

(1993) 07 MAD CK 0004
In the Madras High Court
Case No : C.R.P. No. 2292 of 1986

Iqbal Bhai Mulla Abbas Bhai

APPELLANT

Vs

Buhari Sons (P) Ltd., Madras-8

RESPONDENT

Date of Decision : 14-07-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 34

Citation : (1993) 07 MAD CK 0004

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : K. Krishnaswamy, for the Appellant; M. Diagam, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Singh, J.—This civil revision petition is directed against the order in I.A. No. 6527/85 in O.S. No. 157/78 on the file of V Assistant

Judge, City Civil Court, Madras. Short facts are: The revision petitioner had filed the suit against the respondent on a money claim. The defendant

had filed written statement, but later he submitted to decree and decree was passed on 21.1.80. Subsequently he filed I.A. No. 6527/85 under S.

152 read with 151, C.P.C, praying for amendment of the decree by amending the rate of interest at 6% p.a. instead of 36% p.a. The said petition

was opposed by the plaintiff/revision petitioner. After hearing the parties, the learned Assistant Judge had passed an order, allowing the petition

and thereby had amended the decree by providing interest at 6% instead of 36% which originally awarded. Aggrieved by the said order, the

plaintiff has come forward with this revision petition.

2. Mr. K. Krishnaswamy, the learned counsel for Mr. S. Sampathkumar, the learned counsel appearing for the revision petitioner, would submit

that

(i) petition under S. 152 is not maintainable

(ii) The court below is not correct in applying S. 34 C.P.C, inasmuch as the contract rate must be taken as 36% p.a. in view of the submission of the defendant to the suit claim.

(iii) The other suit on which reliance was made by the defendant is not germane and the plaintiff is not a party to the other suit.

(iv) The petition is highly belated and already the defendant had made part payments,

(v) The defendant's remedy was only by way of a review or revision and because of the above grounds, the court below ought to have dismissed the petition for amendment.

I have heard the learned counsel appearing for the respondent on the above aspects.

3. I have given careful consideration to the submissions made by rival counsels. I shall consider the grounds taken by the learned counsel for the revision petitioner in seriatim.

Ground No. 1:- and (ii) to consider the ground, S. 152, CP.C. needs extraction. It reads as follows:

152. Amendment of judgements decree for orders: -

Clerical or arithmetical mistakes in judgements, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

The learned counsel appearing for the revision petitioner would rely upon Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, .

The Apex Court had occasion to consider the meaning of the words arithmetical mistake, clerical mistake and accidental slip in that ruling. With reference to Rule 83 concerned in that case which has been extracted in para 7 of the judgment. After extracting the same, the apex court has laid as follows:

An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission

unintentionally made.

4. In the instant case, in para 4 of the plaint, it is averred as follows:

As on date the defendant is liable to pay Rs. 6,987/- on the said Hundi inclusive of interest at 6% p.a from the date of Hundi, as on this date, according to the following particulars...

In Para 7, it is averred as follows:

The plaintiff therefore prays for a decree against the defendant for a sum of Rs. 6,987/- with interest at the present commercial rate of 36% p.a.

from the date hereof till the date of payment in full and for the costs of this suit.

5. I shall immediately refer to S. 34 C.P.C. The relevant proviso which reads as follows:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of Interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions. (Emphasis supplied)

In the instant case, the contractual rate of interest is only 6% p.a. But claim was made for interest at 36% alleging that it was the commercial rate,

at the time of filing of the plaint. But yet, when there is a specific contractual rate of interest, by virtue of S. 34, the court cannot award interest

exceeding the contractual rate of interest viz., 6%. In this regard, Mr. Krishnaswamy, would submit that when the defendant had submitted to a

decree, the commercial rate of interest claimed in the suit must be taken as the contractual rate. I am unable to accept this submission for the

reason that no new contract can be inferred from the submission to the plaint claim. We cannot ignore the averments in the plaint regarding the

contractual rate, while considering the claim in the prayer for the commercial rate. No new contract can be said to have arisen because of the

submission of the defendant to the suit claim. One cannot travel beyond the purview of the plaint, while a submission to the plaint claim has been

made. In view of the above, I am unable to accept the submission made by Mr. Krishnaswamy in this regard.

6. When it is seen that as per S. 34, C.P.C, interest cannot exceed the contractual rate viz., 6% and when the judgment and decree grant the

interest at the rate of 36%, it has to be construed as an accidental slip so as to bring it within the fold of S. 152, C.P.C Hence I do not accept

Ground No. (I) and (ii) urged by Mr. Krishnaswamy.

7. Ground No. (iii):-I do accept ground and the plaintiff is not bound by the judgment in some other suit to which he was not a party.

8. Ground No. :-(iv) The question of limitation docs not arise in this case and as such this ground wilt not preclude the defendant by seeking resort

to S. 152, C.P.C.

9. Ground No. (v);- In view of my finding regarding grounds (i) and (ii) that a petition will lie under S. 152 C.P.C., I do not accept either this ground.

10. Since none of the grounds urged by Mr. Krishnaswamy, learned counsel for the petitioner finds acceptance with me, the inevitable result is that

the civil revision petition will have to be dismissed. In view of the above, this civil revision petition shall stand dismissed. No costs.