

(1996) 12 DEL CK 0052

In the Delhi High Court

Case No : Election Appeal No's. 72 and 73 of 1994 and 67 of 1985 and
Execution Appeal No. 70 of 1968

Lakshmi Commercial Bank Ltd.

APPELLANT

Vs

Rohtash Financiers (P) Ltd.

RESPONDENT

Date of Decision : 10-12-1996

Acts Referred:

Arbitration Act, 1940 — Section 17

Civil Procedure Code, 1908 (CPC) — Section 34

Criminal Procedure Code, 1973 (CrPC) — Section 47

Citation : (1997) 40 DRJ 18 : (1997) 2 ILR Delhi 213

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : V.K. Gupta, K.K. Mehra and Anurag Gupta, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This order will dispose of three applications being E.A.No.72/94, E.A. No.73/94 and E.A.67/85. In so far as E.A.73/94 is concerned, the prayer of the applicant/judgment debtor is that the decree as it stands pertaining to the rate of future interest directed to be payable at the rate of 12% per annum on the principal amount from the date of the decree to the date of payment is not in conformity with Section 34 CPC and as such the same needs to be modified. E.A.67/85 which is under Order 34 Rule 8 read with Rule 11 and Section 151 CPC is also more or less to the same effect. In so far as E.A.No.72/94 is concerned, the prayer of the applicant/judgment debtor is that it should be allowed to deposit Rs.2,00,000.00 and the sale of the property, namely D-343, defense Colony, New Delhi, which was pledged to the decree holder be set aside. The facts leadings to these applications are as follows:-

DECREE holder bank had provided credit facilities to the judgment debtor against equitable mortgage of letter's property, namely, D-343, defense Colony, New Delhi. The parties went to Arbitration in order to resolve their disputes regarding

the payment of the dues of the decree holder and the mode of payment. The Arbitrator, Bakshi Vikram Singh Sahni, Advocate made and published his award on March 15, 1967. The award was filed in this Court. Relevant portion of the award reads as follows:- "I award that the "Debtors" i.e. M/s. Rohtas Financiers Pvt. Ltd., Shri Verindra Kumar Suri, Shri Krishan Lal Suri and Smt. Savitri Suri do jointly and severally pay to the claimant bank a sum of Rs.2,59,841 besides the interest at 12% per annum with monthly rests, as agreed rate, as from 1.3.1967 till it is fully paid. The property D-343, defense Colony, New Delhi is already mortgaged with the claimant bank and I further award that this property belonging to M/s. Rohtas Financiers Pvt. Ltd., shall remain charged as mortgaged property with the claimant bank till all their dues are finally paid. x x x x x x x Though the Debtors have agreed to pay interest at 12% per annum with monthly rests and my this award they have been held liable to pay the interest as from 1.3.67 till the awarded amount i.e. Rs.2,59,841.00 along with interest at the aforesaid rate and other expenses incurred or to be incurred are finally paid, I give one more concession to the Debtors and further award that in case the Debtors pay the installments regularly and also deposit the amount of hundis falling due in any month over and above the sum of Rs.15,000.00 and/or pledge the fresh set of documents as mentioned above regularly and fulfill all the obligations under this award, the debtors shall get a special rebate of 1% per annum in interest payable by them. In that event, the Claimant Bank shall give to Debtors this special rebate and shall be entitled to charge interest as from 1.3.67 at 11% per annum with monthly rests."

