(1982) 03 MAD CK 0010

In the Madras High Court

K. Sambandam APPELLANT

Vs

Sirkali Co-operative Urban Bank Limited and Another RESPONDENT

Date of Decision : 19-03-1982

Acts Referred:

Citation : (1982) 2 MLJ 227

Hon'ble Judges : P.R. Gokulakrishnan, O.C.J.

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, O.C.J.

1. The first respondent in E.P. No. 66 of 1979, on the file of the District Munsif of Sirkali is the petitioner herein. The first respondent herein as the

plaintiff in C.T.I.A. No. 317 of 1973-74, got an award from the Arbitrator of Co-operative Societies, Sirkali, against the petitioner and the second

respondent herein on 30th May, 1974, u/s 73 of the Tamil Nadu Co-operative Societies Act, (LIII of 1961). In that proceeding, the first

respondent herein claimed a sum of Rs. 2,270-65 due on a surety bond, dated 30th November, 1971 with further interest at one paise per rupee

per mensem from the date of making the reference to the date of recovery and costs. During the enquiry, the petitioner and the second respondent

herein remained ex parte. The arbitrator directed the petitioner and the second respondent herein to pay to the first respondent a sum of Rs.

2,349-22, with interest thereon at two paise per rupee per mensem from the date of the award till realisation. In order to execute this award, the

first respondent herein filed E.P. No. 66 of 1979.

2. The main question that was decided in the Execution Petition was whether the award and claim of excessive interest beyond six per cent, per

annum for the period subsequent to the award was valid or not and whether the Executing Court can decide that matter at the stage of execution.

The Executing Court found that it cannot go beyond the decree, that u/s 100 of the Tamil Nadu Cooperative Societies Act, the jurisdiction of the

Civil Court was barred and as such, the validity or otherwise of the interest granted cannot be gone into by the Civil Court and) that the objection

is barred by constructive res judicata. With these findings, the Court below ordered execution. As against this order, the present revision petition

has been filed.

3. Mr. P. Veeraraghavan, learned Counsel for the revision-petitioner, contended that the grant of interest which works out at the rate of 24 per

cent, per annum is not correct and that applying the decision in Gurunathan and Ors. v. Villupuram Co-operative Urban Bank Limited 1979

T.L.N.J. 448, the revision has to be allowed. Mr. S. Jayaraman, on the other hand, pointing out the provisions of the Tamil Nadu Co-operative

Societies Act, submitted that the Civil Court has no jurisdiction to go into the matter and that the Executing Court cannot go beyond the decree or

the award passed in this case.

4. It is clear from the facts of the case, that the decree-holder claimed interest at one paisa per rupee per mensem. But, the arbitrator has given an

award to the effect that the decree-holder is entitled to interest at two paise per rupee per mensem. This award works out to 24 per cent, per

annum. It is clear from the decisions rendered by our High Court and the Supreme Court, that Section 34 of the Code of Civil Procedure, though

not applicable directly to the arbitration proceedings the principle of that section can be applied by the arbitrator for awarding interest. This is clear

from the decision reported in Seth Thawardas Pherumal Vs. The Union of India (UOI), . Thus, the Supreme Court has placed the subject-matter

beyond controversy by holding that Section 34 of the CPC will be applicable to proceedings before an arbitrator also.

5. The learned Chief Justice of our Court in C.R.P. Nos. 818 and 819 of 1979, dated 13th October, 1979, reported in Gurunathan and Anr. v.

Villupuram Co-operative Urban Bank Ltd. 1979 T.L.N.J. 448, after accepting the proposition laid down by the Supreme Court in the decision

cited above, interfered with the interest awarded by the Arbitrator on the ground that the same is more than six per cent, and that such award of

interest more than 6% is not envisaged by Section 34 of the Code of Civil Procedure. Accordingly, the learned Chief Justice modified the award

and stated that the award amount will carry interest at six per cent, and not at 18 per cent, as award by the Arbitrator. With this modification, the

learned Chief Justice dismissed both the revisions.

6. Mr. P. Veeraraghavan, the learned Counsel for the revision petitioner submitted that following the above-said decision, this Court must

interefere and reduce the interest to that of six per cent. I am afraid that I cannot accept this argument. No doubt, Section 34 of the CPC gives

ample power to the Court to award interest. That section has been invoked for awarding interest in cases pending before the arbitrators also. Such

a procedure has been upheld by this Court and also by the Supreme Court. Though Section 34 of the CPC mentions a certain rate of interest to be

awarded by the Court concerned, the awarding of interest more than, what is contemplated u/s 34 of the CPC will not ipso facto make such

award illegal or without jurisdiction. If a party is aggrieved by such award, the proper course will be to have it corrected by way of an appeal or

revision before the appropriate forum and cannot at the stage of execution question the same. It is well-settled that the Exceeding Court cannot go

beyond the decree except in certain cases where the decree itself is ob initio void or that the Court which passed the decree did not have

jurisdiction to pass the same. As far as the present case is concerned, there is absolutely no difficulty in coming to the conclusion, that the arbitrator

has got jurisdiction to go into the matter and he can invoke rightly Section 34 of the CPC for awarding interest. If such interest awarded is in

excess, it is for the aggrieved party to agitate the correctness of the same before the appropriate forum and he cannot be allowed to question the

same at the execution stage without in any way trying to set aside the same through appropriate proceedings. Further, any arbitration award passed

by an arbitrator can be set aside or modified only through the hierarchy of authorities envisaged in the Tamil Nadu Co-operative Societies Act.

Section 100 of that Act clearly states that no order or award passed, decision or action taken or direction issued under that Act by an Arbitrator,

Liquidator, Registrar or an Officer authorised or empowered by him, the Tribunal of the Government or any officer subordinate to that, shall be

liable to be questioned in any Court. Thus, the Executing Court, apart from the fact that it cannot go beyond the decree, cannot even consider this

question at the time of executing the same in the civil Court, since Section 100 of the Tamil Nadu Co-operative Societies Act is a bar to the same.

The decision reported in Gurunathan and An. v. Villupuram Co-operative Urban Bank Limited 1979 T.L.N.J. 448, never considered this question

at all, nor laid down any principle after applying Section 100 of the Tamil Nadu Co-operative Societies Act. Further, that decision has not even

considered as to whether the Executing Court has power to go beyond the award passed by an arbitrator. In such circumstances, and in view of

the clear dictum that the Executing Court cannot go beyond the decree, unless the decree or award is a nullity or the award was passed without

jurisdiction, the award of interest can-not be questioned at the execution stage. Correctly, the Court below has allowed the execution petition as

per the award granted in favour of the first respondent herein. I am in complete agreement with the finding of the Court below.

7. Since there is no question of any jurisdiction as such involved in this matter, the civil revision petition is dismissed. There will be no order as to

costs.