

(1994) 11 MAD CK 0102
In the Madras High Court

Dr. Thangavel Padayachi (died) and Others

APPELLANT

Vs

J. Ramu Chettiar

RESPONDENT

Date of Decision : 01-11-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1995) 1 MLJ 110

Hon'ble Judges : Govardhan, J

Bench : Division Bench

Judgement

Govardhan, J.—The Legal Representatives of the judgment-debtor in the appeal A.S. No. 437 of 1979, have come forward with this application for amendment of the decree in O.S. No. 345 of 1973 of Sub Court, Ariyalur, contending as follows:

The suit filed by the respondent against Thangavel Padayachi, was decreed. But the respondent filed the appeal in respect of certain amounts disallowed by the trial court. The said appeal was dismissed. During the pendency of the appeal, the respondent took out an execution in E.P. No. 2 of 1981 for realising a sum of Rs. 58,882 against the decree passed for a sum of Rs. 31,620 with proportionate costs. In the judgment, the rest of the claim of the plaintiff has been dismissed with costs. The office, by mistake, has drafted the decree for a higher sum. Hence the application for amendment of the decree.

2. The respondent has filed a counter contending briefly as follows: The respondent filed the suit for recovery of a sum of Rs. 38,309 towards the principal and interest due under various promissory notes executed by Thangavel Padayachi. The trial court held that the defendant had paid interest upto 17.8.1972 and therefore, the plaintiff cannot claim interest for the promissory notes till 17.8.1972 and disallowed a portion of the interest claimed and decreed the suit for a sum of Rs. 31,620 with proportionate costs and interest due from 17.8.1972. The appeal preferred by the deceased defendant was dismissed. The father of the respondent who is the plaintiff, has filed E.P. No. 2 of 1981 for recovering the decree amount. The present contention is one of the various

untenable contentions raised by him to the effect that the decree-holder is not entitled to future interest. The same is liable to be rejected since the courts are vested with power to award interest u/s 34 of the Code of Civil Procedure.

3. C.M.P. No. 14993 of 1994 is an application for stay of further proceedings in E.P. No. 2 of 1981.

4. The learned Counsel appearing for the petitioner in the petitions has argued that the learned Subordinate Judge, Ariyalur, has granted a decree to the effect that the plaintiff will be entitled to a decree for a sum of Rs. 31,620 in all with proportionate costs and dismissed the rest of the claim with costs, and therefore the decree-holder is not entitled to claim more than the amount awarded in the judgment viz., Rs. 31,620 and the decree has been drafted as if the plaintiff is entitled to Rs. 58,000 and odd and therefore, the decree has to be amended. In support of his above contention, the learned Counsel appearing for the petitioner relies upon a decision reported in *Hasan Shah v. Sheo Prasad*, ILR Mad. 121, wherein it has been held that it was illegal for the court to decree the claim for interest by way of amendment of its decree and that the order so amending the decree was open to revision. The court in its judgment awarded the plaintiff's a specific sum of money and ordered that the rest of the plaintiff's claim should stand dismissed. Learned counsel appearing for the respondent, on the other hand, argued that u/s 34 of the Code of Civil Procedure, the courts are empowered to award interest under three heads viz., (1) upto the date of filing of the suit, (2) from the date of suit till date of decree and (3) after decree till realisation and that the contention of the petitioner that the decree has not been properly drafted, is to be rejected and he relies upon a decision reported in *Union of India (UOI) and Another Vs. A. Venkataiah*, . In the above decision our High Court has held that even if the judgment is silent about the award of interest from the date of suit till the date of decree, the decree which awards it cannot be attacked on ground that it is prima facie at variance with the judgment. The learned Counsel for the appellant would argue that it is not as if the judgment is silent as contemplated in the decision reported in *Union of India (UOI) and Another Vs. A. Venkataiah*, ; but, it is specific in stating that the plaintiff will be entitled to a decree for a sum of Rs. 31,620 with proportionate costs and the rest is dismissed with costs and therefore, it is only the decision quoted by him, has to be accepted and acted upon. It has to be noted that the plaintiff has filed the suit for recovery of a sum of Rs. 38,309 towards the principal and interest under various promissory notes executed by Thangavel Padayachi and a portion of the said claim has been negated by the trial court, since it has held that the defendant has paid interest upto 17.8.1972 and he is entitled to interest on the principal from 17.8.1972. Since a portion of the claim has been dismissed, I am in agreement with the learned Counsel for the respondent that the judgment of the trial court only holds that the plaintiff will be entitled to an amount less than the amount claimed in the suit and it is not as if the amount mentioned in the judgment alone, is payable by the judgment-debtor to the decree-holder, at any time when the decree-holder realises the fruits for the decree. The judgment has

been passed in the year 1978. It does not stand to reasoning that even after 16 years, the decree-holder will be entitled to the amount mentioned in the judgment alone without any claim for interest upto the date of payment. In the decision relied upon by the learned Counsel for the respondent, their Lordships have held that it is only at the time of drafting the decree and signing of the decree by the trial Judge that the question of his discretion springing from his jurisdiction u/s 34 of the CPC to provide for interest in a money decree, would arise and that if he does not provide for such interest it becomes final and the aggrieved party has no relief and that it follows that if he provides for interest in the decree, it is lawful and is backed up by express statutory provisions and is not questionable on the technical ground that it is prima facie at variance with the judgment, which, in turn is silent about the provisions of interest. Their Lordships have also referred to a decision of Andhra Pradesh High Court in Ramamurthi v. Narasimham AIR 1957 A.P. 476 and held that the above decision is based on the literal interpretation of Section 34 of the CPC and it is the primordial intent and purpose in the case of a decree for money and that they are, therefore, unable to agree with the argument that the provisions for interest ought not to have been made in the decree and such interest so provided, cannot be granted to the respondent. The above decision makes it abundantly clear that the contention of the learned Counsel appearing for the petitioner that the judgment provides only for Rs. 31,620 with proportionate costs and therefore, the plaintiff is not entitled to subsequent interest from the date of decree till realisation and the decree has therefore to be amended is without merits and is liable to be dismissed. It is accordingly dismissed. The appeal has already been dismissed. The petition filed for amending the decree by the trial court, has been dismissed in view of the passing of the decree in the appellate court. That is how this petition is entertained in this Court.

5. In the result, C.M.P. No. 14992 of 1994 is dismissed with costs. In view of the dismissal of C.M.P. No. 14992 of 1994, C.M.P. No. 14993 of 1994 is dismissed.