(1991) 08 MAD CK 0067

In the Madras High Court

M. Elumalai APPELLANT

Vs

Devi alias Perundevi and Others RESPONDENT

Date of Decision : 16-08-1991

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 24 Rule 3

Citation : (1992) 1 MLJ 113

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—This revision petition is against the order of X Assistant Judge, City Civil Court, Madras dismissing the application filed by the petitioner herein for payment of Rs. 4,054.30 from out of the court deposit.

2. The basis of the claim of the petitioner is that he filed a suit for specific performance in O.S. No. 4986 of 1983 against the respondents on an agreement dated 10.12.1982. The suit was initially decreed ex parte on 8.11.1985. It is stated that the petitioner deposited the balance of sale consideration of Rs. 66,380 seen thereafter. The ex parte decree was set aside and a decree after contest was passed on 20.1.1987. Thereafter, the amount deposited by the petitioner in court was deposited in Vijaya Bank, T. Nagar Branch, Madras, at his instance on 27.3.1987 in the form of a cash certificate. That deposit earned interest and on the date when the petitioner filed the application before the court below, a sum of Rs. 4,054.30 had accrued by way of interest.

3. It is the contention of the petitioner that the respondents are entitled only to the balance of sale consideration, namely, Rs. 66,380 which was the only amount in court. According to him, the interest that was earned on the deposit made in the Bank at his instance belongs to him. Learned Counsel for the petitioner submits that it was open to the respondents to withdraw the same as soon as it was deposited or at least after the passing of the decree and the fact that the respondents have not withdrawn the same would disentitle them to claim interest accrued on the deposit made in the Bank. Learned Counsel also submits that

when the decree specifies the amount as Rs. 66,380 which was due according to the contract, any accretion thereto cannot be available to the respondents.

4. Learned Counsel for the petitioner placed reliance on the judgment the Full Bench in Bichal Naidu Vs. S.K. Muthuramalingam and Another, . That was a case which related to restitution. The Full Bench held that when the decree-holder was prevented from withdrawing the amount in deposit in court, till the disposal of the appeal, he could not be made liable for interest on the amount deposited in court, on the decree being set aside by the appellate court and restitution being ordered in favour of the judgment-debtor. That principle was followed and applied by Andhra Pradesh High Court in State of Andhra Pradesh Vs. Govinda Raja Rice Mill Contractors Co., Chebrolu, . The principle laid down by the Full Bench will not apply to the facts of the present case. This is not a case in which that decree-holder was prevented from withdrawing the amount deposited from court. On the other hand, he was bound by law to make the deposit. Under the Specific Relief Act, the plaintiff must prove before the court that he is always ready and willing to perform his part of the contract and it is only to show that he has performed his part of the contract, the deposit of the balance of sale consideration, it is not open to the plaintiff/decree-holder to contend that the judgment-debtor could not withdraw the same. The entitlement to enforce specific performance depends upon the deposit made by the decree-holder. Unless the decree-holder makes the deposit, he would not be entitled to execute the decree, against the defendant. Once the money is deposited as per the provisions of the Specific Relief Act or the decree, it is earmarked for payment to the judgment debtor. The court holds the money for the benefit of the defendant. If it earns interest on account of deposit in a Bank, such interest should go to the benefit of the judgment-debtor and not to the decree-holder.

5. It is contended that in one sense, the respondents are decree-holders inasmuch as they are entitled to the money and that the petitioner is a judgment-debtor to that extent. Even so, the petitioner being bound by law to make the deposit in order to get a decree for specific performance, he would not be entitled to claim interest on the amount. On the other hand, the petitioner may be entitled to claim possession of the property as a consequence of execution of sale deed in his favour. Hence, the petitioner cannot claim interest Which has accrued on the amount deposited.

6. Learned Counsel for the petitioner draws my attention to Order 24, Rule 3, Code of Civil Procedure. Under that rule, no interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of receipt of notice thereof, whether the sum deposited is in full of the claim or falls short thereof. The rule applies only to a suit where money is claimed from the defendant and he makes deposit in court. Once the defendant makes the deposit in court and gives notice to the plaintiff, he ceases to be liable for interest thereon. The rule only sets out that position. That has no application to the facts of the present case.

7. It is to be noted that the deposit in Bank was made only in March, 1987 after the decree in the suit was passed. Hence, by stretching the provisions of law to any extent, the petitioner cannot claim that he is entitled to the interest that has accrued on the deposit in Bank. After the decree, the remedy of the petitioner is only to execute the decree and take a sale deed in his favour. The respondents filed an appeal and applied for stay. Ultimately, stay was vacated. The petitioner can now get the sale deed executed in his favour by executing the decree. But, he cannot claim the interest that has accrued on the sale consideration deposited by him as directed by the decree.

8. In these circumstances, this revision petition fails and is dismissed. However, there will be no order as to costs.

