(2007) 01 KL CK 0035

In the High Court Of Kerala

Case No : WP (C) No. 20129 of 2005 (U)

Narayanan Nair APPELLANT

Vs

The Federal Bank Ltd. and N. Surendran RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152, 34
Constitution of India, 1950 — Article 227

Citation : (2007) 01 KL CK 0035

Hon'ble Judges : M. Sasidharan Nambiar, J

Bench : Single Bench

Advocate : AVM. Salahudin, for the Appellant; Mohan Jacob George, for the Respondent

Final Decision : Dismissed

Judgement

M. Sasidharan Nambiar, J.—Petitioner is the first defendant in O.S.403 of 1999 on the file of Sub Court, Kozhikode. First respondent is the plaintiff. The suit was filed seeking a decree for realisation of Rs. 6,78,509.45 with interest at 21.42% with quarterly rests by the sale of the mortgaged properties. As per judgment dated 7.12.2000, suit was decreed allowing plaintiff to realise the same with interest at 21.41% with quarterly rests from the date of the suit till realisation by sale of the plaint schedule properties. Petitioner thereafter filed I.A.1086 of 2004, an application u/s 152 of the CPC to amend the decree and judgment contending that instead of 6% interest, by mistake the court awarded future interest at 21.42% and therefore it is to be corrected. Under Ext.P2 order learned Sub Judge dismissed the application. It is challenged in this petition filed under Article 227 of the Constitution of India.

2. Learned counsel appearing for petitioner and first respondent were heard.

3. The argument of the learned Counsel appearing for petitioner, relying on the decision of a learned single Judge of this Court in George v. Federal Bank 2000(1)KLT 715 was that when the court has committed a mistake without

considering the future rate of interest payable for the decree amount, it can be corrected u/s 152 of the CPC and the judgment shows that the rate of interest payable was not specifically considered by the learned Sub Judge and in such circumstances, it is a mistake which is to be corrected and Ext.P2 order passed of the learned Sub Judge is to be quashed. Reliance was placed on the decision of the apex court in Ashutosh Vs. State of Rajasthan and Others, and it was argued that interest of 21.42 with quarterly rests is highly excessive as held by the apex court and therefore court below should have amended the decree providing future interest at 6%.

4. The learned Counsel appearing for first respondent argued that the facts of the case considered by this Court in George''s case (supra) was entirely different and it cannot be applied to the present case where the fact that it was a commercial transaction was not disputed and petitioner contested the suit and Sub Judge directed payment of future interest at the contract rate as it is a commercial transaction and Section 152 of CPC cannot be invoked as sought for.

5. Section 152 of CPC provides that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either on its own motion or on an application of any of the parties. It is therefore clear that the mistake which could be corrected u/s 152 of the Code is either a clerical or arithmetical mistakes in the judgment, decree or orders or any accidental slip or omission thereon. The court is empowered to correct them either on its own motion or on the application of any of the parties. Ext.R1(a), copy of the plaint produced by first respondent shows that it was specifically pleaded in the plaint itself that the transaction was a commercial transaction as loan was obtained for the trading purpose of the defendants and the contract rate of interest payable was 21.42% per annum with quarterly rests. Ext.R1(b)judgment shows that the fact that it is a commercial transaction was not disputed by the defendants. The learned Sub Judge did not raise any issue on the rate of interest payable, though defendants contended that interest claimed is excessive. The learned Sub Judge, after considering the respective cases, granted a decree providing future interest at the rate of 21.42% with quarterly rests. It cannot be said that the liability cast under the judgment to pay rate of interest is either the result of any accidental omission or clerical or arithmetical mistake, which can be corrected as provided u/s 152 of the Code of Civil Procedure.

6. The facts of the case in George''s case was entirely different. That was a case where defendant remained exparte. In the plaint itself it was specifically contended that it was an agricultural loan. But without taking note of this fact, an exparte decree was passed providing future interest as if it is a commercial transaction. An application u/s 152 of the Code to correct the future rate of interest was moved before the trial court. It was dismissed. That was challenged in this Court. The learned Single Judge found that it was a mistake committed by the court without going through the contentions raised in the plaint. In such

circumstances interest of justice warrants that the mistake is to be corrected u/s 152 of Code of Civil Procedure. That decision cannot be applied in a case where defendants with open eyes contested the suit and did not dispute the fact that it is a commercial transaction.

7. Section 34 of the Code provides future interest at 6% per annum from the date of decree provided it is not a commercial transaction. If it is a commercial transaction, interest can be awarded at the contract rate. That exactly was done by the Sub Judge.

If the case of petitioner is that learned Sub Judge should not have awarded the rate of interest as claimed by the plaintiff, remedy of petitioner is to challenge the judgment by a regular appeal and not by filing an application u/s 152. As it is neither an accidental or clerical mistake, it cannot be corrected u/s 152 of Code of Civil Procedure. Though reliance was placed on the decision of the apex court in Ashuthosh''s case, those facts are also entirely different. The Supreme Court has not laid down the law that irrespective of the commercial transaction, in a suit for realisation of money, future interest cannot be granted at the contract rate. In such circumstances, the petition is dismissed.

