

## **Role of the Apex Court in Determining Interest and Costs in Civil Proceedings**

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### **I. Introduction:**

The question of the award of interest in civil proceedings for payment of money is of most frequent occurrence. However, the expression “interest” has not been defined in the Code of Civil Procedure. *Black’s Law Dictionary* defines “interest” *inter alia* as the compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to *Stroud’s Judicial Dictionary of Words And Phrases* interest means, *inter alia*, compensation paid by the borrower to the lender for deprivation of the use of his money. A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. Thus it may be called interest, compensation or damages according to the principle underlying in Section 34, CPC. The provision of the Section 34, CPC, invests the courts with the requisite jurisdiction in that behalf<sup>2</sup>. Before the CPC (Amendment) Act, 1976, the maximum interest which could be awarded by a court under this Section was six per cent per annum. In appropriate cases, the court had discretion to award interest at a lesser rate but in no case it could exceed six per cent. A proviso has been introduced by the CPC (Amendment) Act, 1976 which enables the court to increase post decretal interest in relation to a liability arising out of a commercial transaction on the principal sum adjudged. The amendment is intended to prevent commercial operators from exploiting the situation by lending money at a rate higher than six per cent and thereby earning profits<sup>3</sup>. The award of costs is at the discretion of the court. Normally, in civil proceedings, “costs shall follow the events”. However, the Apex Court in *Ashok Kumar Mittal v. Ram Kumar Gupta and Anr.*<sup>4</sup>, observed that the present system of levying meager costs in civil matters (or no costs in some matters), no doubt, is wholly unsatisfactory and does not act as a deterrent to

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2 *State of Haryana and Ors. v. S.L. Arora and Company*, AIR 2010 SC 1511; *C.K. Sasankan v. The Dhanalakshmi Bank Ltd.*, AIR 2009 SC 3171; *Wada Arun Asbestos (P) Ltd. v. Gujarat Water Supply and Sewerage Board*, AIR 2009 SC 1027; *Punjab State and Ors. v. Harvinder Singh*, (2008) 3 SCC 394

3 Statement of Objects and Reasons, Gazette of India, Extraordinary, Part-II, Section 2, Dated 1.4.1976, at pp. 804-07.

4 (2009) 2 SCC 656

vexatious or luxury litigation borne out of ego or greed, or resorted to as a “buying-time” tactic. More realistic approach relating to costs may be the need of the hour. Hence, in discussing the award of interest and costs in civil proceedings for payment of money few issues arise. These issues are: What are the general principles to be followed for payment of interest? Whether interest can be awarded for a period prior to the date of institution of suit? What is the rule to determine interest after the date of institution of the suit? Is there any principle relating to control and regulate the rate of interest? What is the scope and ambit of award of costs? In the following pages an attempt has been made to demonstrate the aforementioned issues.

## **II. Interest: Principles, Claims and Rate:**

### **II. I. General Principles:**

So far as the general principles of interest in civil proceedings are concerned the Apex Court held in *N.M. Veerappa v. Canara Bank*<sup>5</sup>, that Section 34, CPC, applies to simple money decrees relating to payment of interest pending such suit. In *Municipal Corporation of Delhi v. Sushila Devi*<sup>6</sup>, the trial court awarded compensation to be paid by the appellant, on account of death caused to a scooter-driver by the fall of a branch of a tree on him. The amount was deposited in court, but not withdrawn by the respondent on account of inability to furnish security. The amount was directed to be invested in a fixed deposit, but the registry of the court failed to do so. The appellate court enhanced the amount of compensation and directed the appellant to pay interest at 3 per cent on the amount deposited, in addition to the 6 per cent interest awarded, though the fault was that of the registry. The Apex Court held that the award of such additional interest was not illegal. In absence of any agreement or statutory provision or a mercantile 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. A decree in terms of an arbitration award was passed in *Jagdish Rai v. Union of India*<sup>7</sup>, but no provision was made for payment of interest during the pendency of the proceedings. When appeal was filed against the decree, an application was filed for award of interest, but only for the period of pendency of the appeal. The Apex Court held that the high court should have awarded interest on the principal sum of the decree right through and ordered appropriate corrections in the decree.

In *Hotel Sea King v. Kerala Financial Corporation*<sup>8</sup>, the appellant

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5 AIR 1998 SC 1101 See also, *Punjab and Sind Bank v. Allied Beverages Company Pvt. Ltd. and Ors.*, MANU/ SC/ 0802/ 2010

6 AIR 1999 SC 1929 : See also, *Union of India and Anr. v. Shreeji Colour Chem Industries*, (2008) 9 SCC 515; *Clariant International Ltd. and Anr. v. Securities and Exchange Board of India*, AIR 2004 SC 4236.

7 (1999) 6 SCC 51.

8 (1999) 6 SCC 51.

borrowed money from the respondent, but failed to repay the amount. The Apex Court held that interest would be payable according to the terms of the agreement. Section 34, CPC, cannot be invoked in proceedings instituted where interest will be payable in accordance with terms of agreement. The award of interest after institution of the suit is purely a matter of statutory power<sup>9</sup>. Section 34, CPC, has no application to interest prior to the institution of the suit which is a matter of substantive law. An order under this section can be passed only at the time of decree<sup>10</sup>. In *State of Punjab v. Krishan Dayal Sharma*<sup>11</sup> a suit was filed by a Government servant for declaration that he was entitled to promotion, consequent benefits, rights and privileges were also claimed. The suit was decreed. While execution the Executing Court granted interest on the amounts due. The interest was not claimed in the suit nor was directions issued by the Court in this regard. The Apex Court held that when no interest had been claimed in the suit itself, the grant of such interest by the Executing Court was illegal since the Executing Court is bound by the terms of the decree and it could not add to or alter the decree on its notion of fairness or justice. In *ONGC and Others v. Natural Gas Consuming Industries*<sup>12</sup>, the late payment of the amount, payment of interest at the rate and in the manner specified in the contract was contemplated. The amount payable by the respondent had become quite large and, therefore, the Apex Court gave certain directions regarding payment of the amounts by installments. In *Central Bank of India v. Ravindra and Others*<sup>13</sup>, the Apex Court after elaborate discussion laid down the following principles for payment of interest on bank loans to the bank:

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9 *Jagdish Rai v. Union of India*, AIR 1999 SC 1258 : *Thawaras v. Union of India*, AIR 1955 SC 468.

