
**P. J. Rathod (Prabhubhai S/O Jadhavji Rathod) Vs Union Of India, Thr.
Divisional Railway Manager (Engineering) South Eastern Railway, Nagpur
And Anr**

Writ Petition No. 6626 Of 2023

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Nov. 11, 2024

Acts Referred:

Code of Civil Procedure, 1908 " Order 21 Rule 1, Order 21 Rule 2#Arbitration Act, 1940 " Section 30, 31#Arbitration and Conciliation Act, 1996 " Section 34, 37

Citation: (2024) 11 BOM CK 0007

Hon'ble Judges: Anil L. Pansare, J

Bench: Single Bench

Advocate: C. B. Dharmadhikari, M. R. Chandurkar

Final Decision: Allowed

Judgement

Anil L. Pansare, J.

1. Issue Rule returnable forthwith. Learned counsel waives service of Rule on behalf of the respondents. With consent of learned counsel for the

parties, the petition is taken up for final hearing.

2. The question that arises for consideration is, whether interest will stop accruing once the amount awarded to the Decree Holder is deposited by the

Judgment Debtor in the Court other than the Executing Court?

3. According to the petitioner - Decree Holder, the liability of the Judgment Debtor to pay interest on the amount awarded would not stop on the date

of its deposit in the Court but would instead continue till actual payment is made to him.

4. In support of his contention, Mr. C. B. Dharmadhikari, learned counsel for the petitioner, has relied upon judgment passed by Division Bench of

Delhi High Court, in Delhi Development Authority .Vs. Bhai Sardar Singh & Sons, 2009 (109) DRJ 384. The facts before the Court were that an

award was passed in favour of the respondent therein in relation to the construction contract between the parties. The petitioner therein challenged the

award by filing objection under Sections 30 and 31 of the Arbitration Act, 1940. The respondent took an objection that provisions of the Arbitration and

Conciliation Act, 1996 (hereinafter referred to as the, "Act of 1996") will apply and thus the objections in the petition were not maintainable.

Learned Single Judge accepted this plea and dismissed the objection preferred by the petitioner. The petitioner preferred appeal against the dismissal

of objection. The Appellate Court stayed the execution of decree, subject to the petitioner depositing entire amount due and payable under the decree

within a period of four weeks. The petitioner deposited the entire amount before the First Appellate Court. During the pendency of appeal, the

respondent moved an application seeking permission to withdraw the amount deposited by the petitioner. The application, however, remained pending.

Eventually, the appeal was allowed and the order rejecting the petitioner's objection to the award was set aside. The appellate Court held that the

objection to award ought to have been considered under the Arbitration Act, 1940. Accordingly, the learned Single Judge was directed to decide the

objections afresh, in accordance with law.

5. Learned Single Judge then heard objections and having found no substance, dismissed the same. Consequently, the respondent was held to be

entitled to receive specified sum with interest with effect from 13.03.1986. The only variation made in the award was that the interest was reduced to

9% if the payment in terms of modification of rate of interest is made within six weeks from the date of judgment, failing which the interest was to

revert back to the rate of 18% per annum as awarded by the Arbitral Tribunal. Thus, the concession granted in the interest was conditional upon

payment of amount within six weeks from the date of judgment.

6. The respondent therein preferred an execution petition. The notice was issued to the petitioner. Pending the execution proceeding, the petitioner

Judgment Debtor made a submission that money had already been deposited and was lying in the first appeal and that the petitioner has no objection if

the respondent "Decree Holder moves for withdrawal of such an amount. The respondent contended that the amount so deposited by the

petitioner, is short of decretal amount. The Court directed the respondent to first withdraw the amount and, thereafter, file execution proceedings, if

necessary. The respondent accordingly withdrew the amount lying before the First Appellate Court. The petitioner took a plea that since interest rate

was reduced, the amount of award has been reduced and thus the petitioner will be entitled for refund of part amount. As against, the respondent

claimed that the amount of award/decreed which includes the interest is more than what has been deposited before the First Appellate Court. The First

Appellate Court permitted the respondent to withdraw the amount, by dismissing the plea put forth by the petitioner to release part amount in its

favour.

7. The Division Bench referred to order XXI Rule 1 of the Civil Procedure Code, 1908 (hereinafter referred to as the, "CPC"), which reads thus:

"1. Modes of paying money under decree."