(2) Both the decree holder and the judgment debtor filed an application for making the award a rule of the Court. Pursuant to the prayer of the parties, the award was made a rule of the Court and a decree in terms thereof was passed on May 10, 1967. As is apparent from above the judgment debtor was to pay to the decree holder a sum of Rs.2,59,841.00 with agreed rate of interest of 12% per annum. The aforesaid amount was required to be paid by installments of Rs.15,000.00 each payable every month till its realisation. In the meantime, the above said property was to remain under mortgage with the decree holder for the satisfaction of the decretal amount. The first Installment was payable on the 1st of May, 1967. The judgment debtor paid only a sum of Rs.73,763.80 but failed to pay the remaining decretal amount. As a result of the failure of the judgment debtor to pay the balance amount, the decree holder filed Ex.70/68 for execution of the decree by the sale of the mortgage property, namely D-343, defense Colony, New Delhi. Notice under Order 21 Rule 66 CPC was issued to the judgment debtor. The judgment debtor in response to the notice filed an objection petition and inter-alia pleaded that the decree holder had obtained the decree by fraud. The decree holder on the other hand contested the objection petition inter-alia on the ground that the same was not maintainable. This Court by order dated December 3, 1968 held that none of the questions raised in the objection petition related to execution, discharge or satisfaction of decree and on the contrary points urged by the judgment debtor related to the validity of the

decree. The Court was of the opinion that the objection petition was not maintainable u/s 47 CPC. While holding so, it also noticed that the judgment debtor had instituted a suit questioning the validity of the award and the decree mainly on the ground of the decree having been secured by fraud. It may also be mentioned that in the suit auction sale, which was earlier ordered to be held, was directed not to be confirmed pending its disposal. The suit filed by the judgment debtor, however, came to be dismissed by this Court on September 26, 1975. Thereafter the judgment debtor carried the matter in appeal. On 4th February, 1991 the appeal was also dismissed with the following observations:-

"The learned single Judge after appreciating the evidence on record, correctly came to the conclusion that the appellants/plaintiffs had agreed to the reference to the arbitration proceedings the terms of the award and to its being made a rule of the Court and we affirm the same. No significance can be attached to the fact that notices of the arbitration proceedings in the court were not actually served on the appellants/plaintiffs when a counsel appeared on their behalf to accept the award for the purpose of having it made a rule of the Court."

(3) Besides the aforesaid challenges to the decree, the judgment debtor had also questioned the proclamation of sale by means of application being E.A.325/69. On February 17, 1969 this application was allowed and the proclamation of sale was held to be not in strict compliance of Order 21 Rule 66 CPC with the result that the sale of the mortgaged property was stayed and the Court directed issuance of a fresh proclamation of sale in accordance with Order 21 Rule 66 of the Code of Civil Procedure. Thereafter the judgment debtor filed two more applications being I.As. 325/69 and 642/69. These I.As. questioned the decretal amount and the subsequent proclamation of sale inter-alia on the grounds that the interest was not calculated correctly and the same was charged against the directions of the Reserve Bank of India.

(4) By order dated May 19, 1969 the Court rejected both the applications and observed as follows:-

"Interest has been claimed by the decree holder in terms of the decree and if the judgment debtor had any objection to the rate of interest then it was for him to object to the rate at the proper time. After the decree this objection can have no force, particularly when the directions of the Reserve Bank of India on which reliance is sought to be placed have not been made available. If the decree holder has disobeyed any directions issued by the Reserve Bank of India then it would be for the Reserve Bank to take such action against the decree holder bank as may be considered necessary. None of the objections raised on behalf of the judgment debtor has, in my opinion, any force."

(5) Having failed in its attempt to combat the effect of the decree, the judgment debtor filed the present applications. Learned counsel for the judgment debtor mainly contended that the judgment debtor could not have been made liable to pay future interest @ 12% per annum from the date of the decree till realisation as

u/s 34 CPC future interest could be awarded only up to maximum limit of 6% per annum and that too by the Court and not by the Arbitrator who has no jurisdiction to award future interest. It was further contended that the decree being silent on the question of future interest, it should be deemed to have been rejected by the Court. Learned counsel also canvassed that the award of future interest @ 12% per annum by the Arbitrator being a nullity, this Court as the executing Court should go behind the decree and not enforce the same.

(6) In *Secretary, Irrigation Department, Government of Orissa and others vs. G.C. Roy* 1992 Sc 732, the Apex Court while overruling its earlier judgment in *Executive Engineer, Irrigation, Galimala and others vs. Abnaduta Jena* 1988 Sc 1520 upheld the jurisdiction of the Arbitrator to award pendente lite interest. In this regard it was held as follows:-

"Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and Therefore when the parties refer all their disputes or refer the dispute as to interest as such to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view."

