

(1996) 09 KAR CK 0030

In the Karnataka High Court

Case No : Civil Revision Petition No. 616 of 1993

Smt. Smithaben H. Patel and others

APPELLANT

Vs

Industrial Credit and Development Syndicate and another

RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Contract Act, 1872 — Section 59

Citation : (1999) 95 CompCas 825

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : D.L.N. Rao, for the Appellant; T.N. Raghupathy, for the Respondent

Judgement

M.F. Saldanha, J.—An interesting aspect of the law relating to the question concerning the manner in which instalments paid pursuant to the passing of a decree are required to be appropriated has arisen for consideration in this case. The petitioners are the judgment debtors who submitted to a decree in O.S. No. 1727 of 1982, for a sum of Rs. 7,29,980.73. The respondents are a financial institution and the decretal amount consisted of certain finances which the respondents had made available to the petitioners as also interest at the agreed rate between the parties. The decree also specified that the petitioners who are the judgment debtors, would be entitled to satisfy the decree through instalment payments of Rs. 20,000 per month. The admitted position is that the petitioners did commence making the instalment payments and continued to do so for a considerable period of time. The dispute has arisen because right from the very inception, the petitioners along with each of their instalment payments, in their covering letter, specified that the instalment in question should be adjusted against the principal. As such, the petitioners maintained an account of the depleting balance and, therefore, wrote to the respondents on May 21, 1985, that the principal amount had been wiped out and that the future instalments which they were sending, should be adjusted against the outstanding interest and costs. The respondents, at this stage, continued to issue the receipts for the

instalments which indicated that the payment was accepted against part satisfaction of the decree. In July, 1987, the real dispute arose because the petitioners informed the respondents that they had first liquidated the principal amount and that they have thereafter paid the outstanding interest and costs and that, therefore, the decree stands fully satisfied. The respondents relied that being a banking company, they had followed the well-settled rule that the principal, interest and costs are computed under three different heads and that as far as the principal is concerned, the interest keeps running and gets added to the head of interest and that as far as the instalment payments are concerned, they are first adjusted against the interest and costs and after those two heads are wiped out only, does the balance amount get adjusted towards the principal amount. On the basis of this contention, the respondents pointed out that there is still a substantial amount due which aggregated to Rs. 2,15,807.22 and, since the petitioners disputed this computation, the respondents took out execution proceedings for recovery of that amount on the ground that the decree had not been satisfied.

2. Before the executing court, the petitioners raised the same contention, namely, that the decree had been satisfied. The point formulated basically was that the petitioners had consistently indicated the manner in which the payment received from them was to be appropriated and they contended that the respondents did not dispute this position at any time when they accepted the payments. They, therefore, contended that the court must uphold the position that there was an arrangement between the parties to appropriate the instalments towards the principal first and towards the other heads thereafter, and in this view of the matter, there was no amount outstanding as wrongly contended by the respondents. The plea canvassed on behalf of the respondents was that they have followed the normal rules applicable in banking practice and which have been consistently enunciated by the courts for purposes of adjustment of amounts received by way of instalment payment and that consequently, the method of accounting followed by them is liable to be accepted by the court and the petitioners must be directed to pay up the balance amount claimed. The learned judge, after considering the rival contentions, rejected the plea put forward by the judgment-debtors and directed recovery of the balance amount. The present civil revision petition is directed against that order.

3. This is a hotly contested litigation and the parties produced over 200 exhibits before the executing court. The factual position that emerges is quite unequivocal in so far as the petitioners did not default as far as the instalment payments were concerned. They are also consistent with regard to the directions given by them to the respondents, namely, that they have very clearly indicated, until the whole of the principal amount was wiped out, that the instalment was to be appropriated against the principal and, thereafter, they have indicated that the amount paid was to be appropriated against the interest and, lastly, they have indicated that the amount paid was to be appropriated against the costs. This particular set of transactions has been spread over a period of about four

years and something like 48 instalments have been paid. The respondents have also issued receipts indicating that the amount was received in part satisfaction of the decree. There are on record letters from the petitioners whereby they have asked the respondents for a statement of account from time to time and the respondents have furnished the statement of accounts indicating the receipt of the instalments by them and the balance due. In the very first statement of account that was issued to the petitioners on November 18, 1993, which is exhibit P-11(a), the respondents have set out the three distinct heads of principal, interest and costs, they have also indicated the receipt of the first instalment and they have indicated the head against which it was appropriated. This briefly is the factual position. As far as the balance statements of accounts are concerned, all that the respondents did was to indicate the three heads one after the other, to total them up, to indicate the instalments received and, thereafter, compute what is the overall balance. There is no distinct indication as to which particular head the instalment was appropriated against.

