

(2013) 11 DEL CK 0102

In the Delhi High Court

Case No : EFA (OS) 12 of 2013, C.M. NO. 8983 of 2013

M/s. Bhandari Builders Pvt. Ltd.

APPELLANT

Vs

New India Mosaic and Marble Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 2, Order 21 Rule 21, Order 24 Rule 1, Order 24 Rule 3
Companies Act, 1956 — Section 28

Citation : (2013) 11 DEL CK 0102

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : S.S. Jauhar, for the Appellant; Trideep Pais, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The unsuccessful judgment debtor claims to be aggrieved by an order of 08.03.2013 by the learned Single Judge made in E.P. 188/2005. The facts are that the respondent (hereafter referred to as "the decree holder") succeeded in arbitration proceedings. An award was made on 29.07.1991 in its favour and against the judgment debtor/appellant. In terms of the award, the decree holder was entitled to an amount of Rs. 7,90,000/- with interest @ 12% per annum with costs of Rs. 1,00,000/- and Rs. 50,000/- towards cost of the machinery. The judgment debtor objected to the award in proceedings being Suit No. 3141A/1991. In another proceeding, i.e. C.P. 133/1985 under the Companies Act, the decree holder sought for winding-up of the judgment debtor. During the course of those proceedings on 19.10.1995, the Court directed the sum of Rs. 9,40,000/- to be deposited with the Registrar which was complied with on 03.11.1995. Ultimately on 24.09.2002, the judgment debtor's objections were substantially rejected and the Court directed the award to be made rule of Court and a decree prepared. The final decree amount was Rs. 7,90,000/- with interest at 12% per annum and costs of Rs. 20,000/-. On 03.02.2003, the decree holder applied in a disposed off proceedings, being I.A. 1731/2002, for permission to

withdraw the sum of Rs. 9,40,000/- deposited; this application was granted on 11.02.2003. Eventually on 25.04.2003, the decree holder withdrew the sum of Rs. 15,10,154/-, i.e. a sum of Rs. 9,40,000/- with interest, with amounts that had accrued as interest during the pendency of the proceedings, in terms of the Court's previous orders. In these circumstances, on 25.10.2005, the decree holder moved execution proceedings, claiming that a balance decretal of Rs. 5,44,954/- was due and payable. According to the decree holder, the total decretal amount worked out to Rs. 19,15,900/- as on 31.03.2003 of which a sum of Rs. 15,10,154/- had been received. The balance thus payable was Rs. 4,05,746/- and Rs. 20,000/- with interest at 12% per annum from 01.04.2003 till 01.07.2005. The execution proceedings were initially disposed off with directions on 22.03.2012. However, the judgment debtor filed review petition, i.e. No. 217/2012 for recall of that order in view of the decision of the Supreme Court. The review petition was heard and allowed on 08.03.2013. The same day the learned Single Judge proceeded to make the impugned directions. The appellant argues that the impugned order is contrary to the law declared by the Supreme Court in the Constitution Bench judgment reported as Gurpreet Singh Vs. Union of India (UOI), . It was submitted that once the sum of Rs. 9,40,000/- was deposited, the mandate of Order XXIV Rules 3 and 4 CPC had to be respected and no further interest was payable. Learned counsel relied upon the said provisions as well as the judgment in Gurpreet Singh (supra) and contended that the so-called rule of appropriation applied by the impugned order is based on an erroneous understanding of the law declared by the Supreme Court. It was submitted that when on 03.11.1995 the deposit was made, even the liability had not in fact crystallized since the Court had not directed the award to be made a rule of Court. In other words, there was no decree. Under the circumstances, there could have been no appropriation in terms of Order XXIV Rules 3 and 4, or as understood by the learned Single Judge. It was argued furthermore that the reliance placed upon the judgment in Deepak Electric and Trading Co. Vs. Union of India (UOI), , was misplaced given the facts of this case. Elaborating on this argument, it was contended that a proper application of the relevant principles would indicate that as on 25.04.2003, the unadjusted principal payable to the decree holder was Rs. 2,65,000/- of which the interest at 12% from 04.11.1995 to 25.04.2003 was Rs. 2,37,864/-. If these two amounts were added to the sums lying in Court, i.e. Rs. 9,40,000/-, the total was Rs. 14,42,864/-, which was the only sum due and payable. It was submitted that concededly the decree holder withdrew Rs. 15,10,154/- on 25.04.2003 pursuant to the order of 11.02.2003. In the circumstances, the decree holder was liable to pay back Rs. 67,290/- and the question of the judgment debtor paying any further amounts did not arise.

