

(1996) 11 DEL CK 0015

In the Delhi High Court

Case No : I.A. No. 1484 of 1990 in S.No. 290 of 1988

State Bank of India

APPELLANT

Vs

Jay Rubber Co. (I) Pvt. Ltd. and others

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Citation : (1998) 91 CompCas 493

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : Ms. Ritu Bhalla, for the Appellant; K.K. Bhuchar, for the Respondent

Judgement

Y.K. Sabharwal J.

1. The suit out of which this application has arisen was filed by the plaintiff-bank on December 16, 1987. The defendants in spite of various opportunities did not file written statement and the case was thus proceeded with under Order 8, rule 10, and the judgment was pronounced on July 27, 1989. In the judgment passed on July 27, 1989, the interest was awarded in favor of the plaintiff and against the defendants from the date of the decree. The plaintiff has filed this application pleading that the non-grant of the pendente lite interest, i.e., interest from the date of the suit till date of the judgment/decreed was on account of inadvertence and accidental slip and omission and unless rectified it would cause grave and irreparable loss and injury to the plaintiff. Thus, the plaintiff has prayed in this application filed u/s 152/151 of the Civil Procedure Code, for correction of the accidental omission and slip in the judgment and decree dated July 27, 1989, to incorporate that the plaintiff is granted pendente lite interest.

2. The application has been strenuously opposed by the defendants. Mr. Bhuchar submits that non-grant of pendente lite interest cannot be said to be on account of accidental slip or omission and if the plaintiff was aggrieved by non-grant of pendente lite interest its remedy was to challenge the judgment and decree by filing an appeal. Counsel contends that the application u/s 152 of the CPC is not

maintainable.

3. The grant of interest after filing of the suit is governed by section 34 of the Code of Civil Procedure. Section 34(2) provides that where the decree is silent with respect to payment of further interest on such principal sum adjudged from the date of decree to the date of payment or earlier date, the court shall be deemed to have refused such interest, and a separate suit Therefore shall not lie.

4. In West Bengal Financial Corporation and Another Vs. Bertram Scott (I) Ltd. (In Liquidation), , a Division Bench has held that the court has no discretion in respect of grant or non-grant of pendente lite interest and the discretion of the court is only as to the rate of such interest to be allowed. It has been held that the court was bound to decree pendente lite interest. This decision has been followed in Life Insurance Corporation of India Vs. Kumar Purnendu Nath Tagore and Another, . I am in respectful agreement with the view expressed in these decisions. In this view, the question that has now to be decided is whether non-grant of pendente lite interest, in the facts and circumstances of the present case, can be said to be or not on account of accidental slip or omission.

5. It may be noticed that when the case was taken up on July 27, 1989, the defendants had not appeared; they have not filed written statement and the decree was passed after the matter was proceeded with under Order 8, rule 10 of the Civil Procedure Code. As noticed above, future interest was awarded in favor of the plaintiff and against the defendants.

6. It is evident and obvious that the non-grant of pendente lite interest in favor of the plaintiff was on account of accidental omission since something which was intended to be incorporated in the judgment was not incorporated on account of inadvertence and also the same not having been pointed out by the counsel for the plaintiff. It is settled law that grant or otherwise of future interest is a matter of court's discretion. Even in respect of grant of future interest, it has been held that section 152 is applicable and the judgment and decree can be corrected if the non-grant is on account of accidental slip or omission. The non-grant of pendente lite interest on account of accidental slip or omission can be corrected u/s 152 of the CPC (see State of Madhya Pradesh Vs. Man Mohan Swaroop, , Devidas Khushalrao Deshmukh v. Yeotmal Central Bank Ltd. AIR 1956 Nag 239 and Jayakrishna Mangaraj Mohapatra Vs. State of Orissa and Another,).

7. Learned counsel for the defendants, however, relies upon Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, , on the scope and interpretation of section 152 of the Civil Procedure Code. The said decision also shows that accidental slip or omission is an error due to a careless mistake or omission unintentionally made. In my view, the present omission and slip in the judgment dated July 27, 1989, can be corrected u/s 152 of the Civil Procedure Code, in terms of law enunciated in the cited decisions. On the facts and circumstances of the case, it cannot be held that the accidental slip or omission is not apparent from the face of the record.

8. For the aforesaid reasons, I allow this application and direct that the judgment and decree dated July 27, 1989, be corrected and for the words "date of decree" the words "date of the suit" shall be substituted. The parties are left to bear their own costs in this application.