

**(2007) 05 AHC CK 0278****Allahabad High Court****Case No:** None

Abdulla

APPELLANT

Vs

Smt. Shyama Devi and Another

RESPONDENT

**Date of Decision:** May 15, 2007**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 2, 34

**Citation:** (2007) 3 AWC 3034 : (2009) 106 RD 379**Hon'ble Judges:** S.U. Khan, J**Bench:** Single Bench**Final Decision:** Allowed

### **Judgement**

S.U. Khan, J.

Heard learned Counsel for the parties.

2. Petitioner filed O.S. No. 13 of 1970 against respondents for possession over a house and for mesne profit @ Rs. 500 from the date of filing of suit, i.e. 1.8.1970 till delivery of possession, i.e., pendente lite and future. The suit was decreed for both the reliefs claimed on 21.3.1978 by Civil Judge, Senior Division, Bhadohi. Possession was delivered on 18.3.1997. Mesne profit from the date of filing of suit, i.e. 1.8.1970, till date of possession, i.e., 18.3.1997 (about 26.5 years) come to Rs. 1,59,500.

3. The point involved in this writ petition is as to whether decree holder-petitioner is entitled to interest over the amount of mesne profits or not.

4. Decree holder-petitioner filed Execution Case No. 2 of 1979 for execution of decree dated 21.3.1978, passed in O.S. No. 13 of 1970. Realisation of the decreed amount for mesne profit was sought through auction and sale of House No. 8/03. In the execution, the Executing Court/Civil Judge, Senior Division, Bhadohi, passed an order on 19.2.1999. Through the said order, claim of the decree holder-petitioner for interest on mesne profit was rejected. However, for recovery of the mesne profits

(or balance thereof), petitioner was directed to take steps for auction of house No. 8/03 under Order XXI, Rule 66, C.P.C. Against the said order, petitioner filed Civil Revision No. 17 of 1999. The A.D.J., Court No. 1, Bhadohi, Gyanpur, dismissed the revision on 31.8.2002, hence this writ petition.

5. The revision was confined only against that portion of the order of the executing court, through which prayer for grant of interest had been refused. Both the courts below held that in the decree, there was no direction for payment of interest on mesne profits, hence interest could not be awarded. The operative portion of the decree dated 21.3.1978 is quoted below:

Suit is decreed with cost. Plaintiff is entitled to the possession of the house in suit after ejectment of the defendants and he is entitled also to the mesne profit at the rate of Rs. 500 per month from 1.8.1970. Plaintiff will be entitled to the mesne profit after payment of court fee in the execution side. Defendant is directed to vacate the house in suit within 2 months from the date of the order. In case of default plaintiff will be entitled to get possession through the Court on the cost of the defendant.

6. In my opinion, there is absolutely nothing wrong in the impugned orders. Learned Counsel for the petitioner has cited a Constitution Bench Authority of the Supreme Court in Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc.,. In the said authority, it has been held that arbitrator is entitled to award pendente lite and future interest as well as for pre-reference period.

7. There cannot be any doubt about the entitlement of interest on mesne profits, pendente lite and future. Mesne profits are defined u/s 2(12), C.P.C. as under:

"Mesne profits" of property means those profits, which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom together with interest on such profits....

Under Order XX, Rule 12, C.P.C, it is provided that:

Where a suit is for the recovery of possession of immovable property and for mesne profits, the Court may pass a decree for the possession of the property and for rent or mesne profits.

Under Section 34, C.P.C., it is provided that:

Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of decree with further interest on such rate not exceeding 6% per annum as the Court deems reasonable on principal sum from the date of the decree to the date of payment....

However, Section 34(2) provides as under:

Where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

8. In the decree, neither any Interest was awarded from the date of the suit, i.e. 1.8.1970 (from which date mesne profits @ Rs. 500 per month were awarded), till the date of decree, i.e. 21.3.1978, nor from the date of decree till actual payment. If Interest has not been awarded by the decree, then executing court has got absolutely no Jurisdiction to direct payment of interest and this is what both the courts below have held. They have rightly refused to grant any Interest.

9. Accordingly, there is no merit in the writ petition, hence it is dismissed.

10. This writ petition was allowed twice without hearing the learned Counsel for the respondents and thereafter both the judgments were set aside on the rehearing application filed by the respondents. While allowing the second rehearing application, the Court directed the respondents to deposit Rs. 50,000 before the executing court. The said amount has been deposited. If the executing court finds that decree holder is entitled to more than Rs. 50,000, then the said amount shall be paid to the decree holder and thereafter execution shall proceed only for the remaining amount due under decree otherwise the said amount or part thereof, as the case may be, shall be returned to the judgment debtor