(7) Therefore, the question of award of pendente lite interest awarded by the Arbitrator at the rate indicated in the award is beyond the pale of controversy.

(8) In so far as the question regarding award of future interest is concerned, the contention of the learned counsel for the judgment debtor that section 34 CPC would be attracted and award of future interest beyond 6% per annum is impermissible is not well founded. Section 34 of the CPC would have no application to the instant case. Rather the question of award of interest would be governed by Order 20 Rule 11 CPC as the sum awarded in favor of the decree holder is payable by way of installments. At this stage it will be convenient to refer to Order 20 Rule 11 CPC which reads as follows:-

Decree may direct payment by installments: "(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason (incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that) payment of the amount decreed shall be postponed or shall be made by installments, with or without interest, notwithstanding anything contained in the contract under which the money is payable. Order, after decree, for payment by installments - (2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree holder,

order that payment of the amount decreed shall be postponed or shall be made by installments on such terms as to the payment of interest, the attachment of the property of the judgment debtor, or the taking of security from him or otherwise, as it thinks fit."

(9) As is clear from above, the aforesaid provision permits the Court passing the decree to order the payment of the decretal amount by way of installments thereby postponing the immediate payment of the decretal amount and directing the payment by way of installments with or without interest. It appears to me that without this provision the Court would have no such power and the decree holder would be entitled to execute the decree immediately against the judgment debtor. Where the decree holder is entitled to execute the decree immediately against the judgment debtor, Section 34 of the CPC would apply but where decretal amount is to be paid by installments Order 20 Rule 11 CPC would apply. The logic appears to be that the decree holder has the security of the decree which he can execute immediately if he so desires and Therefore, the legislature u/s 34 CPC (before amendment) provided for a reduced interest at a maximum rate of 6% per annum from the date of decree till payment. The ceiling on rate of future interest u/s 34 has been deliberately kept by the legislature. However, where the Court defers the payment of the decretal amount or directs the decretal amount payable by installments, the decree holder is not entitled to execute the decree forthwith against the judgment debtor. In such an event, the legislature left the power of the Court in regard to the award of the future interest untrammelled under Order 20 Rule 11. By using the words "with or without interest" in Order 20 Rule 11, the legislature has given a clear indication that it was not imposing any limitation on the power of the Court to award interest at such rate it deems appropriate. Order 20 Rule 11 is a complete Code in regard to the matters pertaining to the power of the Court to make an order postponing payment of decretal amount or making it payable by installments.

(10) The learned counsel for the judgment debtor, however, cited the decision of the Supreme Court in M/s. Shree Bharat Laxmi Wool Store, Panipat and others Vs. Punjab National Bank and another, , for his contention that the award of future interest u/s 34 CPC (before amendment by Act 104 of 1976) could not be more than 6% per annum. This decision will have no application to the instant case as the future interest was awarded not u/s 34 CPC but under Order 20 Rule 11 CPC. Where the Court defers the payment of the decretal amount or makes it payable by installments, Section 34 CPC cannot be invoked and Therefore, resort to the said Section by the judgment debtor is of no avail. This view is supported by a Division Bench decision of the Gujarat High Court in Gordhandas Madhavji and others vs. M/s. Valmji Khetsi 1967 Guj, 276. The Court speaking through P.N. Bhagwati, J. (as His Lordship then was) held as follows:-