4. As far as the legal position is concerned, it has given rise to a very violent debate because the petitioners' learned advocate has submitted that it makes no difference merely because a decree has been passed, but that a perusal of the decree will indicate that there were three distinct debts due from his clients, the principal, the outstanding interest and the costs. He states that these three heads had not been merged by the court and that in fact, they cannot be merged. According to the learned advocate, the normal principal which the courts have applied in such cases and which he does not dispute, is that the payments that are forthcoming would first be adjusted against the head of costs and interest and would thereafter go towards satisfaction of the decree. His case is that this is not an inflexible rule and that section 59 of the Contract Act gives the debtor the right to specify the manner in which the appropriation is required to be made and it is open to the creditor to either accept that arrangement or revoke it. In support of his contention, the learned advocate has submitted that undoubtedly, the Division Bench decision of this court in *Life Insurance Corporation of India v. B. R. Honnappa* [1972] 2 Mys LJ 169 : AIR 1973 Mys 86 which, in turn has followed several of the earlier decisions including the leading case on the point in *Meghraj and Others Vs. Mst. Bayabai and Others*, , has laid down that the interest and costs will first have to be wiped out as the instalments are paid progressively and that the principal will come thereafter. The learned advocate draws my attention to the Supreme Court decision referred to by me wherein the court has carved out an exception to the normal rule. Obviously, the court was taking cognizance of the ingredients of section 59 of the Contract Act, and, therefore, the court has itself specified that the normal rule would apply unless there is an agreement to the contrary between the parties. In taking this view, the Supreme Court relied heavily on the well-known decision of the Privy Council in *Meka Venkatadri Appa Row Bahadur Zamindari Garu v. Raja Parthasarathy Appa Row Bahadur Zamindari Garu* AIR 1922 PC 233, which decision has been followed by the Full Bench of the Allahabad High Court in the

case in *Gajram Singh and Others Vs. Lala Kalyan Mal*. The petitioners' learned advocate submitted that the law itself makes provision for a situation whereby the normal rule or the normal course of events can be departed from. Dealing with a situation whereby the creditor is not agreeable to accept such manner of appropriation, the petitioners' learned advocate submitted that the creditor must, therefore, return the instalments paid and the creditor is entitled to execute the decree if he is not agreeable to accept a different sort of arrangement. In this context, the learned advocate relied on a decision of the Calcutta High Court in *Life Insurance Corpn. of India Vs. Samarendra Nath Roy*, wherein that court upheld the position that if a party desires appropriation in a manner other than what is normally accepted, there is no obligation on the part of the creditor to agree to it, but laid down that in such a situation, it was obligatory on the part of the creditor to refuse the instalment payment and to seek legal redress by way of execution of the decree.

5. In the light of this situation, the petitioners' learned advocate submitted that this court will have to apply the law to the facts of the present case which according to him unequivocally demonstrates that his clients have clearly and consistently made the payments with a specific direction that they were to be appropriated against the principal first, the interest next and the costs thereafter and it is his case that the respondents having accepted the instalments, are deemed to have agreed to the specific condition on the basis of which the payment was made. The learned advocate goes to the extent of submitting that if this is not to be construed as implied acceptance, it was obligatory in law on the part of the respondents to have either returned the instalment or to have written back very specifically to the petitioners that they were not agreeable to the manner of appropriation specified by the petitioners or in the alternative, it was open to the respondents to have sought execution of the decree. I am not in agreement with the contention that the respondents were obliged to have returned the instalment payments because the respondents are a financial institution to whom undoubtedly certain amounts of money were due and the question of appropriation is only a matter of procedure. The respondents were justified in having accepted the instalments, but what needs to be examined is as to whether they were obliged to inform the petitioners specifically that they were not agreeable to the appropriation against the head of principal first, or whether by merely sending a statement of account indicating that they had appropriated the first instalment against the head of interest/costs, they had conveyed their non-acceptance of the arrangement proposed or offered by the petitioners.

6. The respondents' learned advocate submitted that section 59 of the Contract Act would have no application in cases where a decree has been passed. His contention is that where there are multiple debts or more than one debt and where a party decides to repay the debt, it is open to the party to specify the manner in which the payment that is being made should be appropriated, but that this has nothing to do with the situation that obtains after a court of law passes a decree. As far as the latter is concerned, the contention of the learned