10 *Maharashtra State Financial Corporation v. Ashok K. Agarwal and Ors.*, AIR 2006 SC 1584; *Hotel Seaking and Ors. v. Kerala Financial Corporation.*, (1999) 6 SCC 51; *Maharashtra State Financial Corporation v. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Ors.*, (1991) 2 SCC 637; *Maganlal v. Jaiswal Industries, Neemach and Ors.*, AIR 1989 SC 2113 : *Everest Industrial Corpn. v. Gujarat S.F. Corpn.*, AIR 1987 SC 1950 : (1987) 3 SCC 597.

11 AIR 1990 SC 2177. See also, *Vedic Girls Senior Secondary School Arya Samaj Mandir, Jhajjar v. Smt. Rajwanti and Ors.*, AIR 2007 SC 1779; *State of M.P. v. Mangilal Sharma*, AIR 1998 SC 743.

12 AIR 2001 SC 2796.

13 AIR 2001 SC 3095. See also, *Bank of Baroda v. Jagannath Pigment & Chem. and Ors.* : (1996) 5 SCC 280; *State Bank of India, Bhubaneswar v. Ganjam District Tractor Owners' Association and Ors.* : (1994) 5 SCC 238; *Corporation Bank v. D.S. Gowda and Anr.* : (1994) 5 SCC 213; *Renusagar Power Co. Ltd. v. General Electric Co.*, AIR 1994 SC 860; *Secretary, Irrigation Department, Government of Orissa v. Secretary to Government of Orissa*, AIR 1992 SC 732; *Shew Kissen Bhattar v. The Commissioner of Income Tax, Calcutta*, AIR 1973 SC 2348; *Dr. Shamlal Narula v. Commissioner of Income-tax, Punjab*, AIR 1964 SC 1878.

**II. I. I.** Though interest can be capitalized on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalized. Further interest, i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalized. It will be opposed to public policy.

**II. I. II.** Novation, that is, a debtor entering into a fresh agreement with the creditor, undertaking payment of previously borrowed principal amount coupled with interest by treating the sum total as principal and an express acknowledgement of accounts are the best evidence of capitalization. Acquiescence in title method of accounting adopted by the creditor and brought to the knowledge of the debtor may also enable interest being converted into principal. A mere failure to protest however is not acquiescence.

**II. I. III.** The prevalence of banking practice legitimatizes stipulations as to interest on periodical rests and their capitalization being incorporated in contracts. Such stipulations incorporated in contracts voluntarily entered into and binding on the parties shall govern the substantive rights and obligations of the parties as to recovery and payment of interest.

**II. I. IV.** Capitalization method is founded on the principle that the borrower failed to make payment though he could have made and thereby rendered himself a defaulter. To hold an amount debited to the account of the borrower capitalized, it should appear that the borrower had an opportunity of making the payment on the date of entry or within a reasonable time or period of grace from the date of debit entry or the amount falling due and thereby avoiding capitalization. Any debit entry in the account of the borrower and claimed to have been capitalized so as to form a part of the principal sum may be excluded on being shown to the satisfaction of the court that such debit entry was not brought to the notice of the borrower or that he did not have the opportunity of making payment before capitalization and thereby excluding such capitalization.

**II. I. V.** The power conferred by Sections 21 and 35-A of the Banking Regulation Act, 1935 is coupled with the duty to act. Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions having statutory force in the interest of public in general and preventing banking affairs from deterioration as also to secure the proper management of any banking company generally. Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is and it ought to be aware of all relevant factors including credit conditions as prevailing which would influence its policy decisions. The Reserve Bank of India has been issuing circulars from time to time to deal with rate of interest which can be charged and the periods at the end of which rest can be

struck down, interest calculated thereon and charged and capitalized. It should continue to issue such directives; its circulars shall bind all those who fall within their scope. For such transactions which are not strictly governed by such circulars, the directives of the Reserve Bank of India may be treated as standards for all purposes of deciding whether the interest charged is excessive, usurious or opposed to public policy.

**II. I. VI.** Agricultural borrowings are to be treated on a pedestal different from others. Charging and capitalization of interest on agricultural loans cannot be permitted in India except on annual or six monthly rests depending on the rotation of crops in the area to which the agriculturist borrowers belong.

**II. I. VII.** Any interest charged and/or capitalized in violation of RBI directives, as to rate of interest, or as to periods at which rests can be arrived at, shall be disallowed and/or excluded from capital sum and be treated only as interest and dealt with accordingly.

**II. I. VIII.** Award of interest *pendente lite* and post decree is discretionary with the courts as it is essentially governed by Section 34, 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 to the component of the principal sum actually advanced, the court may exercise its discretion in awarding interest *pendente lite* or post decree at a lower rate or may even decline to do so. The discretion, however, shall be exercised fairly and judicially and not arbitrarily<sup>14</sup>.

