
(1991) 02 GAU CK 0012
In the Gauhati High Court
Case No : Execution Case No. 1 of 1989

Eastern Tea Estate Pvt.Ltd.	Vs	APPELLANT
Arati Dutta, M/S.Chand and Tea Estate		RESPONDENT

Date of Decision : 25-02-1991

Acts Referred:

Citation : (1991) 1 GLR 312

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : R.P.Kakati, D.N.Choudhury, S.K.Sen, A.R.Paul Mazumdar, Advocates appearing for Parties

Judgement

1. It appears from the records that a Single Bench of this Court declared that Rs. 8,85,370.24 was to be paid by Mrs. Arati Dutta (whom I shall refer to as the "Judgment Debtor") to M/s Eastern Tea Estate Pvt. Ltd. (which I shall refer to as the "Decree Holder"). On appeal by the Judgment Debtor, a Division Bench of this Court reduced the amount to Rs. 6,81,299.67. However, the matter was taken to the Supreme Court. The Supreme Court confirmed the amount. But while confirming the amount, the Supreme Court made the folio wing direction.

"A sum of Rs. 1, 36,038.06 was directed to be paid at the time of the admission of the appeal by the Division Bench of the High Court. If that money has been paid or realised by the respondent the appellant would pay the balance of Rs. 6,81,299.67 and if the money is paid the respondent will by virtue of this order is entitled to withdraw the same and give credit to the appellant for the same. The balance sum will be paid by 15th March, 1988. In default of payment by that date the amount will carry 18% interest".

Before 15.3.88, the Judgment Debtor riled an application for modification of the order stating that a sum of Rs. 4,42,685.12 had already paid as ordered by the Division Bench of this Court at the time of admission of the appeal and, therefore, Rs. 1.36,038.06 was to be modified. The Supreme Court made an

order on 30.11.90 that Rs. 4,42,685.12 would be substituted for Rs. 1,36,038.06, appearing in the above quoted passage.

2. If it is not disputed that, as directed by the Division Bench of this Court, the Judgment Debtor deposited a sum of Rs. 4,42, 685.12. Thereafter, another sum of Rs. 2 Lakhs had been paid on 14.12.89. The dispute is about the balance to be paid after the order of the Supreme Court.

3. The contention of Mr. Paul Mazumdar, the learned counsel for the Decree Holder, is that the balance amount of Rs. 6,81,299. 67 after the payment of Rs. 4,42,685.12 was Rs 2,38,614.55, but, as the balance was not paid on or before 15 March 1988 as directed by the Supreme Court, the Judgment Debtor is liable to pay Rs, 2,38,614.55 with interest from 15 March 1988 till the debt is discharged. Mr. Paul Mazumdar has contended that out of Rs. 2 Lakhs paid, interest on Rs. 2,38.614.55 is to be appropriated in the first instance on the date of payment of Rs. 2 Lakhs and thereafter what was left towards the principal. Therefore, the Judgment Debtor is liable to pay more than Rs, 1,20,000/ including the capital and interest. In order to support his contention, Mr. Paul Mazumdar has referred me to a decision of Privy Council reported as Ventatadri Appa RW vs. Parthasarathi Appa Raw, AIR 1922 PC 233. In that case, the Privy Council observed :

"There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital."

The decision of Privy Council was approved by the Supreme Court in Meghraj vs. Bayabai, AIR 1970 SC 161. The Supreme Court in that case observed that the normal rule is that in the case of a debt due with interest any payment made by debtor is in the first instance to be applied towards satisfaction of interest and thereafter to the principal. It is for the debtor to plead and prove an agreement that the amounts which were paid by the debtor were accepted by the creditor subject to a condition imposed by the debtor.

3. The above decisions of the Privy Council and the Supreme Court indicate thus. Subject to contract or otherwise to the contrary, where principal and interest are due on a single debt the general rule is that, when a part of the amount due is paid, the amount should first be applied towards the satisfaction of interest and thereafter to the principal, if any, is left over.

4. Coming to the present case the payment was made on 14.12.89 pursuant to the order of this Court made on 9.11.89. On perusal of the order of this Court, it reveals by implication that the payment was to be applied towards the principal. In that view of the matter, the general rule stated above would not be attracted and as such, the balance to be paid to the Decree Holder was Rs. 38,614.55.

5. The question which now arises is what will be the interest payable to the Decree Holder. Admittedly, there was arithmetical mistake in the order of the Supreme Court and the Supreme Court corrected the said arithmetical mistake on the application made by the Judgment Debtor before 15.3.88, as already stated, and, therefore, there appeared some anomalies about the amount to be paid to the Decree Holder. I am of the opinion that the Court executing the order or decree can grant equitable relief. The order of this Court made on 8.1.91 indicates that the Judgment Debtor is agreeable to pay a sum of Rs. 1 Lakh in full satisfaction of the debt. Considering the overall facts and circumstances of the case, I am of the view that, if a sum of Rs 1 Lakh is paid in full satisfaction of the debt it would meet the ends of justice. I do so accordingly.

6. In the result, it is ordered and directed that the Judgment Debtor shall pay a sum of Rs 1 Lakh to the Decree Holder in full satisfaction and in discharge of the debt within two (2) weeks and the Decree Holder shall transfer the title to M/s Chandana Tea Estate to the Judgment Debtor within two (2) weeks thereafter. The relevant title deeds shall be handed over to the Judgment Debtor as agreed upon.

With said observations and direction the petition is disposed of.