advocate is that the courts have clearly and consistently laid down the principle that an appropriation must be made only towards the interest and costs first and the principal thereafter and he submits that even assuming as laid down in *Meghraj and Others Vs. Mst. Bayabai and Others*, , that there can be solitary or singular exceptions to this rule, it would only arise in those cases where there is a distinct and clear-cut agreement between the parties, that the manner of appropriation will be different. The learned advocate has relied on a decision of the Orissa High Court in *The Central Warehousing Corporation, Berhampur Vs. Govinda Choudhury and Sons*, , which was an unusual case in which the deposits were made under distinct heads and the Orissa High Court upheld the position that it is open to the debtor to indicate the method of appropriation and that the option or discretion is thereafter left open to the creditor. The court had occasion to reproduce a passage from AIR 1940 63 (Privy Council) , concerning the concept of appropriation wherein the Privy Council laid down that it is the indication of an intention that money should be applied in a particular way. The whole argument canvassed by the learned advocate was that such a direction could undoubtedly emanate from the debtor, but that the discretion or option of accepting it or refusing it was still that of the creditor. Applying this principle, the respondents' learned advocate submitted that on the very first occasion itself when the petitioners sent the instalment of Rs. 20,000, they have sent the petitioners the statement of account which in no uncertain terms indicated that the amount had been appropriated towards the head of interest/costs and not against the principal. He submitted that this statement of account has admittedly been received by the petitioners and that this is indicative of two aspects, the first being that the petitioners' direction that the instalment should be appropriated towards the head of principal had not been accepted by the respondents and, secondly, that it had in fact been appropriated against the head of interest/costs and the learned advocate submits that if the petitioners still continued to send the instalments irrespective of what they indicated in the covering letters, his clients had made it very clear that the instructions of the petitioners were not being accepted or followed and consequently, it must be construed that the petitioners had accepted this position. The learned advocate submits that it was not obligatory on the part of his clients to send a specific reply to every letter and he submitted that the court should view the practicality of the situation where a financial institution is dealing with thousands of receipts every day and where it would be unreal to expect in respect of each payment or each instalment a separate communication to go back.

7. This briefly stated is the nature of the controversy in this proceeding. I have crystallised the position in law as also the facts of the case and the rival contentions put forward by both the parties. Section 59 of the Contract Act would have application in all cases of appropriation irrespective of whether it is a post decretal stage or where no legal proceedings have intervened. A debtor making a payment who is faced with multiple heads, does have the option to indicate as to specifically which of the heads the amount which is paid should be appropriated

against. It is equally true as pointed by the respondents' learned advocate that the law does not envisage any compulsion on the part of the respondents to accept such a direction or a mandate. It is open to the creditor to accept the condition or it is up to the creditor to refuse to accept that condition. In the present case, the petitioners did send the instalments and they have consistently in every letter accompanying the instalments, specified right from the beginning that the amount was to be appropriated against the head of principal. The respondents did not reply to any of those letters. The respondents did not dispute the specific mandate that came from the client who in this case happened to be the judgment-debtors and under these circumstances, the petitioners' learned advocate, on the peculiar facts and circumstances of this case, is justified in his contention that there was implied acceptance on the part of the respondents. This may not be the position in other cases, but the present case happens to be one in which the petitioners have not tried to do something underhand or clandestine, but they have very clearly, for something like four long years, specified in every letter without exception as to what specifically their instruction for appropriation was. Under these circumstances, if the respondents desired to disregard that instruction, then they ought to have communicated their refusal to the petitioners. It may be that the respondents decided to appropriate the amount in a manner contrary to the instructions from the petitioners which obviously they did. It is true that they did convey the statement of account to the petitioners. This, to my mind, is not enough because, the petitioners had sent a written mandate and if the respondents had not indicated their refusal, it is presumed that the direction was accepted and therefore, if the accounts department did something to the contrary, it was procedurally incorrect. To this extent, therefore, the mere contention that by sending a statement of account which indicated something to the contrary, there was an implied refusal, is too farfetched for the court to accept. I do concede that financial institutions like the present one dealing with a large number of transactions are not expected to indulge in voluminous correspondence and further that they are not expected, where instalments are received, to refuse them. At the same time, there is a legitimate expectation that where a client or a creditor issues a specific instruction and where banking law and practice obliges the institution to abide by that instruction, if the instruction is not acceptable, then a specific communication to that effect must result. There can be no compromise with regard to this aspect of the law and to this extent, therefore, I am unable to agree with the respondents' learned advocate that merely because one statement of account indicated a credit under the latter heads, this will have to be construed as implied refusal of the mandate from the petitioners. This can never be the position because the petitioners proceeded under the assumption under the respondents had agreed to this arrangement and they consistently continued to make the payments accompanying such a mandate for something like four years. It is, therefore, not a question of a singular lapse in which case, the position would have been different, but it is a situation where the arrangement was clear and consistent over a long period of time and in the

absence of any record refusing such an arrangement, I am unable to hold that the arrangement was not in force. Having regard to the position in law that such an arrangement is possible and permissible as far as appropriation is concerned, it is necessary to interfere with the order passed by the trial court in the present case.

8. The civil revision petition accordingly succeeds. The order passed by the trial court is accordingly set aside. The trial court is, however, directed to ask the parties to file the respective figures before it and to verify as to whether the decree has completely been satisfied and if so, no further orders will be necessary. If, however, any amount is still found outstanding from the petitioners, the trial court shall take necessary steps for recovery of that amount. For this limited purpose, the parties shall appear before the trial court on November 18, 1996.

9. The civil revision petition accordingly succeeds. No order as to costs.