

(1967) 12 MAD CK 0024

In the Madras High Court

Case No : A.A.O. No. 343 of 1966 and C.R.P. No. 2549 of 1966

Union of India (UOI)

APPELLANT

Vs

Ummer Sait and Others

RESPONDENT

Date of Decision : 22-12-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 35(3)

Citation : AIR 1969 Mad 212

Hon'ble Judges : Ismail, J

Bench : Single Bench

Advocate : V. Balasubramanian and J. Jayaraman, for the Appellant; S.M. Amjad Nainar, for the Respondent

Judgement

Ismail, J.—The appellant in the civil miscellaneous appeal and the petitioner in the civil revision petition is one and the same, namely, the

Union of India, represented by the Commissioner of Income Tax, Madras. The said Union of India filed O. S. No. 21 of 1958 on the file of the

Court of the subordinate Judge of Salem and the same was decreed on 16th April 1960 with costs. On an appeal preferred by the respondents in

A. S. 183 of 1960 on the file of this court, the appeal was allowed and that decree was set aside. Before the disposal of this appeal, pursuant to

the decree in the suit, the respondents had paid the costs to the Union of India. After the disposal of the appeal, the respondents filed a petition

under Order 21, Rule 11 and Section 144, C. P. Code for recovery of a sum of Rs. 3, 528, by way of restitution, being the costs paid by them to

the Union of India with interest. That application was ordered by the learned Subordinate Judge on 20-4-1966, though the court restricted the

amount to Rs. 3328.25 inclusive of a sum of Rs. 807/- by way of interest on the

costs. It is against this order the civil miscellaneous petition has been filed by the Union of India. Since the Union of India felt a doubt whether an appeal would be maintainable, as a matter of precaution, the civil revision petition also has been filed.

2. Mr. Jayaraman, learned Counsel for the Union of India, advanced two arguments before me: (1) Without there being a specific direction from the appellate Court, the application for restitution by the respondents was not maintainable, and (2) in any event, the respondents were not entitled to interest on the costs paid by them.

3. As far as the first contention is concerned, I have no doubt whatever that the same is absolutely untenable. The right to get restitution is a right created by the statute, flowing as a consequence of the decree being reversed by the appellate court. Whether there is any direction expressly authorising the successful party in the appeal to claim restitution or not, by the very fact of the success in the appeal, the successful party acquires a right in terms of Section 144 C. P. Code. Therefore, I reject the first contention of Mr. Jayaraman.

4. The second contention of Mr. Jayaraman is based upon the fact that Section 35(3) C. P. Code has been omitted by Section 3 of the Central Act 66 of 1956. Section 35(3) before its deletion, was in the following terms:--
The Court may give interest on costs at any rate not exceeding six per cent per annum and such interest shall be added to the costs and shall be recoverable as such".

5. In my view, the presence or absence of Section 35(3) has nothing whatever to do with the question of restitution. Section 35(3) merely empowered a Court, while passing a decree in a suit awarding costs to the successful party, to award interest on such costs as well. That has no bearing whatever on the right to restitution. Suppose, in a particular case, the Court has awarded Rs. X by way of costs. By way of restitution, the party who paid the costs can recover the sum of Rs. X with interest. If, on the other-hand, the Court while awarding the sum of Rs. X, by way of costs, has also awarded a sum of Rs. Y by way of interest on Rs. X. Then while, claiming restitution, the party who paid the sum of Rs. X plus Y, will be entitled to recover the said sum of Rs. X plus Y with interest. Therefore, the deletion of Section 35(3) in 1956 does not affect the right of a

party to claim interest by way of restitution. Section 144 C.P.C. expressly provides that the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal. The express provision authorising the Court to make orders for the payment of interest is not confined to the award of interest only on any money paid by the party, being the amount decreed against the said party. There is nothing whatever in the language of Section 144 to restrict the order as to interest in that particular fashion. On the other hand, the decision in Sri Sri Sri Gajapathi Krishna Chandra Deo Garu, Zamindar of Nandigam Estate Vs. His Highness Sri Mirja Rajah Sri Pushpati Alakh Narayana Gajapathi Raju Maharaja Manya Sultan Bahadur Varu, Rajah of Vizianagram, relied on by the lower Court fully supports the claim of the respondents to interest on the amount of costs paid by them. Under these circumstances, I am of opinion that there is no substance in the second contention of Mr. Jayaraman either.

6. Since I am holding against the Union of India on merits, it is not necessary to decide whether an appeal against the order of the lower Court was maintainable or not. In this view, the civil miscellaneous appeal and the civil revision petition are dismissed with the costs of the respondents in the civil miscellaneous appeal alone.