(1997) 02 BOM CK 0062

Bombay High Court

Case No: First Appeal No. 259 of 1994

Mr. Sanjeev Vaze		APPELLANT
	Vs	
Dr. Kunda Vaikunth		RESPONDENT

Date of Decision: Feb. 4, 1997

Citation: (1997) 99 BOMLR 750

Hon'ble Judges: M.L. Dudhat, J; A.S. Venkatachala Moorthy, J

Bench: Division Bench

Judgement

M.L. Dudhat, J.

The respondent/plaintiff, in this case, stood surety for the present appellant/defendant to the Bank in America in order to enable the appellant/defendant to purchase a car. Thereafter, the respondent/plaintiff repaid the loan of the Bank advanced to the appellant/defendant as per the direction and instruction given by the appellant/defendant to the respondent/plaintiff. The plaintiff, therefore, filed a suit, being Special Civil Suit No. of 1989 for recovery of due from the defendant of the value of Rs. 58,000/- at the time of filing the suit. The Trial Court decreed the suit and directed the appellant/defendant to pay an amount of Rs. 32,027/- from 10.11.1985 till realisation of the decretal amount. It is this Judgment and decree dated 21.7.1993 passed by the III Jt Civil Judge, Sr. Dn., Pune in Special Suit No of 1989 which is the subject matter of an appeal, being First Appeal No. 259 of 1994 filed by the present appellant/defendant.

2. The aforesaid Judgment and decree is challenged by the present appellant/defendant mainly on the ground that the Trial Court ought to have granted the rate of exchange to the respondent/plaintiff which was at the time of contract, i.e. from the date 22.7.85 and not from the date of the suit Tiled by the plaintiff, i.e. 18.8.1989. It was further argued that the trial court ought to have passed the order of interest from the date of decree and not from 22.7.85. Apart from that, the appellant has also challenged the principal amount decreed by the Trial Court on the ground that the Trial Court has not taken into consideration the

admitted mistake committed by the respondent/plaintiff while arriving at the figure of principal amount. The respondent/plaintiff, in this appeal, has also filed Cross Objection against the said Judgment and decree passed by the Trial Court and further claimed an additional amount of Rs. 52,000/- over and above the decree granted by the Trial Court. The main contention of the respondent is that the Trial Court erred in granting the exchange rate which was prevalent on the date of filing of the suit i.e. 18.8.1989 and in fact ought to have granted the rate of exchange prevalent on the date of decree i.e. 21.7.1993 and according to the respondent/plaintiff in fact now she is entitled to recover the amount from the appellant/defendant at the exchange rate on the date of decree of this High Court.

3. The first important question which is the subject matter of our decision is as to whether the plaintiff/respondent is entitled to get the exchange rate prevalent on 22.7.1985 or prevalent on the rate of filing the suit. i.e. 18,8.1989 at the rate prevalent at the time of passing decree i.e. 21.7.1993 or at the rate which is prevalent at the time of decree passed by this Court in this First Appeal i.e. today.

4. Mr. Ghare, learned Counsel appearing on behalf of the present appellant strenuously contended that the Trial Court was wrong in applying the rate of interest lo the decretal amount which was prevalent at the time of filing the suit i.e. Rs. 16-50 per US Dollar and ought to have granted exchange rate which was prevalent on 22.7.1985 i.e. Rs. 12-50 per US Dollar. On the other hand. Mr. Hausing, learned Counsel appearing on behalf of the respondent/plaintiff contended that as per the ruling of the Supreme Co nil in Renusagar Power Co. Ltd. Vs. General Electric Co., the Trial Court ought to have granted the exchange rate at the time of passing the decree and further argued (hat since the appeal is in continuation of the suit, now the respondent/plaintiff is entitled to get the rate of exchange prevalent on the date of this decree, i.e. today.