## **II. II. Interest Prior to the Date of Institution of Suit:**

The claim for interest for the period prior to the institution of the suit came up for adjudication by the Apex Court in *Union of India v. West Punjab Factories Ltd.*<sup>15</sup>, which arose out of suits for damages for loss of goods which were destroyed by fire on the railway platform. Disallowing the claim of plaintiff for interest before the suit and modifying the decree of the court below on that account, the Court

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14 For various principles for payment of interest, see, *Punjab and Sind Bank v. Allied Beverages Company Pvt. Ltd. and Ors.*, MANU/SC/0802/2010; *State of Haryana and Ors. v. S.L. Arora and Company*, AIR 2010 SC 1511; *Sudhir Shantilal Mehta v. C.B.I.*, : (2009) 8 SCC 1; *Sardar Associates and Ors. v. Punjab and Sind Bank and Ors.*, AIR 2010 SC 218; *State of Rajasthan v. Nav Bharat Construction Co.*, AIR 2005 SC 2795 : (2005) 11 SCC 197; *Allahabad Bank etc. etc. v. Bengal Paper Mills Co. Ltd. and Ors.* : (2004) 8 SCC 236; *Indian Banks' Association, Bombay and Ors. v. Devkala Consultancy Service and Ors.* : (2004) 11 SCC 1; *Ghaziabad Development Authority v. Balbir Singh* : (2004) 5 SCC 65; *Ombalika Das and Anr. v. Hulisa Shaw*, AIR 2002 SC 1685.

15 AIR 1966 SC 395. See also, *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa v. N.C. Budharaj*, AIR 2001 SC 626; *Executive Engineer (Irrigation), Balimela and Ors. v. Abhaduta Jena and Ors.*, AIR 1988 SC 1520.

referred to some earlier decisions<sup>16</sup> and held

In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest it is not possible to award interest by way of damages<sup>17</sup>.

Section 34, CPC, is not concerned with interest prior to suit. Such interest may be awarded : (i) when there is a contract, (ii) when there is usage of trade having the force of law, (iii) when it is contemplated by any provision of substantive law, or (iv) under the Interest Act, 1978, (v) it may sometimes be awarded under a rule of equity also<sup>18</sup>. Where the plaintiff is entitled to compensation under Section 70 of Contract Act for goods supplied, he is also entitled to interest at 6% from one month after the date of supply till institution of suit and at the same rate till the date of payment<sup>19</sup>. If the interest for the period prior to the filing of the suit is not claimed by the plaintiff in clear terms, then he cannot make a grievance if a High Court, in appeal, refuses to award interest<sup>20</sup>. In *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, v. N.C. Budharaj*<sup>21</sup>, the issue before the Apex Court was whether arbitrator may award *pendente lite* interest from a period prior to making reference? The Court examined earlier decisions of the Apex Court on granting interest for the period prior to the reference<sup>22</sup>. The Court found two propositions on the issue that: (i) Arbitrator possess the power since the reference to arbitrator was made by the Court and all the disputes in the suit stood referred. The Apex Court, therefore, came to the conclusion that on the application of the principle of Section 34, CPC, *pendente lite* interest could be awarded by the arbitrator<sup>23</sup>. (ii) However, so far as the power to award interest for the period

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16 *Union of India v. A.L. Ralla Ram*, AIR 1963 SC 1685; *Union of India v. Watkins Mayor & Co.*, AIR 1966 SC 275; *Seth Thawardas Pherumal v. The Union of India*, AIR 1955 SC 468.

17 *Union of India v. West Punjab Factories Ltd.*, AIR 1966 SC 395.

18 *Vithal Das v. Rupchand and Ors.*, AIR 1967 SC 188; *Seth Thawardas Pherumal v. The Union of India*, AIR 1955 SC 468.

19 *Pilloo D. Shaw Sidhwa v. Poona Municipality*, AIR 1970 SC 1201.

20 *N.M. Siddique v. Union of India*, AIR 1978 SC 386.

21 AIR 2001 SC 626.

22 *State of Orissa v. B.N. Agarwalla, etc.* AIR 1997 SC 925; *State of Orissa v. B.N. Agarwala*, AIR 1993 SC 2521; *Secretary, Irrigation Department, Government of Orissa and Others v. G.C. Roy*, AIR 1992 SC 732; *Executive Engineer (Irrigation), Balimela and Ors. v. Abhaduta Jena and Ors.*, AIR 1988 SC 1520 (Overruled); *Ashok Construction Company v. Union of India*, : (1971) 3 SCC 66; *Union of India v. Bungo Steel Furniture Pvt. Ltd.*, AIR 1967 SC 1032; *Union of India v. A.L. Rallia Ram*, AIR 1963 SC 1685; *Satinder Singh and Ors. v. Amrao Singh and Ors.*, AIR 1961 SC 908; *Seth Thawardas Pherumal v. The Union of India*, AIR 1955 SC 468.

23 For example, see, *Secretary, Irrigation Department, Government of Orissa and Others v. G.C. Roy*, AIR 1992 SC 732; *Seth Thawardas Pherumal v. The Union of India*, AIR 1955 SC 468.

prior to the reference is concerned the Apex Court held that the arbitrator has the power to award interest from the date the amount is due under the contract, on the ground that the arbitration agreement did not exclude the jurisdiction of the arbitrator<sup>24</sup>. In this case<sup>25</sup> the Apex Court critically analyzed the above stated both propositions and held that arbitrator appointed by Court has jurisdiction to award *pendente lite* interest even from the date prior to making of reference and also laid down the following principles to be applied where the agreement is silent as to award of interest :

**II. II. I.** A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, CPC, and there is no reason or principle to hold otherwise in the case of arbitrator.

**II. II. II.** An arbitrator is an alternative form (sic forum) for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest *pendente lite*, the party claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

**II. II. III.** An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

**II. II. IV.** Over the years, the English and Indian courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest *pendente lite*. *Seth Thawardas case*<sup>26</sup> has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to

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<sup>24</sup> *Executive Engineer (Irrigation), Balimela and Ors. v. Abhaduta Jena and Ors.*, AIR 1988 SC 1520 (Overruled).

