

(2000) 10 BOM CK 0060

In the Bombay High Court

Case No : Civil Rev. Application No. 633 of 2000

Bhikalal Kalidas Mehta

APPELLANT

Vs

Preeti Sangam Sahakari Bank Ltd.

RESPONDENT

Date of Decision : 11-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1

Citation : (2001) 2 CivCC 588 : (2002) 3 RCR(Civil) 381

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : M.D. Angal, for the Appellant; Anil V. Anturkar, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—Rule: Respondents waive service.

2. By consent rule is made returnable forthwith.

3. This revision is directed against the order dated 16.10.1999 passed by the 2nd Joint Civil Judge, Satara, in Regular Civil Darkhast No.49 of 1990, rejecting the contention of the petitioner that part-repayments made by the petitioner/judgment debtor should first, be adjusted towards principal and, if any surplus is found then, towards interest.

FACTS IN BRIEF

The facts necessary to appreciate rival contentions may be stated briefly:-

4. The petitioner is a member of the Respondent-Co-operative Bank and had availed the cheque discounting facility during the course of his business. The petitioner could not discharge his liability, which became due and payable to the Bank. The Respondent-Bank, filed dispute in the Co-operative Court, Satara for the recovery of Rs.21,65,000/- together with interest thereon at the rate of 18% p.a. quantified in the sum of Rs.1,79,779/-. The said dispute was registered as Co-operative Case No.510/1989.

5. On being noticed, the petitioner/borrower appeared and admitted the suit claim set up by the Bank. However, he prayed for grant of installments so as to enable him to discharge decretal liability as he found it difficult to repay the said liability in lumpsum. The Co-operative Court by its order dated 29.8.1989 passed an award against the petitioner and directed payment of the dues of the bank in two installments. The operative part of the award reads as under:-

"The opponent should pay a sum of Rs.23,44,779/- to the disputant-bank with future interest@ 18% on Rs.21,65,000/- from the date of filing of the dispute till its full realization. The opponent is allowed to pay the said amount in two installments, first on or before 31.12.1989 and the second before 30.6.1990. If opponent commits any default, the disputant is at liberty to recover the whole amount with one default claim. Attachment order passed on 21.8.1989 to continue till full realisation. Opponent should pay costs of the dispute and bear his own."

6. The petitioner-judgment debtor committed defaults in payment of installments. He failed to satisfy the decretal liability crystallised in the form of an award. The respondent Bank therefore, on 26.2.1990 filed Regular Darkhast No.49 of 1990 in the Court of Civil Judge, JD, Karad, for recovery of Rs.25,43,923.50 in pursuance of the award.

7. On being noticed the petitioner/judgment debtor appeared in the execution proceeding and made various part payments from time to time, but failed to clear entire liability. During the course of execution of the award, his property, which was attached during the pendency of dispute was put to auction. The sale proceeds realised therefrom were paid to the respondent-decree holder-Bank. However, the liability remained to be satisfied. The petitioner even after adjustment of the sale proceeds have made further part payments from time to time.

8. The controversy between the parties was with regard to the adjustment of various part payments made by the judgment debtor from time to time. According to the petitioner-judgment debtor, the part-repayments made from time to time ought to have been adjusted firstly towards principal liability and balance if any, towards liability of interest. In reply, the contention of the respondent-Bank was just converse to the contention advanced by the petitioner. According to the respondent-Bank part repayments made from time to time were required to be adjusted towards interest first and surplus, if any, were to be adjusted towards principal liability.

9. There was no controversy between the parties with regard to part repayments made by the petitioner/judgment debtor from time to time. The limited controversy between the parties was as to how the part repayments made from time to time, were to be adjusted. Whether adjustment thereof should have been first towards satisfaction of principal liability or towards liability of interest.

10. The respondent-decree holder-Bank in the aforesaid backdrop, moved an

application (Ex.107) on 13.12.1996 in the execution proceeding and prayed for appointment of the Commissioner to take accounts and to calculate and to find out the amount due from the petitioner. Accordingly, the Executing Court appointed M/s. Godbole and Co., Chartered Accountants, as Court Commissioner, for taking account. The petitioner-judgment debtor submitted his own calculation in the form of statement of accounts showing therein that the entire principal liability stands satisfied and the remaining liability was only towards interest in the sum of Rs.90,299/-.

11. The Court Commissioner submitted his report along with his calculation showing adjustment of part re-payments made from time to time, firstly towards interest and balance thereof towards principal liability.