5. Before dealing with the aforesaid case law, it is desirable to go through few averments and the prayer clause in the Plaint filed on behalf of the respondent/plaintiff. The plaintiff contended that on 13.8.1983, the appellant, while in America purchased TOYOTA Car on higher purchase basis with a loan liability of U.S.$ 7541.80 repayable in 48 monthly installments of $219.13. The respondent/plaintiff who was staying in America stood guarantee for the aforesaid loan. Somewhere in November 1983 the appellant returned to India after having paid there monthly installments towards the loan. On 12.2.1984 the appellant vide Exhibit 21 asked the respondent to pay loan installments of the car, as the appellant was unable to return to Amercia. On 23.4,1994, the appellant again requested the respondent to pay the loan installment for April 1984 and further stated that he is expected to return Amercia by May 1984. Thereafter, by letter (Exhibit 28) dated 15.6.1984, the appellant informed the respondent that he is expected 10 return to America, however, he requested the respondent to pay the loan installments. Thereafter by Exhibits 34/35 dated 12.12.1984 the appellant requested the

respondent to sell the car and for that purpose also sent a letter of authority for selling the said car. According to the said instruction, on 5.4.1985, the respondent sold the car for $ 5500 which she received from selling the car along with additional amount of $ 341 to clear the appellant''s bank liability and informed the same to the appellant/defendant. The appellant/defendant, thereafter, vide Exhibit 45, dated 9.5.1985 acknowledged the information and intimation given by the respondent/plaintiff about the payments $ 5500 and $ 341 made by the plaintiff on behalf of the defendant to clear the loan liability.

6. On 22.7.1985 the appellant paid Rs. 15,000/- to the respondent/plaintiff which was equivalent to $ 1200 (as on 22.7.1985 the rate of exchange was Rs. 12-50 per Dollar). Exhibit 46 is a letter dated 27.8.1986 written by appellant to the respondent acknowledge the balance of the amount to be repaid. Vide Exhibit 64 the respondent/plaintiff gave legal notice to the appellant/defendant calling upon him to repay $ 2020.46 alongwith interest thereon at the rate of 17% per annum. Since the appellant failed to comply with the notice, the respondent filed the suit on 18.8.1989 for recovery of $ 11941.46 with interest at the rate of 17% per annum and claimed $ 3510 from the appellant. In the Trial Court, the defendant raised various defences including the point of limitation. The Trial Court, after allowing both the sides to lead evidence and after hearing both the sides, decreed the suit of the respondent/plaintiff for the amount of Rs. 32,027/- with interest of 6% per annum, from 10.11.1985 till the actual realisation. The Trial Court has al so passed the conditional order that if the appellant/defendant failed to pay the decretal amount within two months from passing the decree, then the respondent/plaintiff shall be entitled to charge interest at the rare of 12% per annum on decretal amount of Rs. 32,027 from 10.11.1985.

7. From the aforesaid facts which are supported by various documents and correspondence between the parties, it is clear that the Bank advanced loan to purchase the car to the appellant on 13.8.1983 in Dollars in America. It is also admitted fact that the respondent who was staying in America made payments of installments of the said car as per the directions and requests given by the present appellant and, therefore repayment of loan to the Bank by the respondent was also in Dollars. On 22.7.1985 the appellant paid the amount of Rs. 15,000/- and the same was adjusted by the parties towards the amount due to the respondent from the appellant in Dollars and calculating at the rate of exchange prevalent on 22.7.1985 of Rs 12-60 per Dollar the respondent gave credit to the appellant of 1200 Dollars (of the amount of Rs. 15000/- paid by the appellant to the respondent). Vide notice Exhibit 64 the respondent also called upon the plaintiff to pay the amount of $ 2020.46 with interest of 17%. From this, it is clear that the appellant received loan in Dollars from the Bank in USA. The said loan was paid by the respondent in USA in Dollars. The appellant made part payment of Rs. 15,000/- also calculated at the rate of exchange prevalent on the date of payment in Dollars, notice calling upon the appellant to pay the balance of the amount also demands payment in Dollars and