<sup>25</sup> *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, v. N.C. Budharaj*, AIR 2001 SC 626.

<sup>26</sup> *Seth Thawardas Pherumal v. The Union of India*, AIR 1955 SC 468. In this case it was held that the arbitrator possesses the power since the reference to arbitrator was made by the Court and all the disputes in the suit stood referred.

lay down any such absolute or universal rule as they appear to, on first impression. Until *Abhaduta Jena case*<sup>27</sup> almost all the courts in the country had upheld the power of the arbitrator to award interest *pendente lite*. Continuity and certainty is a highly desirable feature of law.

### **II. III. Interest After the Date of Institution of Suit:**

The award of interest after the date of institution of the suit is purely a matter of statutory power of courts under Section 34, CPC. Hence, as regards interest due from the date of the institution of suit to the date of the decree and that due from the date of decree till the date of realization is governed by the Section 34<sup>28</sup>. This section applies where the decree is for a definite sum of “money”. The expression “decree for the payment of money” as used in this Section includes a claim to unliquidated damages. In money suits, therefore, the question of interest after the institution of the suit passes from the domain of contract into that of judgment and a Court has discretion as to the rate of interest<sup>29</sup>. That discretion however, is a judicial discretion to be exercised on proper judicial grounds and not arbitrarily. A three-Judge Bench of the Apex Court in the case of *Madnani Construction Corporation (P) Ltd. v. Union of India and Ors.*<sup>30</sup>, while discussing several aspects of the arbitration and also the provisions of Section 34 of the Code of Civil Procedure held:

“...Though the said decision deals with the power of the arbitrator to award interest *pendente lite*, the principle of the decision makes it clear that the arbitrator is competent to award interest for the period

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27 *Executive Engineer (Irrigation), Balimela and Ors. v. Abhaduta Jena and Ors.*, AIR 1988 SC 1520 (Overruled). In this case three learned judges considered the competence of the arbitrator on reference made without intervention of the Court and came to the conclusion that in cases, which arose prior to the commencement of the Interest Act, 1978, the arbitrator did not have the power to grant interest either *pendente lite* or for the period prior to the reference.

28 *Madnani Construction Corporation (P) Ltd. v. Union of India and Ors.*, AIR 2010 SC 383; *Indian Hume Pipe Co. Ltd. v. State of Rajasthan* : (2009) 10 SCC 187; *Union of India v. Saraswat Trading Agency and Ors.*, JT 2009 (9) SC 648; *M/s. M.K. Shah Engineers & Contractors v. State of Madhya Pradesh*, AIR 1999 SC 950; *Executive Engineer v. Abhaduta Jena*, (1988) 1 SCC 418.

29 *S. Nazeer Ahmed v. State Bank of Mysore and Ors.*, AIR 2007 SC 989; *Kanshi Ram & Anr. v. Lachhman & Ors.*, AIR 2001 SC 2393; *Shyam Sunder v. Satya Ketu and Ors.*, AIR 1967 SC 923; *Pentapati Chinna Venkanna and Ors. v. Pentapati Bengararaju and Ors.*, AIR 1964 SC 1454; *Jibon Krishna Mukherjee and Anr. v. New Beerbhumi Coal Co. Ltd.*, AIR 1960 SC 297; *Jugalkishore Saraf v. Raw Cotton Co. Ltd.*; (1955) 1 SCR 1369.

30 AIR 2010 SC 383: See also, *Indian Hume Pipe Co. Ltd. v. State of Rajasthan*, (2009) 10 SCC 187; *Hindustan Construction Company Limited v. State of Jammu and Kashmir*, (1992) 4 SCC 217.

commencing with the date of award to the date of decree or date of realization, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of Code of Civil Procedure provides both for awarding of interest *pendente lite* as well as for the post-decree period and the principle of Section 34 has been held applicable to proceedings before the arbitrator, though the section as such may not apply...”

Where the delay in release of the decretal amount to the claimants is attributable to their failure to furnish the security, the claimants allowed interest on decretal amount from the date of the decree, though the compensation was qualified only from the date of the passing of the decree, in such circumstances the order of Court is not to be interfered with. In absence of any agreement or statutory provision or a mercantile 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<sup>31</sup>. The award of interest from the date of decree to the date of payment is also at the discretion of the court<sup>32</sup>. The proviso as added by the Amendment Act of 1976 empowers the court to grant further interest at a rate exceeding six per cent per annum but not exceeding the contractual rate of interest, and in the absence of a contract to that effect, at the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions, provided that the liability arises out of a commercial transaction.

#### **II. IV. Rate of Interest:**

In discussing the award of interest in suits the rate of interest is one of the controversial issues. This issue can be discussed under four heads: (i) compound interest, (ii) enhanced rate of interest, (iii) reduction of interest, and (iv) inflation.

##### **II. IV. I. Compound Interest:**

Compound interest refers to a method of charging interest where interest is computed not only on the principal, but also the accrued interest. For this purpose, periodical rests are provided for computation of interest, say yearly, or quarterly or monthly. A variant of compound interest, involves limited compounding, where interest is not added to the principal with periodical rests, but only once or twice at agreed stages. For example, where a loan is repayable within one year, if a provision is made the contract that in the event of the loan not being repaid within one year, the interest which had accrued during the one year period will be added to the

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31 *Union of India and Anr. v. Shreeji Colour Chem Industries*, (2008) 9 SCC 515; *Clariant International Ltd. and Anr. v. Securities and Exchange Board of India*, AIR 2004 SC 4236, *Municipal Corporation of Delhi v. Smt. Sushila Devi & Ors.*, AIR 1999 SC 1929.