(1) All money, payable under a decree shall be paid as follows, namely:

(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payments is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through

the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule

(1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and

the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause

(c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the

money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which

the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

8. The Division Bench then before adverting to the judgments relied upon by both the sides, thought it proper to analyse the relevant facts and

thereafter proceeded to decide the issue in following manner.

"16. Before adverting to the judgments relied upon by both the sides, it is necessary to analyze a few relevant facts. To ward off a possible execution of the

decree that followed the dismissal of the objections to the Award by the learned Single Judge on 2nd August, 2001, the appellant judgment debtor deposited the

decretal amount of Rs. 58,80,380/- in this Court in terms of order dated 15th March, 2002 in CM No. 219/2002 in FAO(OS) 93/2002. This FAO(OS) 93/2002 was

allowed, as aforesaid, on 20th April, 2004 reviving the objections of the appellant. Therefore, there was no question of the amount deposited in the Court being

available for appropriation to the respondent decree holder after the judgment dated 20th April, 2004. Even when the fresh decree was passed on 15th July, 2005,

the amount already lying deposited in the FAO(OS) 93/2002 did not become available to the decree holder for appropriation automatically. It is not the

appellant's case that it communicated its consent to the respondent for the withdrawal of the amount lying in deposit in the disposed of FAO(OS) 93/2002 at any

point of time within a period of six weeks from the date of the passing of the decree dated 15th July, 2005. In fact, the appellant appears to have taken no steps

whatsoever to either tender the decretal amount with concessional rate of interest within six weeks, or even otherwise to facilitate the withdrawal of the amount

deposited in the disposed of FAO(OS) 93/2002 by the decree holder to the extent of the decretal amount. It was only after the decree holder had preferred

Execution Petition 168/2005 well after the expiry of the six weeks period from 15th July, 2005, the appellant judgment debtor for the first time gave its no

objection to the decree holder withdrawing the amount deposited in the aforesaid FAO(OS) 93/2002 on 14th December, 2005. Consequently, even if one were to

assume that the giving of the no objection by the judgment debtor to the withdrawal of the decretal amount from the deposit lying in FAO(OS) 93/2002 amounted

to making payment within the meaning of Order XXI Rule 1 CPC, the said no objection came well after the expiry of the period of six weeks from 15th July, 2005.

17. In our view, the act of making payment to the decree holder under Rule 1 of Order XXI CPC. would require a positive act on the part of the judgment debtor of

either depositing ""into the Court whose duty it is to execute the decree"" or to make payment out of court to the decree holder through a postal money order or through

a bank or by any other mode ""wherein payment is evidenced in writing"", unless the Court which made the decree otherwise directs. The payment made under a

decree, to fall within the ambit of Order XXI Rule 1 CPC has therefore, necessarily, to be an unconditional payment by the judgment debtor to the decree holder

either directly, or indirectly through the medium of the Court whose duty is to execute the decree. Mere deposit of the decretal amount in a Court, other than an

executing Court can never amount to ""payment"" and even where the decretal amount is deposited in the executing court, the judgment debtors liability to pay

interest does not cease until notice contemplated by sub-rule(2) of Rule 1 of Order XXI is given. This is evident from sub-rule(4) above. Order XXI Rule 1 CPC

does not contemplate the decree holder having to chase the judgment debtor to realize the decretal amount by seeking attachment of one or the other accounts of

the judgment debtor or the properties of the judgment debtor. If resort to the execution process of the Court is required to be made by the decree holder, and the

decretal amount is recovered in pursuance of the order of attachment of the accounts of the judgment debtor, and/or sale of assets of the judgment debtor, such

realization of the decretal amount would not amount to payment of the decretal amount under Rule 1 of Order XXI.

18. When the learned Single Judge, while passing the decree dated 15th July, 2005, granted remission in interest to the judgment debtor on the condition of the

payment being made to the decree holder within six weeks, the Court did not intend that the decree holder should have to take out execution proceedings, or to

chase the judgment debtor to realize the payment under the decree. It was for the judgment debtor to itself come forward and tender the decretal amount, or at

least to facilitate the withdrawal of the amount deposited by the judgment debtor in Court, within the time granted by the Court. It is not the appellants case, and

it could not have been its case that upon passing of the decree dated 15th July, 2005, the decree holder could have on its own approached the appellant Court for

withdrawal of the decretal amount from the deposit lying in FAO(OS) 93/2002. The amount lying deposited in FAO(OS) 93/2002, which was allowed in favour of

the judgment debtor, could not have been accessed by the decree holder without the consent/no objection of the judgment debtor, or through the medium of the

execution of the decree holder by obtaining orders from the executing Court.

