsel for the parties and perused the material available on record.

8. It is a settled principle of law that once the plaintiff-appellant itself remained dormant for a considerable period and did not assert its alleged right within a reasonable time, it cannot subsequently claim interest for the period during which it voluntarily remained silent. The said principle is further reinforced by the maxim '*Vigilantibus non dormientibus jura subveniunt*', meaning 'the law assists those who are vigilant, not those who sleep over their rights'.

9. A bare perusal of the material available on record clarified that the only grievance raised by the plaintiff-appellant is with regard to the date from which interest has been awarded, as the learned Commercial Court granted interest @24% per annum from 01.12.2011 i.e. the date of issuance of legal notice, instead of from the year 2008 when the supplies were allegedly made.

10. Admittedly, the transactions in question pertain to the year 2008, however, despite the alleged liability having arisen at that stage, this Court on perusal of the record finds that the plaintiff-appellant remained silent and chose to issue the legal notice only on 01.12.2011. Further, no plausible explanation has been furnished by the learned counsel for the plaintiff-appellant for such prolonged inaction.

11. It is further settled that the grant of interest, particularly for the pre-suit period, is essentially discretionary and equitable in nature unless specifically governed by a contractual stipulation or statutory mandate. A party claiming equitable relief must itself approach the Court with due diligence and promptness. Where a





claimant remains inactive for years together and does not even issue a demand notice within a reasonable time, the Court would be justified in restricting the grant of interest only from the date on which a formal demand for payment was first raised.

12. In these circumstances, the aforesaid maxim aptly applies in the present case. A party cannot be permitted to take advantage of its own inaction and seek interest for the entire interregnum despite having failed to initiate any prompt recourse for recovery of the alleged dues. Therefore, plaintiff-appellant cannot now seek to burden the defendant-respondent with liability of interest for a period during which it itself remained inactive and indolent.

13. The learned Commercial Court, therefore, rightly exercised its discretion in awarding interest only from the date on which the defendant-respondent was formally called upon to make payment through legal notice dated 01.12.2011. The approach adopted by the learned Commercial Court is not only legally sustainable but also equitable and in consonance with settled principles governing award of interest under civil jurisprudence.

14. This Court further finds that the learned Commercial Court has already granted substantial relief in favour of the plaintiff-appellant by decreeing the suit for recovery of Rs.4,00,000/- along with interest. In the facts and circumstances of the present case, the determination made by the learned Commercial Court regarding commencement of interest neither suffers from perversity nor from any illegality warranting interference by this Court in appellate jurisdiction. It is settled proposition that an Appellate Court ought not to interfere with a discretionary order unless the discretion has been exercised arbitrary, capriciously or





contrary to settled legal principles, which is not the situation in the present case.

15. Accordingly, the present Civil First Appeal being devoid of merit is hereby **dismissed**. The rate of interest and the date from which the same has been awarded i.e. 01.12.2011, as determined in D.B. Civil First Appeal No. 152/2020, shall *mutatis mutandis* apply in the present appeal as well.

16. Pending application(s), if any, stands disposed of.

**(BIPIN GUPTA),J**

**(SANJEEV PRAKASH SHARMA),ACTING CJ**

Sudha/S-2