32 *Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. and Ors.*, JT 2010 (6) SC 41. *Anirudhsinhji Jadeja and Another v. State of Gujarat*, AIR 1995 SC 2390.

principal, and as a consequence, after one year, interest will be payable on the aggregate of the principal and the interest for one year, it is a provision for interest upon interest. Compound interest can be awarded only if there is a specific contract, or authority under a Statute, for compounding of interest. There is no general discretion in courts or tribunals to award compound interest or interest upon interest<sup>33</sup>. The Apex Court in *Renusagar Power Co. Ltd. v. General Electric Co*<sup>34</sup> held that award of interest on interest was not opposed to the public policy of India, but could be awarded only if authorized by contract or statute. This Court observed:

Merely because in Section 3(3) (c) of the Interest Act, 1978, the court is precluded from awarding interest on interest does not mean that it is not permissible to award such interest under a contract or usage or under the statute. It is common knowledge that provision is made for the payment of compound interest in contracts for loans advanced by banks and financial institutions and the said contracts are enforced by courts. Hence, it cannot be said that award of interest on interest, i.e., compound interest, is against the public policy of India. We are, therefore, unable to accept the contention that award of interest on interest, i.e. compound interest is contrary to public policy of India.

In *State Bank of India v. Ganjam District Tractor Owners Association*<sup>35</sup> the Apex Court again observed that in the absence of a provision for compound interest or interest with periodical rests in the agreement between a bank and the borrower, the bank cannot claim such interest. In *Central Bank of India v. Ravindra*<sup>36</sup> a constitution bench of the Apex Court, after exhaustive consideration of the case law, summarized the legal position regarding compound interest thus:

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 capitalizing the same on remaining unpaid.

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33 *State of Haryana and Ors. v. S.L. Arora and Company*, AIR 2010 SC 1511; *Indian Hume Pipe Co. Ltd. v. State of Rajasthan*, (2009) 10 SCC 187; *Rampur Fertiliser Ltd. V. Vigyan Chemicals Industries*, (2009) 12 SCC 234; *H.U.D.A. v. Raj Singh Rana*, AIR 2008 SC 3035; *Assam Small Scale Ind. Dev. Corp. Ltd. and Ors. v. J.D. Pharmaceuticals and Anr.*, AIR 2006 SC 131.

34 AIR 1994 SC 860.

35 (1994) 5 SCC 238.

36 AIR 2001 SC 3095. See also, *State Bank of India, Bhubaneswar v. Ganjam District Tractor Owners' Association and Ors.* (1994) 5 SCC 238; *Corporation Bank v. D.S. Gowda and Anr.* (1994) 5 SCC 213; *Renusagar Power Co. Ltd. v. General Electric Co.*, AIR 1994 SC 860; *Secretary, Irrigation Department, Government of Orissa v. Secretary to Government of Orissa*, AIR 1992 SC 732; *Shew Kissen Bhattar v. The Commissioner of Income Tax, Calcutta*, AIR 1973 SC 2348.

Such a practice is prevalent and also recognized in non-banking money lending transactions. 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 capitalization 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 authorizing the creditor to capitalize the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalized sum for the succeeding period. Interest once capitalized, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower<sup>37</sup>.

#### **II. IV. II. Enhanced Rate of Interest:**

Whether the Court can enhance the rate of interest? In *State of Rajasthan v. Raghbir Singh*<sup>38</sup>, in a suit by the plaintiff respondent with respect to building work on a contract undertaken by him, a decree was passed. The decree awarded interest on the amount decreed. The High Court enhanced the rate and also granted interest for a period prior to filing the suit. On the question whether enhanced interest should have been awarded and for the period before filing the suit the Apex Court held that the claim of the respondent was for the payment of a sum which was ascertainable on a calculation made in terms of the agreement and was, therefore, a 'sum certain' within the meaning of the Interest Act, or at any rate a debt, that is 'a sum of money which is now payable or will become in the future by reason of a present obligation.' There was also a demand made by him for payment and a definite claim for interest. Therefore, the High Court rightly exercised its discretion in favour of the respondent. In a suit for recovery of loan by bank the claim for enhanced rate of interest was made. The trial Court running contrary to the terms of agreement observed that there was no record to show that the defendants had agreed to pay higher rate of interest. Subsequent acknowledgments made by defendants also indicated that they had acknowledged their liability of amount due. The amount was calculated on the basis of enhanced rate of interest. There was no question of taking separate consent of the defendants as the rate was increased as per terms of agreement. There was also no violation of principles of natural justice for want of notice to defendants. The claim for

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<sup>37</sup> For computation of interest, see, *Wada Arun Asbestos (P) Ltd. v. Gujarat Water Supply and Sewerage Board*, AIR 2009 SC 1027; *Centrotrade Minerals and Metal Inc. v. Hindustan Copper Limited*, 2006 (5) SCALE 535; *Mardia Chemicals Ltd. Etc. Etc. v. Union of India and Ors.*, AIR 2004 SC 2371; *Mardia Chemicals Ltd. v. Union of India*, MANU/SC/1120/2004.

<sup>38</sup> AIR 1979 SC 852.

enhanced rate of interest could not be rejected<sup>39</sup>.

#### **II. IV. III. Reduction of Interest:**

It is an often question whether court can reduce the rate of interest? Where the relationship between the parties was not merely that of lender and bank but there was an agreement similar to the cash credit arrangement with the bank, the claim of interest was reduced from 18% to 12% p.a. which was the bank rate of interest at that time<sup>40</sup>. In a suit for recovery of electricity and water consumption charges from the lessee, it was held that the liability does not arise out of a commercial transaction. Interest awarded at the rate of 18% was reduced to 6% per annum<sup>41</sup>. It is also provided that where a decree for payment for money is silent with respect to payment of further interest i.e. from the date of the decree to the date of payment, it is to be presumed that the Court has refused such further interest and no separate suit can be filed for such interest.

