

(1995) 02 DEL CK 0053

In the Delhi High Court

Case No : I.A. No. 2263 of 1994 in Suit No. 299 of 1988

Punjab National Bank

APPELLANT

Vs

Amit Alloys Strips Private Ltd. and Others

RESPONDENT

Date of Decision : 20-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, 152

Citation : (1996) 1 BC 190 : (1995) 58 DLT 138

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : S.P. Aggarwal and Sandeep Aggarwal, for the Appellant; P.C. Khanna Upender Sharma and Ruchi Sindhwani, for the Respondent

Final Decision : Allowed

Judgement

J.K. Mehra, J.—This is an application filed by the plaintiff wherein it has submitted that on account of an accidental slip and/or omission, the interest pendente life has not been awarded though future interest has been awarded by the Court. Notice of the application was given to the judgment-debtors and defendants/judgment-debtors Nos. 2, 3 and 5 filed a reply contesting the application whereas Counsel for judgment-debtor No. 1 stated that in case the Court is of the view that there was an omission, the same may be supplied and judgment corrected.

2. The present suit was filed by the plaintiff/decreed-holder for the recovery of the money advanced by, inter alia, enforcing the mortgage. The transaction between the plaintiff/decreed-holder Bank and the respondents/defendants could not be described as nothing other than commercial transaction and in such cases the Court has discretion to award interest even in excess of 6% up to contractual rate and in case no contractual rate is fixed by awarding the rate the Court may award such rate of interest on which money is lent by nationalised banks in relation to commercial transaction.

3. I have heard the parties. The plaintiff has argued that the Court had all along in its mind the award of interest and that there were clerical omissions both with regard to the rate of interest and as also of the words pendente lite interest. While the omission of the rate of interest was supplied by the Court by inserting the same in his own hand, the omission regarding pendente lite interest remained unconnected.

4. On the question of payment of interest, Mr. Aggarwal appearing for the plaintiff-Bank has laid lot of stress on the provisions of Order 34 Rule 11 CPC and has contended that the Court in terms of the said provisions had no option but to award interest as provided under Order 34 Rule 11 CPC. The said rule reads as under:--

"Rule 11 - Payment of interest

In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely -

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage -

(i) on the principal amount found or declared due on the mortgage, - at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,

(ii)

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money, -- at the rate agreed between the parties, or, failing such rate, at such rate not exceeding six per cent per annum as the Court deems reasonable; and

(b) subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in Clause (a) as calculated in accordance with that clause at such rate as the Court deems reasonable."

5. He has also relied upon the decisions in the cases of AIR 1927 1 (Privy Council) reported as , Konakalla Venkata Satyanarayana (died) and AIR 1953 Nag 258 Konakalla Venkata Satyanarayana (Died) and Others Vs. State Bank of India and Others, , The Assam Tea Corporation Ltd. Vs. Narayan Singh and Another, and West Bengal Financial Corporation and Another Vs. Bertram Scott (I) Ltd. (In Liquidation), , in support of his contention that the interest pendente lite is also payable under Order 34 Rule 11 CPC.

6. Mr. Aggarwal referred to the aforesaid rulings in support of his contention that in a mortgage suit the ordinary rule is that interest from the date of the suit till the date of redemption of the mortgage by the mortgagee at the contractual rate

is awarded and not on a different rate unless there are circumstances justifying the same.

7. Mr. Khanna, on the other hand has taken up the objection that the present application u/s 152 CPC is not maintainable inasmuch as the alleged error sought to be corrected is neither a clerical error nor arithmetical error nor is it an accidental omission. Before I deal with this contention any further, it will be appropriate to refer to Section 152 CPC which reads as under:--

"S.152 Amendment of judgments, decrees or orders--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 of its own motion or on the application of any of the parties."

8. I find from the said Section that it is not only arithmetical mistake, but also all clerical mistakes resulting from any accidental slip or omission which may be corrected by the Court on its own motion or on an application by the party. As such, if this omission had come to the notice of the Court, the Court was not powerless to rectify the situation. Mr. Khanna further argued that it is in fact a case for review and not rectification u/s 152 CPC. He has referred to *Inderjit Singh Vs. Sahu Chheda Lal and Another*, , Mr. Khanna has addressed lengthy arguments on the chargeability or otherwise of compound interest by the bank and he has also pointed out that the principal sum has to be adjudged by the Court. Mr. Khanna relied on the Full Bench decision of Bombay High Court in the case of *Union Bank of India Vs. Dalpat Gaurishankar Upadhyay*, . Mr. Khanna has laid lot of stress on the determination of the amount and had stressed that in terms of Bombay Judgment the Court should have determined the principal amount which was lent originally and the interest accrued thereon separately. The view of the Delhi High Court as recorded in *Syndicate Bank Vs. West Bengal Cements Ltd. and others*, is, however, different. He has also taken me through the plaint to point out that it is only one defendant who was the mortgagee and that the preliminary mortgage decree can be ordered only against the said defendant. According to him, the mortgage was only by defendant No. 2 as set out in para 23 of the plaint, although the prayer was for a mortgage for the recovery of Rs, 21,65,765. In any event, this controversy cannot be gone into while deciding the present application and as such the question clearly falls outside the purview of the present application.

9. Having considered all the contentions of the parties, I find that in fact, all that was required to be noticed was that whether the omission of the words "pendente lite and" from the last paragraph of the judgment was the result of a clerical mistake which occurred through an accidental slip or omission or was consciously omitted by Court. In the penultimate paragraph of the judgment, I have held that the claim of the plaintiff stands proved. The claim included the pendente-lite interest. The only change intended was in the rate of interest which was fixed at 13.5% p.a. I had absolutely no intention to disallow the pendente lite interest and non-appearance of the words "pendente lite and" before the

word "future" in the last one line of the judgment is the result of an accidental slip. I am availing this opportunity to clarify the judgment that the decree has been passed in terms of the prayer in the plaint which had in terms claimed pendente lite interest which was fixed by me at 13.5% p.a. For that reason also, the words "pendente lite" and future interest @ 13.5% and costs" be read in place of words "future interest @ 13.5%" in the judgment. This application is disposed of accordingly.