"ORDER20, Rule 11 is a self-contained provision dealing with the power of the Court to make an order postponing payment of the decretal amount or making it payable by installments. Sub-rule (1) coffers power on the Court to make such

an order at the time of the passing of the decree if there is sufficient reason to do so. But the amount decreed would not include future interest from the date of the decree. What then is to happen in regard to such decree? Sub-rule (1) makes provision in this behalf also and says that the Court may order that payment of the amount decreed shall be postponed or shall be made payable by installments, "with or without interest". The provision in regard to interest from the date of the decree in a case where payment of the decretal amount is postponed or the decretal amount is made payable by installments is thus made in sub-rule (1) itself and that sub-rule confers discretionary power on the court either to refuse interest altogether or to award interest without any limitation as to rate of interest. So also is the case in sub-rule (2). Sub-rule (2) confers power on the Court to make an order postponing payment of the decretal amount or making the decretal amount payable by installments after the passing of the decree. Such an order can be made by the Court on the application of the judgment-debtor only if the decree-holder consents and in such a case the Court can lay down such terms as to payment of interest as it thinks fit. Here again we find that provision in regard to interest from the date of the order is made in sub-rule (2) itself and full and absolute discretion is conferred on the Court in the matter of award of interest. It will thus be seen that each of the two sub-rules or Order 20 Rule 11 enacts a self-contained provision conferring power on the Court to postpone payment of the decretal amount or to make it payable by installments and providing for award of interest from the date of the decree or order, as the case may be. There is, Therefore, no scope or need to resort to Section 34 so far as the award of interest from the date of the decree up to the date of payment is concerned and the limitation as to rate of interest specified in Section 34 cannot be invoked where the Court is acting under Order 20 Rule 11 sub-rule (1) or (2)."

(11) Though strictly speaking Order 20 Rule 11 CPC does not apply to arbitration proceedings, the principle enshrined therein can be applied by the arbitrator for awarding interest in a case where a court of law in a suit having jurisdiction over the subject matter covered by the said Order could grant a decree for interest. This proposition of law is fortified by the observations of the Supreme Court in G.C. Roy's case (supra) as in that case the Supreme Court held that the principle of section 34 CPC could be applied by the arbitrator for awarding interest in a case where a court of law in a suit having jurisdiction over the subject-matter covered by section 34 could grant a decree of interest. Taking clue from G.C. Roy's case it can be safely held that the principle laid down in Order 20 Rule 11 CPC could be resorted to by the Arbitrator for granting interest at the rate of 12% per annum on the sum adjudged in favor of the respondent (decree holder) and against the petitioner (judgment debtor) as the same is payable by way of installments.

(12) It is important to point out that the award of the Arbitrator regarding payment of future interest by the judgment debtor was based upon agreement between the parties. For this reason alone the judgment debtor cannot be

allowed to question the award of interest by the Arbitrator. If a party wants an award to be set aside it must file an application within thirty days from the date of service of notice of the filing of the award as prescribed in article 119(b) of the Limitation Act. In the instant case if the judgment debtor was so minded it could have filed an application challenging the award of future interest in favor of the respondent within the time fixed by the statute. Such objections would have been covered by the words "or is otherwise invalid" occurring in clause (c) of section 30. In a situation where no objections are filed or the court does not find any ground to set aside the award, it has no option but to mandatorily pass a decree in terms of the award. This position is clear from even on a cursory reading of section 17 of the Arbitration Act which reads as follows :-

"17.JUDGMENTin terms of award Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award." (underlining added)

(13) The underlined words clearly show that after the time prescribed for filing an application to set aside the award has expired or where the application to set aside the award has been refused the court in which the award is filed has to proceed to pronounce judgment according to the award. It may also be noticed that the aforesaid provisions inter- alias provides an opportunity to the parties to assail the award but where the same is not challenged within the time prescribed by law, they cannot be permitted to assail the same subsequently, especially after the award has been made a rule of the court and a decree passed in terms thereof. This principle should apply with greater force and vigour where the award of an arbitrator or any part thereof is made with the agreement of the parties. It is also clear from Section 17 of the Arbitration Act that where the court passes decree in terms of the award, no appeal is maintainable from such a decree except on the ground that it is in excess of or not otherwise in accordance with the award. This shows that the legislature intended that all objections to the award be made by means of an application within the time prescribed for making such an application and after that time is over no further opportunity should be available to a litigant to question the award. A decree passed in terms of the award, to which parties consented cannot be allowed to be challenged u/s 47 CPC on the grounds which were open to judgment debtor at the appropriate stage before the decree was passed. In case the judgment debtor is allowed to question the authority of the Arbitrator to award future interest & at a particular rate, it will amount to permitting the judgment debtor to do something which would be opposed to sections 17 and 30 of the Arbitration Act read with section 119(b) of the Limitation Act. In *Madan Lal Vs. Sunderlal and Another*, , it was held by the Supreme Court that if a party wants an award to be set aside on any

