

Sundeeep Industries Vs. Collector of Customs and anr.

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Court : Delhi

Decided On : Jul-16-2008

Reported in : 2008(105)DRJ58

Judge : Rajiv Sahai Endlaw, J.

Acts : Code of Civil Procedure (CPC) - Order 21, Rule 1 - Order 24

Appeal No. : Ex.P. 313/2003

Appellant : Sundeeep Industries

Respondent : Collector of Customs and anr.

Advocate for Def. : Satish Aggarwal, Adv.

Advocate for Pet/Ap. : Sharad K. Aggarwal, Adv

Judgement :

Rajiv Sahai Endlaw, J.

1. The only surviving issue in this execution petition is as to whether out of the amount of Rs 1,84,904.52 deposited by the judgment debtor in this Court, the decree holder is entitled to a sum of Rs 66,578.17 only as contended by the judgment debtor or to the entire amount as contended by the decree holder. The answer to the said issue depends upon whether the deposits made by the

judgment debtor in the court after filing of the execution petition are to be appropriated first towards interest as contended by the decree holder or first towards the principal amount as contended by the judgment debtor. If the appropriation is towards the interest first, then the decree holder is entitled to the release of the entire sum of Rs 1,84,904.52. However, if the appropriation is towards the principal first then the decree holder is entitled to the release of Rs 66,578.17 only.

2. An ex parte decree dated 22nd August, 2003 was passed in favor of the decree holder for recovery of Rs 22,64,564/- together with pendente lite and future interest @ 9% per annum from the date of institution of the suit till the date of realization. Costs of Rs 35,653.57 were also awarded to the decree holder. The decree holder filed this execution stating that as on 16th October, 2003 a sum of Rs 41,00,545.95 was due under the decree. The judgment debtor, on notice of the execution being issued, first deposited a sum of Rs 22,64,564/- in this Court as recorded in the order dated 21st May, 2004 in the execution. This amount was the exact amount of which the decree was passed besides interests and costs. However, on 21st May, 2004 when it was informed that the said amount had been deposited, it was not stated that the deposit was under any particular head. The order dated 21st May, 2004 itself directs the judgment debtor to deposit the balance decretal amount. Thereafter, a further sum of Rs 18,35,982/- was deposited by the judgment debtor in the court. On the submissions of the decree holder that the sum of Rs 1,84,904.54 remains outstanding on the decree, warrants of attachment for the said amount were issued towards the same. The amount was deposited by the judgment debtor in the court subject to the determination instant. The counsel for the judgment debtor has urged that upon the judgment debtor depositing the entire principal amount of Rs 22,64,564/- before the court on 12th February, 2004, notwithstanding the judgment debtor having not deposited the remaining decretal amount which was towards interest and costs only, further interest ought to stop running and as such besides the amount mentioned in the decree only the sum of Rs 66,578.17 more was due to the decree holder towards interest till the date of deposit. Reliance in this regard is placed on *Nandi Investments and Enterprises v. L.M. Saravamangala* AIR 2004 SC 4765. However, the said judgment after recording the submissions of the

parties remanded the matter to the High Court for fresh adjudication and is of no help to the judgment debtor. The counsel for the decree holder has on the other hand placed reliance on Gurpreet Singh v. Union of India : (2006)8SCC457 , Mathunni Mathai v. Hindustan Organic Chemicals Ltd : [1995]3SCR765 and Meghraj and Ors. v. Mst. Bayabai and Ors. : [1970]1SCR523 .

3. At first blush it appears that reference in Order 21 Rule 1 and Order 24 CPC to 'deposit' has to be reference to deposit of principal amount only since interest runs on the same only and question of cessation of interest on deposit of interest amount, which does not incur any further interest, does not arise. However, a Five Judges Bench of the Apex Court in Gurpreet Singh (supra) has extensively analyzed the provisions of Order 21 Rule 1 and Order 24 of the CPC and have held in para 26 as under:

26. Thus, in cases of execution of money decrees or award decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree.

The Apex Court in para 53 of the judgment even made the above rule subject to an exception - where deposit is indicated towards specified heads by judgment debtor while making the deposit intimating the decree-holder of his intention.

4. I have already noted above that the judgment debtor, in the present case, though first depositing the exact principal amount, at no stage intimated to the decree holder that the deposit was being made towards principal. I may notice that a Single Bench of this Court in Moolji v. Indian Railway Construction Company Limited 89 (2001) DLT 766 has also held that if the amounts were allowed to be adjusted towards the principal amount first, it would not only be against the provisions of law but would also be against the public policy inasmuch as the judgment debtor would then after depositing the principal amount delay the payment of the amount decreed towards interest and on which the decree holder would not be entitled to future interest. The same view has also been taken in

Tosh and Sons India Limited v. N.N. Khanna : AIR2006 Delhi251 and Bengal Silk Trading Company v. D.S. Bhalla : 65(1997)DLT219 .

5. Thus, the amount of Rs 22,64,564/- deposited by the judgment debtor on 12th February, 2004 would not cease the running of interest. The said deposit will be adjusted in interest and costs first, due on that date and the balance principal amount shall continue to incur interest.

6. In view of the above, the decree holder is entitled to the entire amount of Rs 1,84,904.52 lying deposited in this Court. The said amount was ordered to be kept in a fixed deposit. The decree holder would also be entitled to the interest earned on the said deposit.

The execution petition, accordingly, stands disposed of.

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