19. The submission of the appellant judgment debtor that the mere deposit of the amount in the FAO(OS) 93/2002 resulted in the stoppage of accrual of any

further interest from the date of deposit is also meritless. Even in cases where the decretal amount flows into the coffers of the decree holder, subject to the decree

holder being required to furnish a security during the pendency of an appeal, the Supreme Court has held in P.S.L.Ramanathan Chettiar & Ors. (supra) that such

payment does not tantamount to payment of money under the decree. In paras 12 and 13 of P.S.L. Ramanathan Chettiar & Ors. (supra), the Hon ble Supreme

Court held as follows:

12. On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on

terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in

terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of

immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 rule 1 C.P.C. in

satisfaction of the decree.

13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The

decree holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be

proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-

debtor.

20. The situation in the present case is still worse for the appellant, inasmuch as, the amount deposited in FAO(OS) 93/2002 was not released to the respondent

till after the passing of the order dated 27.4.2006. The amount lying in deposit in the disposed of FAO(OS) 93/2002 was not a deposit made in the executing court

in terms of Order XXI Rule 1 CPC. Admittedly, the said deposit could not be construed as direct payment made to the decree holder. As noticed by the learned

Single Judge, when the decree dated 15th July, 2005 was passed, it was not informed by the judgment debtor to the learned Single Judge passing the decree, that

the amount of Rs. 58,80,380/- stood deposited in FAO(OS) 93/2002. Had the same been intimated, possibly the Court may have passed an order directing payment

of the decretal amount to be made to the decree holder from out of the said amount deposited in the Registry of the Court, which would have been amounted to

payment under Order XXI Rule 1 CPC.

21. In Mathunni Mathai (supra) though the judgment debtor had made the deposit in the executing Court, but intimation in respect thereof was not given to the

decree holder. The Supreme Court held that the payment could not be deemed to have been appropriated towards principal unless the decree holder admits it to

be so: While examining Order XXI Rule 1,2 and CPC, the Supreme Court observed:

....The amended Sub-rule (2) removes the doubt if there was any that the judgment-debtor is not absolved of the obligation of informing the decree-holder by

written notice even in respect of deposit in court either directly or by registered post. The purpose of addition of the expression, 'either through court directly or

by registered post acknowledgment due' is that the judgment-debtor should not only give notice of payment but he must ensure that the decree holder has been

served with the notice. The ratio laid down in Meghraj case applies now with greater rigour. appears to be that if the judgment debtor intends that the running of

interest should cease then he must intimate in writing and ensure that it is served on the decree-holder. Sub-rules (4) and (5) added in 1976 to protect the

judgment-debtor provide for cessation of interest from the date of deposit or payment. But the cessation of interest under sub-rule (4) takes place not by payment

alone but from the date of service of the notice referred to in sub-rule (2).

22. In our view, the decision of the Constitution Bench of the Supreme Court in Gurpreet Singh (supra) is of no avail to the appellants in the facts of this case. In

this case, the Supreme Court was considering the aspect of the right of the decree holder to claim interest and to appropriate the amount deposited by the

judgment debtor in pursuance of a Court decree, in different situations. The Supreme Court while stating the legal position in paras 20 and 21 quoted above was

dealing with a situation where the judgment debtor makes a deposit in the executing Court. This is clear from a plain reading of the above extract. However, in

the present case it cannot be said that the appellant had made the deposit in the executing Court since the deposit had been made in FAO(OS) 93/2002.

23. Therefore, we are of the view that the mere fact that the deposit of Rs. 58,80,380/- was made by the appellant in FAO(OS) 93/2002 as a condition for grant of

stay for execution of the decree dated 2.8.2001 (which was eventually set aside on 20.4.2004), does not entitle the appellant to claim that interest in terms of the

decree had stopped running from the date of deposit. No doubt, the interest earned on the deposit; made in FAO (OS) 93/2002 would enure for the benefit of the

appellant. We are also of the view that the appellant did not avail of the conditional remission of interest granted in the decree dated 15.7.2005 by making

payment within six weeks, and the mere fact that the money was already lying deposited in FAO(OS) 9.3/2002 does not have the effect of payment of the decretal

amount to the respondent decree holder.