#### **II. IV. IV. Inflation:**

Inflation is a phenomenon of which the Apex Court takes judicial notice. The Court has to strike a balance between the competing equities<sup>42</sup>. In *Shree Hanuman Jute Mills and Ors. v. Brij Kishore Kela and Ors*<sup>43</sup>, the Apex Court held that 6% interest should be given from the date of filing the case before High Court till the date of judgment rendered by the High Court and for the period after that 12% interest should be paid considering the inflation. In *Clariant International Ltd. v. Securities & Exchange Board of India*<sup>44</sup> the Apex Court held that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds there for, for which a written demand is mandatory. It was further held that in 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 jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take judicial notice both of inflation as well as 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<sup>45</sup>.

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39 *Syndicate Bank v. R. Veeranna*, AIR 2003 SC 2122.

40 *Mohendra Singh Jaggi v. Dataram Jagannath*, AIR 1997 SC 1219.

41 *Rajni Kumar v. Suresh Kumar Malhotra*, AIR 2003 SC 1322.

42 *Union of India v. Prince Muffakam Jah and Others*, AIR 1995 SC 498.

43 MANU/SC/0017/1986.

44 AIR 2004 SC 4236.

45 *C.K. Sasankan v. The Dhanalakshmi Bank Ltd.*, AIR 2009 SC 3171; *Rampur Fertiliser Ltd. v. Vigyan Chemicals Industries*, (2009) 12 SCC 234; *United India Insurance Co. Ltd. v. Patricia Jean Mahajan and Ors.*, AIR 2002 SC 2607; *Smt. Kaushnuma Begum &*

### III. Costs— Scope and Ambit:

Sections 35, 35-A, 35-B and Order 20-A, CPC, enables the court to pass order of costs. An order of costs is entirely in the discretion of the court, while an order of interest which the court makes under Section 34 forms part of a dispute between the parties. The object of awarding costs is to secure to a litigant the expenses which he has incurred and not to punish the opposite party. The costs to be awarded under this section are in the judicial discretion of the Court. This judicial discretion is to be exercised on sound legal principles. Ordinarily, the successful party is entitled to his costs. In other words, costs follow the event. When both the parties are guilty of acts of bad faith, both may be deprived of their costs. The CPC provides for the following kinds of costs: (a) General Costs (Section 35), (b) Miscellaneous Costs (Order 20-A), (c) Compensatory Costs (Section 35-A), (d) Costs for Causing Delay (Section 35-B).

#### III. I. General Costs— Section 35:

Section 35, CPC, lays down that the costs of an incidental to all suits shall be in the discretion of the Court. The Court can order by whom and out of what property, the costs are to be paid. The section clearly provides that “costs shall follow the events”. It means that the successful party is entitled to the costs, unless the Court in its discretion orders otherwise, either because that party is guilty of misconduct or because there is some other good cause for not awarding costs to him. Thus successful party will not get his costs if he succeeds on a small part of his claim, but fails on the most important and larger part of it or if the party has raised an unnecessary issue, or placed a burden on the defendant which ought not to have in the litigation, *etc.* The costs may be disallowed if there is vindictive nature of the proceedings are launched by a client against his pleader for professional misconduct. Similarly a landlord who deliberately mis-states the areas of the land in a rent suit may be deprived of costs, though he is successful in his suit<sup>46</sup>. In *Vinod Seth v. Devinder Bajaj and Anr*<sup>47</sup>. the Apex Court observed that the provision for costs is intended to achieve the following goals:

1. It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence.
2. Costs should ensure that the provisions of the Code, Evidence Act and

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*Ors. v. The New India Assurance Co. Ltd. and Ors.*, AIR 2001 SC 485.

<sup>46</sup> *U.P. Cooperative Federation Ltd. v. Three Circles*, (2009) 10 SCC 374; *Ramon Services Pvt. Ltd. v. Subhash Kapoor*, AIR 2001 SC 207; *R.G. Shinde v. State of Maharaashtra*, AIR 1994 SC 1673; *Bijendra Nath Srivastava v. Mayank Srivastava*, : (1994) 6 SCC 117; *S.A. Jais & Co. v. Gujarat Electricity Board*, AIR 1988 SC 254; *A.S. Iyer v. V. Balasubramanyam*, AIR 1980 SC 452; *Punjab Nationla Bank v. Sri Ram Kunwar*, AIR 1957 SC 276 (278); *Vidya Verma v. Shiv Narain*, AIR 1956 SC 108.

<sup>47</sup> JT 2010 (8) SC 66.

- other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court.
3. Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs.
  4. The provision for costs should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases. In many other jurisdictions, in view of the existence of appropriate and adequate provisions for costs, the litigants are persuaded to settle nearly 90% of the civil suits before they come up to trial.
  5. The provisions relating to costs should not, however, obstruct access to courts and justice. Under no circumstances the costs should be a deterrent, to a citizen with a genuine or bonafide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts.

The theory on which costs are now awarded to a plaintiff is that default of the defendant made it necessary to sue him, and to a defendant is that the plaintiff sued him without cause; costs are thus in the nature of incidental damages allowed to indemnify a party against the expense of successfully vindicating his rights in court and consequently the party to blame pays costs to the party without fault. These principles apply, not merely in the award of costs, but also in the award of extra allowance or special costs. Courts are authorized to allow such special allowances, not to inflict a penalty on the unsuccessful party, but to indemnify the successful litigant for actual expenses necessarily or reasonably incurred in what are designated as important cases or difficult and extraordinary cases. In *Salem Advocate Bar Association v. Union of India*<sup>48</sup> the Apex Court after noticing that the award of costs is in the discretion of the court and that there is no upper limit in respect of the costs awardable under Section 35 of the Code of Civil Procedure observed thus:

Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In a large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages the filing of frivolous suits. It also leads to the taking up of frivolous defences. Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to

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48 AIR 2005 SC 3353.

follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons therefore. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow.

