

(2008) 03 DEL CK 0245

Delhi High Court

Case No: Ex. No. 225 of 1993

Kali Charan Sharma
(since deceased)

APPELLANT

Vs

New Okhla Industrial
Development Authority

RESPONDENT

Date of Decision: March 10, 2008

Acts Referred:

- Arbitration Act, 1940 - Section 14
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 1
- Constitution of India, 1950 - Article 136
- Interest Act, 1978 - Section 3

Citation: (2008) 3 BC 565

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: Anusuya Salwan, for the Appellant; Ravinder Kumar, for the Respondent

Final Decision: Allowed

Judgement

S. Ravindra Bhat, J.

The decree holder seeks execution of a decree arising out of an award, which was made rule of this Court, on 20.9.1993.

2. The facts necessary for deciding this case are that on 31.5.1986 a mutually agreed arbitrator directed that the sum of Rs. 11,24,085.56 along with interest at 15% per annum (from the date of the decree to be made by Court), should be paid by the respondent. The decree holder approached this Court u/s 14 of the old Arbitration Act, 1940 (hereafter referred to as "Act"). On 20.9.1993, the Court overruled the objections of the respondent/judgment debtor and confirmed the award, thus making it the rule of the Court, in Suit No. 1283-A/1986. The decree holder thereafter moved this Court for realization of its dues, through the present execution proceedings. The Court took

cognizance and issued warrants of attachment of the judgment debtor's bank accounts. It was at that stage that the judgment debtor represented on its behalf that an appeal, against the judgment of the Court, dated 20.9.1993, had been filed before the Division Bench.

3. In the meanwhile, on 5.4.1994, during pendency of the appeal before the Division Bench, the judgment debtor deposited the sum of Rs. 11,24,085.56 before this Court. The Court noticed this in its order dated 26.4.1995, in EA Nos. 3/95 and 50/95. That order recorded the grievance of the decree holder that only the award amount and not the interest accruing on it (which formed part of the decree) was deposited. The Court felt that since the award amount deposited by the judgment debtor, and had not been released in favour of the decree holder, releasing interest amounts through execution of the decree should not be permitted till the Division Bench gave clarification with regard to such amounts. The Division Bench issued an order on 24.3.1994 staying the release of the amount deposited under certain conditions. The Division Bench held:

In case the appellant deposits the decree holder amount with the Registrar of this Court by 5.4.1994, the order by the Executing Court attaching the bank guarantee shall not be given effect to.

4. The Division Bench dismissed the appeal on 30.7.2001; it also imposed costs to the tune of Rs. 10,000/- and further directed that the amounts deposited by the judgment debtor/appellant should be released to the present decree holder, forthwith. The judgment debtor carried the order of the Division Bench in appeal by Special Leave, under Article 136 of the Constitution to the Supreme Court, which rejected it, on 4.10.2007.

5. It is claimed by the decree holder as on 5.3.2008, the balance amount of Rs. 5,09,216.09 was payable by the judgment debtor after adjusting the award amount (i.e. Rs. 11,24,085.56) and the interest accruing thereon. The decree holder had been paid a sum of Rs. 21,89,990/- on 20.9.2001. It is further claimed that as on 20.9.2001 the balance decretal amount, which included 15% per annum directed under the award, had mounted to Rs. 32,07,974.51 and that this further increased to Rs. 43,44,132.14 as on 29.1.2003; that day the judgment debtor had paid the sum of Rs. 33,06,680/- thus leaving a balance of Rs. 10,37,452.14.

6. This Court had on 10.12.2004 directed issuance of warrant of attachment for rest of the amounts of Rs. 13,31,454.65. It is claimed that after due adjustment of the said amount, the balance decretal amount, on a proper application of the law would stand at Rs. 5,09,2106.09.

7. It is contended on behalf of the decree holder by its Counsel Ms. Anusuya Salwan that on the application of well settled principles, interest up to the date of the decree formed part of the decree and could not be distinguished from the principal, or award amount. Thus, the judgment debtor could not claim to be relieved of its liability to pay the entire

decretal amount, to satisfy the decree holder's rights under the decree. She relied upon the judgment of the Supreme Court reported as [Oil and Natural Gas Commission Vs. M.C. Clelland Engineers S.A.](#), (Clelland Engineering) and also the judgment reported as *Saraswati Construction Co. v. DDA* 112 (2004) DLT 336 : 2004 (5) AD Delhi 375, in support of the submission that interest awarded on interest, also termed as interest on damages or compensation for delayed payment would be a part of the principal amount thus not attracting Section 3 of the Interest Act.

8. It was further contended that the judgment debtor cannot hide behind the plea that it had deposited the principal or award amount on 5.4.1994 to escape liability for satisfying the decree fully. It was submitted that deposit of any amount in the Court would not amount to satisfying the decree as it is made only with a view to purchase peace and escape attachment of properties; keeping in view the creditor/decreed holder away from the fruits of the judgment. Thus, the deposit of entire amounts too would not make any difference. Counsel placed reliance upon the decision of the Supreme Court reported as [P.S.L. Ramanathan Chettiar and Others Vs. O. Rm. P. Rm. Ramanathan Chettiar](#), in support of the submission that deposit of amounts by a judgment debtor under orders of Appellate Court does not amount to payment in terms of Order 21 Rule 1 of the CPC and, therefore, the judgment debtor continues to be liable to pay on the entire decretal amount and merely cannot claim immunity from paying interest from the date of the deposit.

