
(2008) 01 DEL CK 0088
In the Delhi High Court
Case No : FAO (OS) 378 of 1996

Union of India (UOI)

APPELLANT

Vs

Kilpest P. Ltd.

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0088

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Aruna Suresh, J

Bench : Division Bench

Advocate : Maneesha Dhir, for the Appellant; Shiv Khorana, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the order dated 22nd March, 1996 passed by the learned Single Judge disposing of the application of the appellant registered as is No. 5048/1987.

2. A suit was instituted by the respondent seeking recovery of an amount of Rs. 5,86,017.65p on which ad valorem court fee was also paid. In the said suit the respondent who was the plaintiff, also claimed interest @ 18% per annum on the aforesaid amount from the date of the last RR i.e. 30th August, 1978 to the date of institution of the suit i.e. 10th January, 1981. On 24th October, 1986, a decree was passed in favor of the respondent /plaintiff and against the appellant.

3. We have perused the decree sheet in order to appreciate the contentions raised before us. A bare perusal of the said decree would indicate that a decree was passed for recovery of an amount of Rs. 5,86,017.65p together with interest and costs of the suit and interest @18% per annum pendente lite as also from the date of the decree till realisation of the decretal amount The said amount, as due and payable in terms of the decree passed, was also paid by the appellant to the respondent treating the decree for recovery of Rs. 5,86,017.65p along with the interest payable thereon. Subsequent to the same, an application was filed by the appellant contending, inter alia, that the appellant is entitled for

restitution of a sum of Rs.1,94,418.23p in terms of the provisions of Section 144 of the Code of Civil Procedure. The plea raised was that the principal amount, which was mentioned in the suit filed by the plaintiff - decree holder, was Rs. 4,12,665/- and on the said principal amount the plaintiff had claimed interest @ 18% per annum from 30th August, 1978 to the date of the institution of the suit i.e. 10th January, 1981, which amounted to an amount of Rs. 1,73,352.65 contending that in view of the aforesaid position the suit was filed by the respondent/plaintiff for recovery of Rs. 5,86,017.65p, the appellant would be entitled to restitution of the aforesaid sum of Rs. 1,94,418.23p. as the plaintiff/decree holder wrongly calculated pendente lite interest and future interest on the decretal amount which includes interest of Rs.1,73,352.65p whereas he was entitled to interest on the principal amount of Rs. 4,12,665/-.

4. Counsel appearing for the appellant in support of her statement placed reliance on the provision of Section 144 of the Code of Civil Procedure. Before the learned Single Judge, apparently, no such reliance was placed on the provisions of Section 144, as we find no reference or discussion on the aforesaid provision in the impugned order. What was relied upon was the provisions of Section 34 only. Counsel appearing for the appellant also places reliance on the decision of the Supreme Court in Central Bank of India Vs. Ravindra and Others, .

5. We have also heard learned Counsel for the respondent who has submitted before us that the aforesaid application, which was filed by the appellant, was not maintainable as the provisions of Section 144 of the CPC were not applicable to the contentions, which were raised.

6. We find force in the submissions of the counsel for the respondent for the simple reason that the provisions of Section 144 of the CPC Code cannot be said to be applicable to the case in hand inasmuch as in the present appeal we cannot go behind the decree as the decree has become final and binding. In the decision relied upon by the counsel for the appellant itself, it is stated thus:

...The principal sum adjudged so would be the sum actually loaned plus the amount of interest on periodical rests which according to the contract between the parties or the established banking practice has stood capitalised....

7. In our considered opinion, the aforesaid decision instead of helping the appellant to the aforesaid extent goes against the appellant, for the decree was passed by the trial court for recovery of a sum of Rs. 5,86,017.65p. The provisions of Section 144 of the Code of Civil Procedure, in our considered opinion, would also not be applicable to the case in hand, as there is no separate suit filed by the appellant wherein the decree was reversed or modified nor was there any order passed by any higher court reversing or modifying the decree already passed either in the case of an appeal, revision or in any other proceeding or otherwise.

8. In that view of the matter, we find no merit in this appeal, which is dismissed.