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**(2002) 09 GAU CK 0036**

**Gauhati High Court (Agartala Bench)**

**Case No:** Civil Revision No. 50 of 1997

State Bank of India

APPELLANT

Vs

Maa Sarada Oil Mills and Others

RESPONDENT

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**Date of Decision:** Sept. 10, 2002

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 47

**Citation:** AIR 2003 Guw 22 : (2003) 3 BC 113 : (2002) 3 GLT 636

**Hon'ble Judges:** B.B. Deb, J

**Bench:** Single Bench

**Advocate:** S. Deb and S.N. Banerjee, for the Appellant; B. Choudhary, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

B.B. Deb, J.

Heard Mr. S. Deb, learned senior counsel being assisted by Mr. S.N. Banerjee, learned counsel for the petitioner and Mr. B. Choudhary, learned counsel for the respondents.

2. This Civil Revision Petition u/s 115 of the CPC has been filed by the decree-holder, petitioner herein, being aggrieved by the judgment/ order dated 25-4-1997, passed by the learned Executing Court (Civil Judge, Senior Division Court No. 1). West Tripura. Agartala in Case No. EX (T) 8 of 1990.

3. The decree-holder filed a Title Suit bearing No. 60 (Mort) of 1988 for realisation of the loan amount granted and paid to the judgment-debtor, respondents herein, taking security from the guarantor. It was a suit for recovery of money secured by mortgage deed which is commonly called as "Mortgage Suit". Fortunately, the suit was concluded on admission and the learned trial Court passed the judgment/debtor on 18-8-1988. The operative position of the judgment/debtor is

reproduced below :--

"On consideration of the plaint documents on record and submissions of Ld. Counsel for the plaintiff I am of the opinion that plaintiff has proved his case. Hence it is ordered that the suit be decreed on admission against the defendants with costs. It is a preliminary decree against the defendant side with costs and it is hereby ordered that the defendants to pay Rs. 2,65,972.73 paise calculated upto 7-6-1988. And the defendant side will pay said money to the plaintiff bank within 6 months and in case of failure a final decree will be passed against the defendant side. Plaintiff bank is also entitled to get interest at the rate of Rs. 2.50% below the State Bank of India Advance Rate minimum 14% with quarterly rests for the amount Rs. 2,65,972.73 paise. Order dated 5-8-1988 stands vacated with some modification therein."

4. Admittedly, the suit was decreed for Rs. 2,65,972.73 say Rs. 2,65,973/- (round figure) as had been calculated upto 7-8-1988. The learned trial Court also ordered for adding 14% interest over the aforesaid amount with quarterly rests. The preliminary decree was formally drawn up on 25-8-1988. Para 2 of the preliminary decree is relevant to decide the present revision and as such it is reproduced below :--

"2. And it is hereby ordered and decreed as follows :--

(i) that the defendants do pay Into Court on or before the 18th day of Feb. 1989 or any later date upto which time for payment may be extended by the Court the said sum of Rs. 2,70,189.98.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under Rule 10, together with such subsequent interest as may be payable under Rule 11 , of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in the possession or power relating to the mortgage property in the plaint mentioned, and all such documents--shall be delivered over to the defendants, or to such person, as he appoints and the plaintiff shall, if so required, re-convey or retransfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall if so required, delivered up to the defendants quite and peaceable possession of the said property."

5. Unfortunately in drawing up the preliminary decree, the payment of interest and the rate thereof as have been determined in the judgment, escaped the notice of the Court, as a result the preliminary decree remained silent as to the payment of interest including rate thereof. The final decree was drawn up following the preliminary decree, as a result error has been repeated in the final decree also.

6. The decree-holder, petitioner herein, filed Execution proceeding as in the meantime, the judgment debtors failed to pay the entire amount. In execution petition, the decree holder petitioner added the amount of interest on proper calculation in terms of the judgment. The judgment debtors, respondents herein, filed an objection petition u/s 47 of the C.P.C. opposing execution on the ground, inter alia, that the figure shown in the Execution Petition did not tally with the amounts shown in the decree.

On perusal, apparently the stand taken by the Judgment debtors appears to be correct, but in substance the same cannot be treated to be in conformity with the judgment. The judgment dictates the payment of interest at the rate of 14% per annum on quarterly rests on the amount adjudged, but at the time of drawing up the decree, the said part of the judgment dealing with the interest, has not been incorporated.

7. It is the settled proposition of law that while there is some inconsistency between the judgment and the decree, the real intendment of the result of the suit should be gathered by re-conciliation between the judgment and the decree. Neither the decree nor the judgment should be read in isolation, but in combination. The learned Executing Court is duty bound to give effect to the decree in its substance and should not pass any order rendering the judgment as futile attempt.

8. On perusal of the judgment, in my considered opinion, the learned trial Court inadvertently missed to add the matter relating to interest over the adjudged amount.

9. Mr. Choudhary, learned counsel appearing for the judgment debtors, respondents herein, referring the judgment submits that the learned trial Court has not imposed the payment of interest for any period after the passing of the decree.

On perusal of the judgment, I find that the learned trial Court did not allow any interest to be paid by the judgment-debtor since from the date of decree. Their liability is fixed by the learned trial Court upto the date of decree.

10. Under the aforesaid factual and legal aspects, as revealed from the records placed before me, I am of the opinion to hold that the impugned order passed by the learned Executing Court is not correct in view of the combined reading of judgment and decree. The learned Executing Court failed to exercise his jurisdiction in passing the impugned order as he failed to take into consideration the "interest" imposed by the learned trial Court in passing the preliminary decree followed by final decree.

11. In the result, the revision petition is partly allowed with the following directions to the learned Executing Court :--

(a) The learned Executing Court is to execute the decree treating the decretal amount to be Rs. 2,65,973/- plus interest thereon at the rate of 14% per annum with

quarterly rests from the date of filing of the suit till the date of decree. Any amount already paid by the judgment debtors during the pendency of the suit or till the date which ever may be the fact, be adjusted by way of deduction.

(b) The decree holder is directed to submit a draft calculation sheet to assist the learned Executing Court. The writ of execution is to be issued after proper calculation accordingly.

No order as to costs.