9. The respondent filed its reply to the execution. In that it has largely not disputed the facts. It adverts to deposit Rs. 11,4085.56 on 5.4.1994 and alleges to be the entire principal amount and further adverts to payment of other amounts. It is claimed by the judgment debtor and alleged on its behalf Mr. Ravinder Kumar that the decree holder sought review of the order dated 24.7.1994 without revealing that it had moved an application for vacation of the said order. Considerable reliance was placed on the said two applications i.e. CM No. 229/94 and CM 312/94. Counsel submitted that the Division Bench neither reviewed its order dated 25.7.1994, by which it had declined to release the amounts deposited in Court nor vacated it subsequently. In the circumstances, the decree holder, having attempted to proceed further in the matter and seek release of the amounts, is now stopped by conduct from asserting that the further amounts, were at all payable on or after 5.4.1994, i.e. the date of deposit.

10. Learned Counsel also contended that the amount deposited in the Court accrued interest which was also released to the decree holder. In the circumstances, the judgment debtor having paid the principal amount, and also the interest which had accrued thereon and further two amounts later on different dates, can justly claim that the decree stands satisfied. Learned Counsel relied upon the order dated 6.4.1995 and submitted that this Court was not inclined to release the amounts or proceed for recovery of the interest amounts allegedly due.

11. It was submitted that in the conspectus of the above facts this Court should dispose of the Execution Petition stating that the decree stands satisfied and that amounts due and

payable had been fully paid to the petitioner by the decree holder.

12. In the Oil and Natural Gas Commission case, the Supreme Court held that the award of interest on amounts due, by an arbitrator amount to interest on damages or compensation; therefore, the provisions of Section 3 of the Interest Act do not get attracted. In *Saraswati Construction (supra)* it was held that the passing of an Award or the dismissal of the objections by the Court and passing a decree in terms of the Award, not only the amount of a claim upheld by the Arbitrator or the Court but the pre-suit and pendente lite interest awarded in favour of the decree holder crystallizes into decretal amount. Thus, future interest becomes payable on the entire amount comprised the claims as well as the pre-suit and pendente lite interest. Thus, future interest is not to be calculated merely on the amount of the claims upheld by the Arbitrator/Court but also on the amount of the interest awarded by the Arbitrator or the Court from the date of the passing of the decree.

In view of this clear position in law, the Court has to hold that the entire amount, i.e. principal and interest accruing till the date of the judgment making the award rule of Court, became part of the decree. No part of it could be segregated as either principal or interest.

13. As regards the second question, i.e. whether the deposit of part of the amount absolved the judgment debtor of any liability to pay interest from that date, the Supreme Court held in this very context, in *Ramanathan Chettiar's case (supra)* that:

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.

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.

14. The facts of this case show that the judgment debtor did not deposit any part of the amount decreed till 5.4.1994, after the order of the Division Bench, requiring such deposit, as a condition for stay of attachment. This clearly amounted to the kind of conduct, indicated in *Ramanathan Chettiar's case (supra)* whereby the payment was

made to purchase peace. A proper application of the law in that case would mean that the judgment debtor cannot claim any kind of equity or relief, for having deposited that amount. This is quite apart from the fact that depositing Rs. 11,24,085.56 did not amount to depositing the decretal amount; it only resulted in depositing a part of the said amount.

15. The other contention of the judgment debtor is that having been unsuccessful in its attempts to secure release of the amounts deposited during the pendency of the appeal, and having allowed the interlocutory order of the Division Bench to become final, and also having suffered an order of this Court, refusing release of the decretal amount, the decree holder is now stopped from claiming interest on the entire amount, for the period after 5.4.1994. A close scrutiny of this contention would reveal that this is but another shade of the same argument negatived earlier, i.e. the disentitlement to any interest after 5.4.1994. Further, the argument would have been relevant, if the judgment had succeeded in part, to get the decree set aside, for any reason. However, here the Division Bench affirmed the judgment making the award rule of Court, and even imposed costs. Therefore, the decree holder's inability in persuading the Appellate Court to allow withdrawal of the amounts deposited, cannot rob it of its legal entitlement to the full amount of interest. The Court's considerations in declining a party's request at an interim stage to withdraw amounts, when the matter is at large, are quite different. At that stage, the endeavour of the Court is to ensure that no party is prejudiced by its order, and rule against likelihood of creation of irreversible situations, which might result in difficulties in restitution of rights at later stages of the proceedings. Therefore, the question of conduct or application of equitable principles, to deny what is plainly the decree holder's right, does not arise. In view of the above discussion, the objections raised by the judgment debtor have no force. It shall, therefore, pay the sum of Rs. 5,09,216.09 towards balance outstanding interest, on or before 15th April, 2008. The execution proceeding Ex. No. 225/93 is allowed in these terms. No costs. Order dasti.