(2000) 01 KL CK 0041

In the High Court Of Kerala

Case No : C.R.P. No''s. 2035, 2038, 2464 and 2467 of 1999-D

K.V. George and Others APPELLANT

Vs

The Federal Bank Ltd., Pala RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

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

Citation : AIR 2000 Ker 183 : (2001) 1 CivCC 336 : (2000) 2 RCR(Civil) 645

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : Mathew John, for the Appellant; K.P. Balasubramaniam, for the Respondent

Final Decision : Allowed

Judgement

D. Sreedevi, J.—Petitioners in all the above cases filed the above revision petitions against the orders passed by the Court below dismissing the applications to correct the mistake crept in the judgment and decree passed by the Court below. Petitioners filed the applications u/s 152, C.P.C. The Court below dismissed the applications in view of the decision reported in Dwaraka Das Vs. State of Madhya Pradesh and Another, . Aggrieved by the said orders the petitioners have filed the above revision petitions.

2. Admittedly, the petitioners in the above petitions have availed of agricultural loan agreeing to repay the same with 11.5% interest. As they have committed default in paying the amount, the respondent filed suits against the petitioners for realisation of the amount, claiming 17.25% interest per annum compounded quarterly. As the petitioners remained ex parte the Court decreed the suits in terms of the plaint. From the judgment it is seen that the Court has not applied its mind regarding the rate of interest claimed in the petition. The respondent cannot realise more than the contract rate of interest especially when it is an agricultural loan. Therefore, the rate of interest claimed in the suit is not legally due to the plaintiff. Simply because the petitioners have not contested, the Court

cannot award more interest than the contract rate of interest.

3. It is submitted that Section 152, C.P.C. cannot be invoked in this case to correct the judgment and decree because the mistake crept in is not a clerical error or accidental omission as held by the Apex Court in Dwaraka Das Vs. State of Madhya Pradesh and Another, . In that case, what the Apex Court has stated is, that (Para 6 at p. 1032 of AIR) :--

"the omission sought to be corrected which goes to the merits of the case is beyond the scope of S. 152, for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be."

Relying on this decision, the Court below dismissed the application. But, as per the contract between the parties, the defendant is liable to pay only the contract rate of interest. But the plaintiff claimed 17.25% interest per annum compounded quarterly. Simply because the defendant did not contest the suit, the Court without looking into the contract, mechanically passed a decree allowing the plaintiff to realise more interest than what is legally due. The Apex Court held that Section 152 cannot be invoked to correct the errors, if it goes to the merit of the case. But, so far as this case is concerned, the correction of rate of "interest" does not go to the root of the case. That will not cause any prejudice to the plaintiff. Therefore, that decision cannot be applied to help the plaintiff in this case.

4. This Court in Syndicate Chit Funds Ltd. v. Narayanan Nair (1988) 1 KLT 825, held, that-

"the object of the section is to preserve substantial justice from being submerged in the bog of technical hurdles. It enables the Court to change or vary its judgment so as to give effect to its meaning and intention. It helps to minimise litigation and avoid multiplicity of proceedings. It is not merely the power vested in Court, but it casts a duty on the Court, that such amendments must be made in order to give effect to the true meaning and intention of the judgment. It is based on the principle that the act of the Court shall not prejudice any party. That is precisely the reason for empowering the Court to make such corrections even without an application from any party aggrieved. The words "either on its own motion" reflect the legislative concern to remind the Court of its duty to do the needful when a situation warrants it, even if there is no application from any person to make such corrections."

The Court also held, that-

"such power must be exercised very liberally whenever such amendments become necessary to promote the cause of Justice and to save the parties from the ordeals of a separate litigation for such reliefs."

In this case, the plaintiff is legally entitled to only 11.5% interest. But, what is awarded is 17.25% interest per annum compounded quarterly. This will really prejudice the interest of the defendant. If this correction is not made, the defendant will be put to much hardship and irreparable injury. Therefore, in the interest of justice, the correction has to be made.

In the result, these Civil Revision Petitions are allowed. The orders under challenge are set aside and the Interlocutory Applications will stand allowed.