It is clear from the foregoing discussions that normally costs shall follow the event and it is not the rule that costs should be left to be borne by the parties. However, the costs may not be awarded by the Court if it is satisfied in this respect on account of some good reasons. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some good cause for not awarding costs to him<sup>49</sup>. If a plaintiff recovers a less amount than he claimed in the plaint his costs should be apportioned according to the amount recovered and not according to the sum claimed<sup>50</sup>. Where both the parties advanced pleas far in excess of their legal rights each party will be made to bear his own costs. The trial Court as well as the High Court gave good reasons in support of their orders as to costs, the claim made by the appellants was a highly exaggerated one. The bulk of the evidence adduced by them was found to be unacceptable. Under the circumstances, the Court thought that the appellants should not be granted any costs. The costs are essentially in the discretion of the Courts. The Apex Court declined to interfere with the order<sup>51</sup>. The fact that the respondent succeeds on a ground taken for the first time in appeal is a ground for depriving him of costs<sup>52</sup>.

### **III. II. Miscellaneous Costs— Order 20-A:**

Order 20-A<sup>53</sup>, CPC, makes specific provision with regard to the power of the court to award costs in respect of certain expenses incurred in giving notices, typing charges, inspection of records, obtaining copies and producing witnesses. Under Order 20-A, the court may award costs in respect of:

1. expenditure incurred for the giving of any notice required to be given by law before the institution of the suit.
2. expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party

<sup>49</sup> *Jugra Singh v. Jaswant Singh*, (1970) 2 SCC 386.

<sup>50</sup> *S. Pestonji Manjoo v. Gangadhar Khemka*, AIR 1969 SC 600.

<sup>51</sup> *Chaturbhuj Pandey v. Collector, Raigarh*, AIR 1969 SC 225.

<sup>52</sup> *Keshavlal v. Dalbhai*, AIR 1958 SC 512.

<sup>53</sup> Order 20-A was inserted by CPC (Amendment) 1976, Section 71 (w.e.f. 1.2. 1977)

- before the institution of the suit;
3. expenditure incurred on the typing, writing or printing of pleadings filed by any party;
  4. charges paid by a party for inspection of the records of the Court for the purpose of the suit;
  5. expenditure incurred by a party for producing witnesses, even though not summoned through Court; and
  6. in the case of appeals, charges incurred by a party or obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal<sup>54</sup>.

### III. III. Compensatory Costs— Section 35-A:

Section 35-A<sup>55</sup> provides for compensatory costs. This Section is an exception to the general rule on which Section 35 is based and intended to deal with those cases in which Section 35 does not afford sufficient compensation in the opinion of the court. Under this provision, if the court is satisfied that the litigation was inspired by vexatious motive and was altogether groundless, it can take deterrent action<sup>56</sup>. In *Ashok Kumar Mittal v. Ram Kumar Gupta and Anr.*<sup>57</sup>, the Apex Court examine the scope and ambit of imposing exemplary cost in civil cases. In this case it was found that both sides were guilty of having lied on oath and deserved to be prosecuted. Hence, the Delhi High Court decided that instead of directing prosecution, heavy costs should be levied on both petitioner and respondents “to be paid to the state which spends money on providing the judicial infrastructure.” It then proceeded to impose exemplary costs of Rs. 1,00,000/- on the petitioner and Rs. 1,00,000/- on the respondents, and directed that the costs should be deposited with the Delhi High Court Legal Services Committee. The learned Counsel for the petitioner submitted that levying costs of Rupees one lakh against the petitioner was not warranted. He submitted that as the appeal before the High Court arose out of a civil suit, costs were governed by Section 35 and 35-A, CPC, and cannot exceed what is livable under those provisions. Under Section 35, CPC, award of costs is discretionary but subject to the conditions and limitations as may be prescribed and the provisions of any law for the time being in force. Under Section 35-A, compensatory costs for vexatious claims and defences may not exceed to Rs. 3,000/-. Further, the primary object of levying costs under Sections 35 and 35

<sup>54</sup> Rule 1, Order 20-A, CPC

<sup>55</sup> Section 35-A was inserted by CPC (Amendment) 1922 (Act 9 Act of 1922), Section 2.

<sup>56</sup> *Devinder Singh and Ors. v. State of Haryana and Anr.*, AIR 2006 SC 2850; *Morgan Stanley Mutual Fund v. Kartick Das*, (1994) 4 SCC 225; *Prem Narain v. Vishnu Exchange Charitable Trust*, AIR 1984 SC 1896; *Manmohan Kaur v. Surya Kant Bhagwandi*, AIR 1989 SC 291; *S.A. Kini v. Union of India*, AIR 1985 SC 893; *Managing Board of The Milli Talimi Mission, Bihar v. State of Bihar and Ors.*, AIR 1984 SC 1757; *T. Arivandanam v. T.V. Satyapal*, AIR 1977 SC 2421.

<sup>57</sup> 2009 (1) SCALE 321 : (2009) 2 SCC 656.

-A, CPC, is to recompense a litigant for the expense incurred by him in litigation to vindicate or defend his right. It is, therefore, payable by a losing litigant to his successful opponent. When an appellant or a plaintiff has already paid the prescribed court fee in regard to the appeal or suit to the state at the time of institution, it is debatable whether any costs can be awarded to the state by way of penalty, in litigation between two private parties. Courts will have to act with care while opening new frontiers. The Apex Court held that the provisions of Section 35-A<sup>58</sup> seems to suggest that even where a suit or litigation is vexatious, the outer limit of exemplary costs that can be awarded in addition to regular costs, shall not exceed Rs. 3000/-. The huge costs like the order of Rs. fifty thousand or Rs. one lakh normally being awarded only in writ proceedings and public interest litigations, and not in civil litigation to which Sections 35 and 35-A of CPC are applicable. The principles and practices relating to levy of costs are matters of administrative law that cannot be imported mechanically in relation to civil litigation governed by the CPC. The Apex Court, therefore, held that imposition of exemplary costs is governed and regulated by Sections 35 and 35-A of CPC and there is no question of exercising inherent power contrary to the specific provisions of the CPC.