Accordingly, dismissed the appeal.

9. As could be seen the Delhi High Court considered the law laid down by the Hon'ble Supreme Court and held that the Act of making payment

to the Decree Holder under Rule 1 of Order XXI of the CPC would require positive act on behalf of the Judgment Debtor of either depositing into

court whose duty it is to execute the decree or to make payment out of the Court to the Decree Holder unless the Court which made decree

otherwise directs. The Division Bench further held that the payment made under a decree, to fall within the ambit of Order XXI Rule 1 of the CPC,

therefore, necessarily to be an unconditional payment by the Judgment Debtor to the Decree Holder either directly or indirectly through the medium of

the Court whose duty it is to execute the decree. The High Court then observed that mere deposit of the decretal amount in a Court other than an

executing Court can only amount to payment and even where the decretal amount is deposited in the Executing Court, the Judgment Debtor's

liability to pay interest does not cease until notice contemplated by sub Rule (2) of Rule 1 of Order XXI is given. The Division Bench then observed

that Order XXI Rule 1 CPC does not contemplate the Decree Holder having to chase the Judgment Debtor to release the decretal amount by seeking

attachment of one or the other account of Judgment Debtor or properties of the Judgment Debtor. The Court proceeds to note that if resort to the

execution process of the Court is required to be made by the decree holder and the decretal amount is recovered in pursuance of the order of the

attachment of the account of the Judgment Debtor and/or sale of assets of the Judgment Debtor, as such realization of the decretal amount would not

amount to payment of decretal amount under Rule 1 of Order XXI. The highlight of the finding is that to fall within the ambit of Order XXI Rule 1

CPC, the payment has to be unconditional payment by the Judgment Debtor to the Decree Holder either directly or through the order of the Executing

Court. In other words, if the amount is not deposited before the Executing Court that too unconditionally and if it is deposited in any other Court, it

will not satisfy the requirement of Rule 1 Order XXI of the CPC.

10. The Division Bench further observed that to claim that the amount deposited in the Court is towards satisfaction of the decree to the Judgment

Debtor has to itself come forward and tender the decretal amount or at least to facilitate the withdrawal of the amount deposited by the Judgment

Debtor in the Court. On the point of stoppage of interest, the Delhi High Court held that mere deposit of amount before the First Appellate Court

would not result in the stoppage of further interest from the date of deposit. While justifying the said finding, the Delhi High Court referred to judgment

passed by the Supreme Court in P.S.L. Ramnathan Chettiar & Ors Vs. O.R.M.P.R.M. Ramnathan Chettiar, AIR 1968 SC 104, 7wherein the

Supreme Court, in a way, held that by depositing the sum in the Court to obtain stay to execution of the decree on the terms that the Decree Holder

can draw it out on furnishing security is in effect an act of putting money beyond the reach of the parties pending disposal of the appeal because the

Decree Holder could only take it out on furnishing the security which means that the payment was not in satisfaction of the decree and the security

can be proceeded against by the Judgment Debtor in case of his success in the appeal.

11. Accordingly, the Delhi High Court held that by depositing the amount in the First Appeal as a condition for grant of stay for execution of the

decree, does not entitle the petitioner-original appellant to claim that interest in terms of decree has stopped running from the date of deposit.

12. Having understood the law in the aforesaid manner, the question formulated in the present petition can be now considered. The relevant facts are

as under.

13. The Arbitral Tribunal passed award on 30.09.2006 for Rs.3,36,803/- along with interest at the rate of 18% per annum from the date of award till

actual payment is made. Respondent challenged the award under Section 34 of the Act of 1996 before the Principal District Judge, Nagpur, which

was pleased to dismiss the application. The respondents then carried the matter before this Court in Arbitration Appeal under Section 37 of the Act of

1996, which again came to be dismissed. Pending appeal, upon the application made by the respondents, the effect and operation of the judgment

passed by the Principal District Judge was stayed subject to respondents depositing entire amount of claim along with interest. Accordingly, on

27.02.2018, the respondents deposited an amount of Rs.10,11,887/-. The petitioner filed an application for withdrawal of 80% of the amount.

Respondents took objection to release the amount. This Court, however, allowed the petitioner to withdraw 50% of the deposited amount. Remaining

amount was allowed to be withdrawn after passing final judgment. The petitioner withdrew the same.