2. Mr. Trideep Pais, learned counsel for the decree holder, submitted that the impugned order does not call for any interference. It was submitted that the judgment and reasoning of the learned Single Judge are based on a proper appreciation of Gurpreet Singh (supra) and subsequent ruling of the Division Bench of this Court in Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh and

Company, . Elaborating on this argument, learned counsel said that the appropriate rules for adjusting and appropriating sums of money deposited in the course of legal proceedings was correctly outlined in both Gurpreet Singh (supra) and Bharat Heavy Electricals Limited (supra). This was correctly appreciated in paragraph 24 of the impugned order, which held that, ".....the question of appropriation towards the "decretal" amount did not arise.." as on 03.11.1995. It was submitted that the appellant's arguments overlooks the fact that the liability to pay interest for the period between 29.08.1991 and 03.11.1995 has remained unfulfilled and no satisfaction has been accorded. Learned counsel argued that whilst there can be no dispute about certain facts such as the deposit of Rs. 9,40,000/- on 03.11.1995, the withdrawal of Rs. 15,10,154/- on 25.04.2003 etc., the fact remained that the total calculation had to be on the basis of the amounts which the appellant was liable to pay in terms of the decree. The liability on that score from 29.08.1991 to 03.11.1995 was not accounted. It was this interest liability for such period and the further interest that arose after appropriation and adjustment which were the subject matter of the impugned orders.

3. Referring to the combined effect of Order XXI Rule 1 CPC together with Order XXIV Rules 3 and 4 CPC (which indicate the mode of payment into the Court, and the general rule that upon deposit in Court and service of due notice by the defendant to the plaintiff, the interest would cease to run), the Supreme Court held inter alia as follows in Gurpreet Singh (supra):

27. As an illustration, we can take the following situation. Suppose, a decree is passed for a sum of Rs. 5,000/- by the trial court along with interest and costs and the judgment debtor deposits the same and gives notice to the decree holder either by approaching the executing court under Order XXI Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order XXI Rule 1 of the Code. The decree holder is not satisfied with the decree of the trial court. He goes up in appeal and the appellate court enhances the decree amount to Rs. 10,000/- with interest and costs. The rule in terms of Order XXI Rule 1, as it now stands, in the background of Order XXIV would clearly be, that the further obligation of the judgment debtor is only to deposit the additional amount of Rs. 5,000/- decreed by the appellate court with interest thereon from the date the interest is held due and the costs of the appeal. The decree holder would not be entitled to say that he can get further interest even on the sum of Rs. 5,000/- decreed by the trial court and deposited by the judgment debtor even before the enhancement of the amount by the appellate court or that he can re-open the transaction and make a re-appropriation of interest first on Rs. 10,000/-, costs and then the principal and claim interest on the whole of the balance sum again. Certainly, at both stages, if there is short-fall in deposit, the decree holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment debtor would still be liable for interest on the

whole of the principal amount in case the appellate court enhances the same and awards interest on the enhanced amount. This position regarding execution of money decrees has now become clear in the light of the amendments to Order XXI Rule 1 by Act 104 of 1976. The argument that what is awarded by the appellate court is the amount that should have been awarded by the trial court and so looked at, until the entire principal is paid, the decree holder would be entitled to interest on the amount awarded by the appellate court and therefore he can seek to make a re-appropriation by first crediting the amount deposited by the judgment debtor pursuant to the decree of the trial court towards the cost in both the courts, towards the interest due on the entire amount and only thereafter towards the principal, is not justified on the scheme of Order XXI Rule 1 understood in the context of Order XXIV Rules 1 to 4 of the Code. The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment debtor to pay interest on that part of the principal which he has already paid or deposited.

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36. Can a claimant or decree holder who has received the entire amount awarded by the reference court or who had notice of the deposit of the entire amount so awarded, claim interest on the amount he has already received merely because the appellate court has enhanced the compensation and has made payable additional compensation? We have already referred to Order XXI and Order XXIV of the Code to point out that such a blanket re-opening of the transaction is not warranted even in respect of a money decree. Section 28 of the Act indicates that the award of interest is confined to the excess compensation awarded and it is to be paid from the date of dispossession. This is in consonance with the position that a fresh re-appropriation is not contemplated or warranted by the scheme of the Act. But if there is any shortfall at any stage, the claimant or decree holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and costs and then towards the principal, unless the decree otherwise directs.

