

(2008) 11 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 15403 of 2005

P.S. Patil Chikodi and Others

APPELLANT

Vs

Lakhamappa Kallappa Khot and Others

RESPONDENT

Date of Decision : 18-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2009) 1 KCCR 272

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : B.S. Kamate, for the Appellant; C.S. Kothawale, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure, J.—Petitioners had challenged the order dated 7.2.2005 in Execution Case No. 5 of 1998 rejecting the Memo of Calculation dated 29.10.2004 filed by them.

2. Facts relevant for the purpose of this petition are as under:

Respondents herein filed Original Suit No. 113 of 1987 for recovery of money of Rs. 94,200/- with interest. The said suit came to be decreed by the judgment and order dated 30.7.1994 granting decree for Rs. 91,311.20 with proportionate cost and future interest at 18 per cent per annum from the date of the suit till the date of the decree and at the rate of 12 per cent for the subsequent period on the principal amount of Rs. 45,655.60 against the petitioners herein. It is after passing of the decree that the respondents filed Execution Case No. 5 of 1998. During the pendency of the execution proceedings, on different occasions, the judgment-debtors paid an amount of Rs. 1,68,968.70 and filed a Memo of Calculation dated 29.10.2004 giving particulars regarding payment and the amount due under the decree. It is the claim of the judgment-debtors that in view of payment of Rs. 1,68,968.70, the whole amount under the decree has been satisfied, and, therefore, they sought for closure of the Execution Petition.

The trial Court heard on the Memo filed by the judgment-debtors i.e., petitioners herein, and, taking into consideration the decree of the trial Court and the Memo of Calculation, held that they have to calculate interest at 18 per cent on the amount of Rs. 91,311.20 (decretal amount) from the date of the suit till the date of the decree, and, as the petitioners herein did not calculate the said interest on the decretal amount, rejected the Memo of Calculation and directed continuation of the execution and posted the matter for payment of the balance amount, holding that the petitioners have to calculate the interest at 18 per cent per annum on the amount of Rs. 91,311.20 and not on Rs. 45,655.60 (the loan amount advanced). Aggrieved by the said order, this petition has been filed.

3. I have heard the learned Counsel for the petitioners and also that of the respondents.

4. The points that arise for my consideration are:

1. Whether the order passed by the Trial Court rejecting the Calculation Memo and directing calculation of interest at 18 per cent per annum on the amount of Rs. 91,311.20 is illegal and perverse?

2. What order?

5. It is the contention of the learned Counsel for the petitioners that the decree of the trial Court is for an amount of Rs. 91,311.20, and the principal amount mentioned in the decree at Rs. 45,655.60 is the amount which has to be considered for calculating the interest at the rate of 18 per cent from the date of the suit till the date of the decree and that the interest at the rate of 12 per cent was awarded for the period subsequent to the date of decree on the principal sum only. In the circumstances, it is his submission that as per the Memo of Calculation, the total amount of the decree is Rs. 91,311.20 and the interest at 18 per cent was calculated on the principal amount of Rs. 45,655.60 from the date of the suit till the date of the decree, and, in the circumstances, he submits that the trial Court has committed an error in rejecting the Calculation Memo as the amount under the decree was satisfied by the petitioners.

6. Per contra, it is the contention of the learned Counsel for the respondents that the interest awarded at 18 per cent is on the amount of the decree at Rs. 91,311.20 and not on the principal sum of Rs. 45,655.30. In the circumstances, he submits that the decree has not been fully satisfied by the petitioners and therefore the trial Court was right in rejecting the Calculation Memo and in posting the matter for payment.

7. It is relevant to note that the claim of the respondents in the trial Court in OS No. 113 of 1987 was for an amount of Rs. 45,655.60 with interest at 18 per cent. The trial Court in the suit took into consideration the contractual rate of interest at 18 per cent on the amount of Rs. 45,655.60 and also the total amount payable to the plaintiffs. This aspect of the matter has been taken into consideration by the Court while appreciating Issue No. 4 in the said suit. In the

circumstances, the amount of claim in the suit was restricted by the trial Court at Rs. 91,311.20, and, therefore, ultimately, it held that the suit has been partly decreed for Rs. 91,311.20 with proportionate cost and future interest at the rate of Rs. 18 per cent per annum from the date of the suit till the date of the decree and at the rate of Rs. 12 per cent per annum for the subsequent period on the principal amount of Rs. 45,655.60 against the defendants concerned. Learned Counsel for the petitioners, interpreting the portion of this decree, contends that the word "and" - a conjunction, has been used to denote the rate of interest at 18 per cent from the date of the suit till the date of the decree and the rate of interest at 12 per cent for the subsequent period till payment refers to the principal amount of Rs. 45,655.60 and not to the decretal amount of Rs. 91.311.20. In the circumstances, he contends that the order impugned is illegal.