therefore from this admitted above position, ii was the intention of the parties, viz. the appellant and the respondent that the appellant was to pay to the respondent in Dollars. In the suit filed by the respondent also, if one reads Clauses (a) and (b) of the prayer clause, it is clear that the respondent prayed for decree against the appellant in Dollars and not in rupee. It is true that prayer Clause (a) amount of Rs. 58,000/- is mentioned but that was on the basis of prevalent exchange rate as on date of filing the suit, i.e. on 18.8.1989. One has to remember that the respondent/plaintiff has filed the suit for recovery in India and, therefore, for the purpose of averment in the cause of jurisdiction and court fees, she has to convert her claim in rupees as on the date of filing the suit. However still the fact remains that even as per the Plaint, the respondent prayed for decree against the appellant in terms of Dollars. In view of this clear admitted fact, now, we have to take into consideration the rival contentions as advanced by Mr. Ghare, learned Counsel appearing on behalf of the appellant any by Mr. Hausing, learned Counsel appearing on behalf of the respondent. Admittedly, the Trial Court has granted the exchange rate of Rs. 16-50 per dollar which was prevalent at the time of filing the suit i.e. on 18.8.1989. Accruing to the appellant, the Trial Court ought to have granted exchange rate of Rs. 12-50 per Dollar which was prevalent on 27.7.1985 when the part payment of Rs. 15,000/- was made by the appellant to the respondent. On the other hand, it is contended on behalf of the respondent that the Trial Court ought to have granted at the rests which was prevalent on the date of the decree i.e. on 21.7.1993 which was Rs. 31-60 per Dollar. Further in the Cross Objection, it is argued on behalf of the respondent/plaintiff that in view of the fact that the matter has come before this High Court in first Appeal which is in continuation of the suit, now the respondent is entitled to get the decree at the exchange rate at the time of passing the decree by the High Court today i.e. 3. 2.1997. For this aforesaid proposition, Mr. Haushing learned Counsel appearing on behalf of the respondent relied upon the Supreme Court authority more particularly Renusagar Power Co. Ltd. Vs. General Electric Co., . In the aforesaid case, the Supreme Court has discussed all these principles at page 905 in para 120. After referring to the practice which ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court, has been thus indicated:

...the plaintiff, who has not received the amount due to him in a foreign currency and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or,

at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount to him. In either event, the valuation of the suit for the purposes of court-fees and the pecuniary limit of the jurisdiction of the court will be the amount in Indian currency claimed in the suit. The plaint may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaintiff would be for a decree that the defendant do pay to him the foreign currency cum claimed in the plaint subject to the permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted and that in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the defendant do pay to the plaintiff the rupees equivalent of the foreign currency sum claimed at the rate of exchange prevailing on the date of the Judgment. For the purposes of court-fees and a jurisdiction, (he plaintiff should, however, value his claim in the suit by converting the foreign currency sum claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange is. He should further give an undertaking in the plaint that he would make good the deficiency in the court fees, if any, if at the date of the Judgment, at the rate of exchange then prevailing, the rupee equivalent of the foreign currency sum decreed is higher than that mentioned in the plaint for the purposes of court fees and jurisdiction.

From this aforesaid observation in the present case, since the respondent/plaintiff paid the amount in dollars on behalf of the appellant and since filed the suit for recovery of the said dollars praying for decree in dollars, rate of exchange at the time of passing the decree, i.e. 21.2.1993 should be the date for converting the exchange rate and which was admittedly Rs. 31-60 per Dollar. In view of the ratio laid down by the Supreme Court as aforesaid, the Trial Court ought to have granted the exchange rate prevalent at the time of decree which was $ 31-60 and not at the exchange rate which was prevalent at the time of filing the suit which was on 18.8.1989.