12. The aforesaid report of the Commissioner dated 25.3.1997 was objected to by the petitioner-judgment debtor vide his objection dated 25.6.1997. In the objection, the judgment debtor inter alia contended that the respondent-decree holder-Bank has, in its books of accounts, adjusted part-payments made from time to time towards principal amount and, therefore, the decree holder-Bank has no right to change its stand and claim adjustment of the said repayments firstly towards interest. The judgment debtor further contended that part payments have to be adjusted first towards principal sum and only after such adjustment the amount of interest shall, become due and payable in view of provision of Order XXI, Rule 1 of the CPC (hereinafter referred to as "Code" for short). The petitioner, therefore, pleaded that based on such adjustment, the liability of the petitioner, ought to have been determined, so as to enable him to make necessary repayment of the balance liability, if any.

13. The executing Court after hearing both the parties by an order dated 16.10.1999 rejected the contention of the petitioner. The Executing Court by the impugned order directed the decree holder-Bank to first calculate and show the decretal liability inclusive of the principal sum together with the amount of costs of the suit and, thereafter to calculate the amount of interest thereon @ 18% p.a. till the deposit of the part payment made first in point of time and, thereafter to deduct the first payment made towards the part satisfaction of decretal liability. Executing Court, further directed that after such deduction, the liability remaining due and payable be shown as outstanding and after calculating interest thereon the subsequent payments should be adjusted and further directed the decree holder-Bank to follow the same method for adjustment of further part payments till the liability is satisfied in toto.

14. Being aggrieved by the aforesaid order the petitioner judgment debtor invoked revisional jurisdiction of this Court and addressed this Court on the question as to how the part-repayments were required to be adjusted on the canvass of the provisions of Order 21 of the Code.

15. The learned counsel appearing for the petitioner-judgment debtor relying upon the provision of Order 21, Rule 1 (5) of the Code contended that in view of

the said provision it is no longer open to the decree holder to adjust part-payments made by the petitioner first towards interest. According to him, part payments made must be first applied towards principal amount and not towards interest. In support of his contention he placed reliance on the decision in the case of Punjab National Bank, Delhi and etc. Vs. Prem Sagar Choudhary and Others, .

16. The learned Counsel appearing for the respondent-decree holder-bank filed counter affidavit on behalf of the respondent-bank. He contended that while remitting the amount towards part payments the judgment debtor failed to communicate, inform or make it clear as to how the amounts remitted were to be adjusted. That is to say; whether it were to be adjusted towards principal or interest or costs. He further pointed out that the documents sought to be relied upon the petitioner viz. statement of account alleged to have been prepared by the bank cannot be allowed to be relied upon in view of the fact that at the relevant time one Shri Deshpande, who was working as Manager of the Bank had acted under the influence of the decree holder who was a director of the Bank and was in a position to exercise influence on the staff of the Bank. According to the decree holder-Bank, he deliberately in collusion with the petitioner shown erroneous adjustments in the account of the petitioner maintained in the books of the bank. The bank after acquiring knowledge of the said misconduct suspended the said Manager Shri S.M.Deshpande and conducted departmental enquiry against him and ultimately he was found guilty of misconduct and was dismissed from service by way of punishment. In the light of these facts, learned Counsel for the decree-holder-Bank contended that the document, on which petitioner is trying to place reliance is a product of collusion between the said Manager and the petitioner. Hence, it should not be taken into account to uphold the contention of the petitioner and his petition be dismissed with costs.

POINTS FOR DETERMINATION

17. In the light of the aforesaid contentions, the following issues arise for my consideration:

1. How part payments made by judgment debtor, from time to time, are to be adjusted? should it first, be adjusted towards interest or principal sum?
2. Whether accounts maintained by the Bank should be relied upon in the facts and circumstances of the case?

SCHEME OF THE CODE

18. In order to answer the first question it is necessary to turn to the provisions of Order XXI, Rule 1 of the Code dealing with payment under Decree, which reads as under:-

- (5) "On any amount paid under clause (b) of sub-rule (1) interest, if any, shall cease to run from the date of such payment".

The Amending Act, 1976, introduced several new rules in Order 21 of the Code. The amended rule enlarge the modes of payment can remit the decretal dues by postal money order or make payment through bank. If it is money payable under a decree, the same can be paid in Court under this rule. Payment to decree holder can be made in part, such payment is valid. The normal rule is that in case the debt is payable with interest and if the debtor deposits money, the creditor may at his discretion apply it first, towards interest and if there is a balance left towards principal sum. In other words, where a judgment debtor deposits money in Court the normal rule would apply; unless the judgment-debtor has laid down condition that it should be appropriated first towards the principal sum and decree holder has accepted such a condition. According to sub-rule(3) where money is paid by postal money order or through bank under clause (a) or (b) of sub-rule (1), the money order or payment through bank, must contain an intimation as to how the money; so remitted is to be appropriated, whether towards principal or interest or costs. But, such intimation is not binding on the decree holder. If he does not accept such a condition he must not accept the remittance.