### **III. IV. Costs for Causing Delay— Sections 35-A:**

Section 35-B, CPC, deals with the law relating to costs levied for causing delay. Section 35-B was added by the CPC Amending Act of 1976. It is inserted to put a check upon the delaying tactics of litigating parties. It empowers the court to impose compensatory costs on parties who are responsible for causing delay at any state of the litigation. Such costs would be irrespective of the ultimate outcome of the litigation. The payment of costs has been a condition precedent for further prosecution of the suit, if the party concerned is plaintiff and the defence, if he is a defendant<sup>59</sup>. In *Manohar Singh v. D.S. Sharma and Anr.*<sup>60</sup>, the Apex Court held that Section 35-B contemplates or requires dismissal of the suit as an automatic consequence of non-payment of costs by plaintiff. When Section 35-B states that payment of such costs on the date next following the date of the order shall be a condition precedent for further prosecution, it clearly indicates that when the costs are levied it should be paid on the next date of hearing and if it is not paid the consequences mentioned therein shall follow. But the said provision will not come in the way of the court, in its discretion extending the time for such payment, in exercise of its general power to extend time under Section 148 of CPC. Having regard to the scheme and object of Section 35-B, it is needless to say that such extension can be only in exceptional circumstances and by subjecting the defaulting

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<sup>58</sup> For various issues on Section 35-A, CPC, see, *Vinod Seth v. Devinder Bajaj and Anr.*, JT 2010 (8) SC 66 : 2010 (7) UJ 3489 (SC); *P.S. Sathappan v. Andhra Bank Ltd. and Ors.*, AIR 2004 SC 5152; *Subal Paul v. Malina Paul and Anr.*, AIR 2003 SC 1928.

<sup>59</sup> *Salem Advocate Bar Association v. Union of India*, AIR 2005 SC 3353 : (2005) 6 SCC 344.

<sup>60</sup> AIR 2010 SC 508.

party to further terms. No party can routinely be given extension of time for payment of costs, having regard to the fact that such costs under Section 35-B were itself levied for causing delay.

#### **IV. Conclusion:**

Imposition of exemplary costs is governed and regulated by Sections 35 and 35-A, CPC, and there is no question of exercising inherent power contrary to the specific provisions of the Code of Civil Procedure, while interest is governed and regulated by Section 34, CPC. An analysis of decision of the Apex Court on Section 34 shows that: (a) the Section 34 is a general procedural provision and its applicability would depend upon the facts of each case; (b) the section confers a discretion on the court to award or not to award interest and at such rates as it deems fit. Where, therefore, the component of interest in the principal sum adjudged is disproportionate to the sum actually advanced the court may refuse interest *pendente lite* or future interest<sup>61</sup>; (c) before amendment of 1956 future interest was capable of being awarded on: (i) the principle sum adjudged, (ii) the interest from the date of suit to date of decree; and (iii) the pre-suit interest i.e., interest could be awarded on pre-suit interest. The amendment is introduced only to deprive the court of its pre-amendment power to award interest on interest and not the power to award future interest on the principal sum adjudged; and (d) the banks bound by the directions of the Reserve Bank of India should make an averment in the plaint that interest or compound interest has been charged at such rates and capitalized at such periodical rests as are permitted by the Reserve Bank of India and a statement of account should be filed. The onus would then be on the borrower to show why the debit balance appearing at the foot of the account and claimed as principal sum cannot be accepted and adjudged. Interest that may be awarded to a plaintiff in a suit for money may be divided into three main heads, according to the period for which it is allowed, namely: (a) interest accrued due prior to the institution of the suit on the principal sum adjudged (as distinguished from the principal sum claimed); (b) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, “at such rate as the Court deems reasonable”; (c) further interest on the principal sum adjudged from the date of the decree to the date of the payment or to such earlier date as the Court thinks fit, at a rate not exceeding 6 per cent, per annum. Under Section 35, CPC, award of costs is discretionary but subject to the conditions and limitations as may be prescribed and the provisions of any law for the time being in force. Under Section 35-A, compensatory costs for vexatious claims and defences may not exceed to Rs. 3,000/-. One view has been that the provisions of Sections 35 and 35-A, CPC, do not in any way affect the wide discretion vested in by High Court in exercise of its

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<sup>61</sup> *Punjab and Sind Bank v. Allied Beverages Company Pvt. Ltd. and Ors.*, MANU/ SC/ 0802/ 2010; *Central Bank of India v. Ravindra and Ors.*, AIR 2001 SC 3095.

inherent power to award costs in the interests of justice in appropriate civil cases. The more so, however, is that though award of costs is within the discretion of the court, it is subject to such conditions and limitations as may be prescribed and subject to the provisions of any law for the time being in force; and where the issue is governed by Sections 35 and 35-A, CPC, there is no question of exercising inherent power contrary to the specific provisions of the Code. Further, the provisions of Section 35-A seems to suggest that even where a suit or litigation is vexatious, the amount of exemplary costs that can be awarded in addition to regular costs, shall not exceed Rs. 3000/-. It is also to be noted that huge costs of the order of Rs. Fifty thousand or Rs. One lakh are normally awarded only in writ proceedings and public interest litigations, and not in civil litigation to which Sections 35 and 35-A are applicable. The principles and practices relating to levy of costs is the matter of administrative law which cannot be imported mechanically in relation to civil litigation governed by the Code of Civil Procedure.