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49. Though, a decree holder may have the right to appropriate the payments made by the judgment-debtor, it could only be as provided in the decree-if there is provision in that behalf in the decree-or, as contemplated by Order XXI Rule 1 of the Code as explained by us above. The Code or the general rules do not contemplate payment of further interest by a judgment debtor on the portion of the principal he has already paid. His obligation is only to pay interest on the balance principal remaining unpaid as adjudged either by the court of first instance or in the court of appeal. On the pretext that the amount adjudged by the appellate court is the real amount due, the decree-holder cannot claim interest on that part of the principal already paid to him. Of course, as indicated,

out of what is paid he can adjust the interest and costs first and the balance towards the principal, if there is a shortfall in deposit. But, beyond that, the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole amount and seek a re-appropriation as a whole in the light of the appellate decree.

4. After discussing the decision in Gurpreet Singh (supra) and the various steps indicated in Bharat Heavy Electricals Limited (supra), which were extracted in paragraph 22 of the impugned order, learned Single Judge stated that in principle, the steps towards appropriation of the amounts deposited are that firstly the interest liability has to be satisfied from the composite deposit. Thereafter, the costs have to be appropriated from the residue and the balance, if any, has to be adjusted against the principal liability. Any interest which arises would be then calculated with reference to the balance principal outstanding as on the date of deposit, of course after applying the appropriations rule.

5. In the present case, there is no dispute that the judgment debtor's ultimate liability was determined at Rs. 7,90,000/- with costs at Rs. 20,000/-. The decree holder was also entitled to interest at 12% per annum on the principal amount (Rs. 7.9 lakhs with effect from 29.08.1991). The amount deposited on 03.11.1995 was Rs. 9,40,000/-. Learned Single Judge was of the opinion that the rule of appropriation applicable in this case did not affect the decree holder's rights in the manner suggested by the appellant because the sum of Rs. 9,40,000/- did not constitute the full amount payable but only a part of the judgment debtor's liability as on 03.11.1995. The impugned order proceeded on the footing that wherever the amount deposited is insufficient to cover the entire amount, i.e. the principal and interest as on the date of the deposit, it is one thing to absolve the judgment debtor from any liability to pay interest on that amount but entirely another to say that the judgment debtor has no liability to pay any interest at all. In other words, the judgment debtor in such circumstances cannot deduct the benefit of interest accruing on the same deposit and kept in a fixed deposit since it already benefits from the deposit having been made and consequently - probably more importantly, the amount stands appropriated in a manner as to wipe-out the interest payable on the costs and duration of the principal amount from the date of deposit.

6. This Court is of the opinion that the arguments of the appellant are insubstantial. The reasoning of the learned Single Judge - that where the judgment debtor does not deposit the whole of the liability, but only a part of it, the decree holder is entitled to appropriate the sums in the manner he chooses. Thus the finding that the rule and the various steps of appropriation were correctly applied, and cannot be faulted. This is for the reason that on 03.11.1995, i.e. the date when the costs of Rs. 9.4 lakhs were deposited, the interest for the period 29.08.1991 till the date of deposit was Rs. 3,96,264/-. If that sum and further sum of Rs. 20 lakhs (towards costs) was further deducted from the deposit, the balance left would be Rs. 5,23,726/-. This amount had to

be entirely appropriated towards the liability to pay principal, i.e. Rs. 7,90,000/-. Thus, as on 03.11.1995, after due appropriation, the principal sum still outstanding and payable was Rs. 2,66,264/-. Learned Single Judge correctly applied the rule indicated in Gurpreet Singh (supra) and held that interest at 12% per annum would be payable on the said balance of Rs. 2,66,264/-. Any other interpretation would lead, in the opinion of this Court, to strange and inequitable results. For instance, if the decretal liability is Rs. 1 crores and with interest at 12%, the total liability (principal plus interest) working out should be Rs. 1.5 crores as on the date of deposit. If the judgment debtor's argument were to be accepted, his liability to pay interest would cease even if he was to make meagre deposit of Rs. 1.5 lakhs after the decree holder is made to wait for considerable period of time. In other words, the liability which arises from a decree cannot be obliterated in the manner sought to be argued by the judgment debtor. This Court finds no infirmity with the reasoning and directions of the learned Single Judge. The appeal and pending application are accordingly dismissed.