18A. Payment made in the Court is valid compliance with a decree even though the decree directs payment to the decree holder. Sub-rule (2), as it stood before the amendment of 1976, required notice to the decree holder only in the event of payment made in the Court. Sub-rule (2) of the amended Act, 1976, now requires notice to be given to the decree holder where payment is made under clause (a) or (c) of sub-rule (1) either through Court or by Registered post, Payment of decretal amount operates as a satisfaction of decree to that extent, though no notice is given to the decree holder, as provided by sub-rule (2). But where interest is awarded by the decree on the decretal amount, the decree holder is entitled to interest until he receives notice of the payment in the Court. Sub-rule (2) makes notice to the decree holder mandatory. If interest is to cease to run on the decretal amount then, the decree holder must have the opportunity to withdraw the money paid in Court, which he would not have, until he has knowledge through notice of such payment. Amendment to Order 21 has brought new changes and has made departure from the normal rule with respect to money decree and the appropriation of payments towards satisfaction thereof.

19. The controversy involved in the present revision application centres around interpretation of sub-clauses (4) and (5) of Order 21 of the CPC which read under:-

(4) On any amount paid under clause (s) or clause (c) of sub-rule (1), interest if any shall cease to run from date of service of notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest if any, shall cease to run from the date of such payment."

FINDINGS

It is well established that after notice of deposit in Court is served on the

judgment-debtor the interest ceases to run on the decretal amount to the extent of such deposit. Sub-rules (4) and (5) extracted hereinabove provide that any amount deposited in Court or sent to the Court by postal order or through a bank or by any other mode wherein payment is evidenced in writing or paid otherwise as Court, which made the decree directs, the interest, if any, shall cease to run from the date of service of notice given under sub-rule (2). Interest likewise shall cease to run on any amount paid out of Court to the decree holder either by postal order or through a bank or by any other mode wherein payment is evidenced in writing. Interest shall also cease to run, if the decree holder refuses to accept the money order or payment through a bank from the date on which the money was tendered, or where he avoids acceptance of the money order, or payment through a bank from the date as the case may be on which the money was tendered to him or on the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

20. In this case the main question is as to from which date the interest would cease to run on the payment made towards the discharge of the interest bearing part of the decretal liability. In order to answer this question one has to turn to the test of the decree. The decree in question provides that judgment debtor is liable to pay sum of Rs.23,44,779/- together with interest in the sum of Rs.21,65,000/- at the rate of 18% p.a. In other words, out of the total sum of Rs.23,44,779/- the amount of Rs.21,65,000/- is the principal sum. The said amount is to bear interest at 18% p.a. Now, on combined reading of clauses (4) and (5) of Order 21 it is no longer open for the decree holder to appropriate payments received by him to that part of the decretal liability which does not bear any interest; Such payment must be applied first towards the decretal amount which bears interest, if any. In this case, decretal amount of Rs.21,65,000/- bears interest at 18% p.a. with effect from 16.6.1989. Therefore, whatever payments are made by judgment debtor shall have to be appropriated towards that part of the decretal liability or amount which bears interest or which carry interest. In the instant case, it is clear that an amount of Rs.21,65,000/- is the only component which bears interest and, therefore, the Executing Court was perfectly justified in directing decree holder to first calculate and show outstanding decretal liability inclusive of the principal amount, interest amount and the amount towards costs of the suit and thereafter, to calculate the interest thereon (excluding costs) till the deposit of part payment made first in point of time, and therefore, to deduct the first payment made towards the part satisfaction of the decretal liability and after such deduction, the liability which remained due and payable be shown as outstanding and thereafter after calculating interest thereon subsequent payments are to be adjusted following the same method till entire liability is satisfied. The same principal has been reiterated in the case of Punjab National Bank (supra) sought to be relied upon by the judgment debtor.

In the aforesaid backdrop, contention canvassed by the learned Counsel for the

petitioner is devoid of any substance and, therefore, this revision application is dismissed. No fault can be found with the impugned order passed by the Executing Court. The Executing Court has rightly applied principle flowing from amended sub-clauses (4) and of Order 21.

In the result, revision application is dismissed with no order as to costs.