

(1992) 02 KL CK 0026

In the High Court Of Kerala

Case No : C.M.P. No. 409 of 1992 in A.S. 115/84

Union of India (UOI)

APPELLANT

Vs

B. Bhogilal and Another

RESPONDENT

Date of Decision : 14-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1

Citation : AIR 1992 Ker 302 : (1992) 2 ILR (Ker) 727 : (1992) KLJ 383

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : M.C. Cherian, for the Appellant; S.K. Brahmanandan, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, J.—This is an application filed under Sections 152 and 153 of the CPC for correction of the judgment. The Union of India represented by the General Manager, Southern Railway, Madras, the defendant in the suit, is the petitioner.

2. The question posed up for consideration is whether on deposit of a portion of the decree amount made pursuant to the order passed by the appellate Court in an application for interim stay of execution of the decree, interest if any shall cease to run from the date of payment of such amount.

3. The respondents filed the suit for damages. The suit was decreed for Rupees 48,703.00 with interest at 12% per annum from the date of the suit till the date of decree and thereafter at the rate of 6% till the date of realisation on the principal sum. Aggrieved by this the defendant filed appeal before this Court and this Court by judgment dated 18th July, 1990 partly allowed the appeal and modified the decree directing the appellant-defendant to pay Rs. 34650/- with interest for the same at the rate of 12% per annum from 10-8-81, i.e. the date of suit, till the date of judgment by the appellate Court and thereafter at the rate

of 6% till realisation.

4. The main contention urged in this petition is that the defendant deposited Rs. 32490/- before the lower Court on 6-8-84 towards decree amount to the knowledge of the decree-holders and therefore the defendant is not liable to pay interest at the rate of 12% per annum for this amount from the date of such payment till the date of decree. It is contended that at the time of final disposal of the appeal by this Court the learned Judge had not taken note of the fact that Rs. 32490 had been deposited before the lower Court on 6-8-84 and that was why this Court granted interest at the rate of 12% for the sum of Rs. 34,650 from 10-8-81 onwards. Therefore, it is contended that the decretal portion of the appellate judgment is liable to be corrected and the decree also is to be redrafted accordingly.

5. This petition is opposed by the respondents counsel. It is argued that the defendant deposited the amount as a condition precedent for getting stay of execution of the decree and that amount was not paid to the plaintiffs and it was lying in Court deposit. Therefore, the plaintiffs are entitled to interest at the rate of 12% per annum for the entire amount and the judgment is not liable to be corrected u/s 152 of the C.P.C.

6. I heard both sides. The contention of the petitioner that the defendant is not liable to pay interest at the rate of 12% per annum for the decree amount from the date of the suit till the date of the decree cannot be accepted. It is true that the defendant deposited Rs. 32,490 pursuant to the order passed by this Court in C.M.P. No. 13428/84. But this amount was not paid to the decree-holders, nor did they (decree-holders) make any application for refund of this amount. This amount was paid by the defendant-judgment-debtor for obtaining interim stay of execution of the decree. The payment made by the defendant cannot be said to be a payment under Order XXI, Rule I, C.P.C. Even if the plaintiffs were aware of the deposit of the amount, they were not entitled to receive it unless the Court granted permission to do so. Under Order XXI, Rule I, C.P.C. several modes of payment of money due under a decree are mentioned and if the amount payable under the decree is paid under any of, the modes prescribed under Order XXI, Rule I, Clauses (1) to (3) it is made clear that the interest shall cease to run from the date of such payment or from the date of service of notice of such payment, as the case may be. It is true that the amount payable under the decree could be deposited in Court whose duty is to execute the decree. But in the instant case the execution of the decree was stayed by this Court and any payment made thereafter cannot be made over to the decree-holder unless specifically directed by this Court. If the amount so deposited is paid to the decree-holder that would be clearly violative of the order of interim stay granted by this Court. So the amount paid by the defendant-judgment-debtor cannot be said to be a payment under Order XXI, Rule 1(1)(a), C.P.C. and it follows that the interest, if any, shall not cease to run from the date of such payment.

7. The amount deposited by the defendant was lying in Court deposit and the

decree-holder did not get that amount. Therefore, on equitable grounds also it is not fair and proper to deny interest to which the decree-holder is otherwise entitled. So, on that ground also defendant's prayer for amendment of the decree cannot be allowed.

8. This petition is dismissed with costs. 14th February, 1992.