14. The petitioner, thereafter, moved an application before the Executing Court claiming additional amount on the count that on depositing the amount

before this Court in arbitration appeal, interest will not stop accruing. Accordingly, the amount of Rs.9,94,274/- was claimed with future interest

payable till actual payment is made. The respondents contested the claim on the ground that by depositing the decretal amount with interest, the

decree is fully satisfied. The Executing Court found substance in the objection raised by the respondents and thus rejected the application vide

impugned order dated 19.06.2023 in R.D.No. 2193/2017.

15. Mr. C. B. Dharmadhikari, counsel for the petitioner, by relying upon judgment of the Division Bench of the Delhi High Court, detailing the effect

of depositing the amount in the appellate Court (and for that purpose before the Court other than the Executing Court) contends that the issue involved

is fully covered and thereby contending that by depositing the amount before the Appellate Forum, interest will not stop accruing.

16. As against, Ms. M. R. Chandurkar, counsel for the respondents submits that the respondents having deposited entire amount of claim along with

interest before the appellate forum, the decree stands satisfied and there arises no question of interest to continue accruing. She further submits that

the petitioner did not even pray to withdraw the entire amount but sought 80% of the deposited amount and, therefore, is barred from claiming interest.

17. In my view, the learned counsel for the petitioner is right in contending that the issue involved is covered in the judgment passed by Division Bench

of Delhi High Court which has rendered the finding based on the law laid down by the Supreme Court. As held, mere depositing the amount before

the appellate forum will not by itself operate as ceaser of interest.

18. In fact, bare reading of Order XXI clarifies the proposition of law on this point. Sub Rule 4 of Order XXI provides that payment of amount under

clause (a) or clause (c) of Sub rule (1), interest, if any, shall cease to run from the date of service of notice referred to in Sub Rule (2), which requires

Judgment Debtor to give notice of depositing amount in the executing Court to the Decree holder either through the Court or directly to him by

Registered post acknowledged due. Thus, to claim satisfaction of the decree, the Decree Holder has to first deposit the amount in the Executing Court

in terms of clause (a) of Sub Rule (1) of Rule 1 of Order XXI or to pay decretal amount to the Decree Holder by postal money or through bank or by

any other mode wherein payment is evidenced in writing or otherwise as the Court which made the decree directs. If the decretal amount is deposited

in terms of clauses (a) and (c) of sub Rule (1), the Judgment Debtor is duty-bound to give notice thereof to the decree holder. Thus, the interest shall

cease to run only on depositing the amount in terms of aforesaid clause and further from the date of service of notice referred to in sub clause (2).

19. It is on this count, the Division Bench has held that the act of making payment to the Decree Holder under Rule 1 of Order XXI of the CPC would

require positive act on the part of Judgment Debtor and the payment made should be unconditional. Accordingly, it is held that Judgment Debtor

should deposit the amount before the Executing Court and give notice to the Decree Holder to facilitate him to withdraw the amount.

20. Thus, the interest will not stop accruing if the amount awarded to the Decree Holder is deposited in the Court other than Executing Court. Further

and even if amount is deposited in Executing Court, unless notice contemplated by sub Rule (2) of Rule 1 of Order XXI is given, the Judgment

Debtor's liability to pay interest does not cease.

21. Applying aforesaid principles of law to the facts of the present case, mere depositing the amount before the appellate forum and further opposing

application made by the Decree Holder for withdrawal of the amount (whether 80% or otherwise) will only act as bar against the Judgment Debtor to

put up a case of cessation of interest.

22. The District Court failed to act in terms of law laid down by the Supreme Court in the case referred to by the Division Bench of Delhi High Court

and thus failed to consider the scope and effect of Order XXI of the CPC on the point of cessation of interest. The impugned order, therefore, is not

sustainable.

23. The writ petition is accordingly allowed. Impugned order dated 19.06.2023 passed by District Judge-8, Nagpur in R. D. No. 2193/2017 is

quashed and set aside.

24. The petitioner is entitled for the amount of interest as granted in award but in terms of order XXI of the CPC as also in the light of the law laid

down by the Hon'ble Delhi High Court as stated above. District Judge-8, Nagpur shall accordingly ascertain the correctness of calculations made

and submitted by the petitioner before it and pass appropriate order(s) thereon and for that purpose the application in R.D. No.2193/2017 is restored

on the file of District Judge-8, Nagpur.

Parties shall appear before District Judge -8, Nagpur on 27.11.2024.

Rule is made absolute in the above terms. No order as to costs.