8. Mr. Haushing, learned Counsel appearing on behalf of the respondent further contended that further observation of the Supreme Court in the said para supports his contention to the effect that the respondent shall be entitled to get the foreign exchange which was prevalent at the time of passing the decree in the High Court i.e. on 3.2.1997. He relies on the Renusagar Power Co. Ltd. Vs. General Electric Co., which reads as under:-

In the event of the decree being challenged in Appeal or other proceedings and such appeal or other proceedings being decided in whole or in part in favour of the plaintiff, the appellate court or the court hearing the application in the other proceedings challenging the decree should follow the same procedure as the Trial Court for the purpose of ascertaining the rate of exchange prevailing on the date of its appellate decree or of its order on such application or on the date nearest or most nearly preceding the date of such decree or order. If such rate of exchange which has been challenged, the court should make the necessary modification with respect to the rate of exchange by its appellate decree or final order. In all such cases, execution can only issue for the rupee equivalent specified in the decree, appellate decree or final order, as the case may be. These questions, of course, would not arise if pending appeal or other proceedings adopted by the defendant the decree has been executed or the money thereunder received by the plaintiff.

9. The aforesaid observations of the Supreme Court to some extend definitely supports the argument as advanced by learned Counsel Mr. Haushing on behalf of the respondent. However, in this case, as observed by the Supreme Court, since the appellant has paid the decretal amount in the Court and the respondent has withdrawn the said amount from the Court. According to our opinion, in the interest of justice, the respondent/plaintiff will be entitled to receive the decretal amount calculated at the exchange rate prevalent at the time of passing the decree of the Trial Court i.e. as on 21.7.1993. Mr. Ghare, learned Counsel appearing on behalf of the appellant/defendant contended that in the plaint, the plaintiff claimed $ 1941.46. as the principal amount due from the defendants while as per the notice given by the respondent and from the admission given by the power of attorney of the respondent/plaintiff, more particularly at page 88 of the paper book, it appears that the principal amount due, according to the plaintiff, is $ 1611.46 and not $ 1911.46. However, the Trial Court failed to take into consideration the aforesaid admission given by the plaintiff. In view of this, the appellant must be given credit to the extent of $ 330 in the principal amount.

10. We have gone through the Plaint and the depositions and according to our opinion, taking into consideration the mistake in calculation as admitted by the plaintiff, the principal amount due on the date of the suit was $ 1611.46 ad not $ 1941.46 and therefore from the principal amount as claimed in the plaint by the respondent, the amount of $ 330 will have to be subtracted and the total principal amount due from the appellant to the respondent is $ 1911.46.

11. Mr. Ghare further contended that the Trial Court has granted interest from 10.11.1985. We have failed to understand as to why the Trial Court has given interest on 10.11.1985. However, taking into consideration the peculiar facts of this case, we grant interest of 6% per annum from 12.6.1989, i.e. the date on which the respondent gave notice, Exhibit-64, calling upon him to any interest thereon from that date.

12. Hence, both Appeal and Cross-Objection are partly allowed. The defendant do pay to the plaintiff the amount of $ 1611.46 equivalent to Rs. 50,922-13 calculated at the exchange rate prevalent on 21.7.1993 which is at Rs. 31-60 per U.S. Dollar along with interest calculated thereon at the rate of 6% per annum from 12.6.1989 till the actual realisation of the amount in place of decretal amount of Rs. 32,027/- with 6% interest granted by the Trial Court.

Mr. Ghare, learned Counsel appearing on behalf of the appellant, prays that some four months time maybe granted to the appellant for payment of the aforesaid amount. Mr. Haushing opposes the said application. Heard both the sides. The appellant is directed to pay the aforesaid amount of Rs. 50,922-13 in the Trial Court within two from today failing which the respondent/plaintiff can start execution proceedings forthwith.

13. In view of this, this First Appeal and Cross Objection are partly allowed in terms of aforesaid order. There will be no order as to costs.

Certified copy of the order is expedited.