of the grounds mentioned in section 30, it must apply within thirty days of the service of notice of filing of the award as provided in Article 158 of the Limitation Act (old), and if no such application is made the award cannot be set aside on any of the grounds specified in section 30 of the Arbitration Act. In this regard the Supreme Court observed as under :-

"If a party wants an award to be set aside on any of the grounds mentioned in section 30 it must apply within 30 days of the date of service of notice of filing of the award as provided in Art. 158, Limitation Act (old). If no such application is made the award cannot be set aside on any of the grounds specified in S.30 of the Act. It may be conceded that there is no special form prescribed for making such an application and in an appropriate case an objection to an award in the nature of a written statement may be treated as such an application. But if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the award, for if it is so treated it will be barred by limitation. "

(14) Similarly, in Sachin Sahakari Gruhanirman Sanstha Maryadit Vs. Shree Ram Construction Co., , the Bombay High Court held that it was incumbent on the person contemplating to challenge the award to make an application u/s 30 of the Arbitration Act for setting aside the same within a .pl11.3" period of 30 days from the date of service of notice of the filing of the award as prescribed in Article 119(b), Limitation Act. Since the Court upheld the award of the Arbitrator with the consent of the parties, the judgment debtor cannot now turn back and challenge the award at this stage. Learned counsel cited the decision of the Supreme Court in Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, for the proposition that the Arbitrator is not competent to award future interest i.e. for post decree period. This principle was adumbrated by the Supreme Court with specific reference to a situation arising u/s 34 and not where the parties consent to the award of the future interest by the Arbitrator who acting under Order 20 Rule 11 CPC allows the debtor to pay the sum adjudged against him in installments.

(15) I am also not impressed with the contention of the learned counsel that since the decree is silent on the point of future interest, the Court should be deemed to have refused future interest u/s 34(2) CPC. Firstly it may again be pointed out that as the payment of decretal amount was to be paid in installments, section 34(2) CPC would not be attracted. Secondly, the consent of the judgment debtor for the aforesaid award including the portion dealing with the grant of future interest at the rate of 12% per annum till realisation of the adjudged sum being made a rule of the Court has the effect of asking the Court to approve the grant of future interest and no question of pressing into service deeming fiction arises.

(16) It also needs to be pointed out that in the aforesaid suit and several applications, the judgment debtor did not rake up the issues which it is raising in the instant application. It is not disputed that the judgment debtor had agreed to

the reference to the Arbitrator, the rate of interest and the period for which the same was payable by it and to the award being made a rule of the Court. For all these reasons, E.A.Nos. 67/85 and 73/94 are dismissed.

(17) As regards E.A.72/94 is concerned, the prayer of the applicant/judgment debtor is that it should be allowed to deposit a sum of Rs.2 lakhs and the sale of the above said property which was mortgaged with the decree holder be set aside.

(18) The judgment debtor is putting forward this prayer on the ground that the decree holder in reply to one of the I.As. being I.A.1447/69 under Order 21 Rule 90 stated that "if the judgment debtor pays Rs.2 lakhs, the decree holder is prepared to give a statement that the auction proceedings will not be proceeded with." This plea of the judgment debtor needs only to be noticed to be rejected. As is apparent the decree holder had made the above said offer to the judgment debtor in September 1969 and the judgment debtor reacted to this offer by filing the instant application in the year 1994. Delayed reaction of the judgment debtor is obviously for the reason that the prices of the property have gone up tremendously. The request of the judgment debtor is not a bonafide one. Accordingly E.A.72/94 is dismissed.