8. Learned Counsel for the respondents inviting attention of this Court to the provision of Section 34 of the CPC argued that in a decree for payment of money the Court may order interest at such rate reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum, as the Court may deems reasonable on such principal sum, from the date of the decree to the date of payment. Insofar as commercial transaction is concerned, the Section provides that further rate of interest shall not exceed contractual rate of interest. Relying upon the provisions of Section 34 of the Civil Procedure Code, learned Counsel for the petitioners referred to a decision of the Apex Court reported in (2001) 2 SCC 758 (T.P. George v. State of Kerala and Another), wherein it has been held as follows:

There are four stages of grant of interest viz. (1) from the stage of accrual of cause of action till filing of the arbitration proceedings, (2) during pendency of the proceedings before the Arbitrator, (3) future interest arising between the date of award and date of the decree, and (4) interest arising from the date of decree till realization of the award. The power of Court to grant interest from the date of decree is not in doubt.

So also, he relied on a decision of the Apex Court reported in Oil and Natural Gas Commission Vs. M.C. Clelland Engineers S.A., . So far as the rate of interest to be considered u/s 34 of the CPC and as could be seen from the provision of Section 34 of the Code, it is relevant to note that as regards the award of rate of interest is concerned, the Court has to consider the rate of interest on the amount payable from the date of advance till the date of the suit, and further rate of interest includes between the institution of the suit till the date of the decree and subsequent interest from the date of the decree till the payment. So, in the context of provisions of Section 34 CPC and also the decision referred to above, now it is necessary for me to take into consideration the decree of the trial Court in OS No. 113 of 1987, wherein it held that on the decretal amount plaintiffs are entitled to the proportionate cost and future interest at the rate of

18 per cent and the word "and" used herein is the conjunction which joins the rate of interest with the amount of decree. Insofar as rate of interest at 18 per cent is concerned, the trial Court has made it clear that the rate of interest at 18 per cent would be from the date of the suit till the date of the decree and it further used another conjunction "and" to the interest at 12 per cent for the subsequent period on the principal amount of Rs. 45,655.60. So, in my considered opinion, rate of interest at 12 per cent would be on the principal amount of Rs. 45,655.60 and the rate of interest at 18 per cent would be on the decretal amount of Rs. 91,311.20 from the date of the suit till the date of the decree. Though in the decree the words "principal amount of Rs. 45,655.60" have been used, this principal amount is not the amount which has been stated as "principal sum" in Section 34 of the Code of Civil Procedure. So far as the words "principal sum" used in Section 34 of the Code is concerned, the High Court of Delhi in a decision reported in AIR 1989 Delhi 107 (Syndicate Bank v. West Bengal Cements Limited and Others) held as follows:

Where the statement of account of the Bank showed that the Bank computed interest with quarterly rests and after the quarter the interest was added to the last balance and that amount was treated as "principal sum" for computing interest for the next quarter and so on and so forth and no contract was either pleaded or proved by borrower showing that amount inclusive of interest could not be treated as "principal sum" and the borrower acknowledged liability for the sum arrived at by the Bank in the aforesaid manner the amount so arrived at would be the principal sum for purpose of interest u/s 34.

9. Learned Counsel for the respondents has relied on a decision of the High Court of Punjab and Haryana reported in M/s. Jagdamba Rice Mills and others Vs. Oriental Bank of Commerce, Karnal, , wherein the High Court held that the principal amount due includes also the amount due as interest, and that the total amount adjudged is the principal amount. So, taking into consideration the provisions of Section 34 of CPC and the words "principal sum" used therein, and in the context of the principle laid down by the Apex Court and by other High Courts referred to above, I am of the considered view that the "principal sum" used in Section 34 CPC includes the amount payable to the plaintiff inclusive of interest from the date of transaction till the date of the institution of the suit. In the circumstances, as respondents decree-holders were entitled to Rs. 91,311.20, the Court ordered future interest at 18 per cent on the amount of Rs. 91,311.20 and for the period subsequent to the decree it awarded interest at 12 per cent on the principal amount of Rs. 45,655.30. In the circumstances, I am of the opinion that there is no illegality in rejecting the Memo of Calculation filed by the petitioners considering the interest at 18 per cent on the amount of Rs. 45,655.60

10. While drawing decree or passing orders, it is necessary for the Courts to use simple language so that the party could understand the real meaning of the decree without leading to any sort of complications. While passing orders in OS

No. 113 of 1987, the Court in a single complex sentence by using two conjunctions has passed the order and in turn the decree which led to complications in its interpretation. It is relevant to note that though the suit was instituted in the year 1987 and the Execution Case came to be filed in the year 1998, the matter is still pending for satisfaction of the decree. Memo of Calculation was filed on 29.10.2004 and the matter is pending since for the last more than 3 years solely for the purpose of interpreting the decree passed in OS No. 113 of 1987. It is because of the use of compound sentence adopted by the trial Court in Original Suit No. 113 of 1987 which has led to this sort of complication. In the circumstances, I think that it is advisable for the Courts below to use simple language so that it gives proper meaning and there would not be any difficulty in its interpretation.

11. Taking into consideration the decree passed by the Court in OS No. 113 of 1987, I am of the opinion that the Trial Court was right in rejecting the Memo of Calculation filed by the petitioners and directing payment of the amount calculating the interest at 18 per cent on Rs. 91.311.20. Hence, I answer point No. 1 in the negative. Hence, I pass the following:

ORDER

Petition is dismissed.

No order as to costs.