

**Ramu Vs. State of Kerala**

**Ramu Vs. State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/731185](http://sooperkanoon.com/731185)

**Court :** Kerala

**Decided On :** May-23-2005

**Reported in :** III(2007)BC177

**Judge :** K.T. Sankaran, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 34, 34(1), 47, 115 and 152  
- Order 47, Rule 1

**Appeal No. :** C.R.P. No. 1654 of 2000

**Appellant :** Ramu

**Respondent :** State of Kerala

**Advocate for Def. :** Government Pleader

**Advocate for Pet/Ap. :** K.G. Balasubramanian, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**K.T. Sankaran, J.**

1. The decree holder challenges the order in E.A. No. 1106 of 1999 in E.P. No. 169 of 1997 in O.S. No. 293 of 1992, on the file of the Court of the Subordinate Judge of Irinjalakuda, by which the Court below recorded full satisfaction of the

decree.

2. The revision petitioner instituted the suit for realization of the amounts due to him from the respondent State on account of the contract work undertaken by the plaintiff. The second defendant in the suit is the Assistant Executive Engineer, P.W.D. (Roads and Bridges), Sub-Division, Irinjalakuda. The plaintiff claimed a sum of Rs. 26,332/- inclusive of interest up to the date of suit, the date of suit being 23.5.1992. The rate of interest claimed in the plaint is 18% per annum from the date of suit till realization.

3. From the judgment, it is clear that there was no full-fledged trial. The judgment reads thus:

Govt. Pleader filed statement by the 2nd defendant that the defendants will pay the amount of Rs. 22,243.95 (Rupees twenty two thousand two hundred and forty three and paise ninety five only) to the plaintiff having the department has deducted the statutory recoveries. The defendants have undertaken to pay the amount as aforesaid within three months. Hence the suit is decreed for a sum of Rs. 22,243.95 (Rupees twenty two thousand and two hundred and forty three and paise ninety five only) within three months from the date of this judgment. There is no costs allowed because, it is proved that the defendants have not paid the amount only because there was a Vigilance Inquiry pending against the plaintiff. But any how, it is decreed that, if the defendants have failed to pay the amount now decreed to the plaintiff within three months as agreed, the plaintiff is entitled for the interest at the rate of 12% per annum, and the costs of the suit from the defendants and their assets.

A decree in terms of the judgment was passed. The operative portion of the decree reads thus: The Court doth order and decree that the plaintiff be allowed to recover a sum of Rs. 22,243.95 within three months from the date of this judgment. If the defendants have failed to pay the amount now decreed to the plaintiff within three months as agreed, the plaintiff be entitled for the interest at the rate of 12% per annum and the costs of the suit Rs. 2,696.50 from the defendants and their assets.

4. The judgment debtor did not pay the agreed amount within the time stipulated as per the decree. Therefore, the decree holder filed the Execution Petition. The judgment debtor deposited a sum of Rs. 25,393.88 on 22.8.1997 and prayed for recording satisfaction of the decree. The decree holder objected to recording of satisfaction of the decree and contended that as per the decree interest is payable from the date of suit and not from the date of decree. This contention was negated by the Court below holding that as per the decree, the decree holder is entitled to interest only from the date of decree and that interest is not specifically granted from the date of suit. Finding that the judgment debtor has deposited the entire decree amount, the Court below recorded satisfaction of the decree.

5. Mr. K.G. Balasubramanian, learned Counsel for the revision petitioner submitted that since the amount was not paid within time as per the decree, the judgment debtor is liable to pay interest from the date of suit. According to him, no correction of the decree or review of the decree is necessary since it is a question of construction of the decree. He also added that there is no question of the Executing Court going behind the decree and if a true construction of the decree is bad, the only conclusion that could be arrived at is that the decree holder is entitled to interest from the date of suit. He pointed out that Section 34(1) of the Code of Civil Procedure empowers the Court to pass a decree granting interest at such rate as it deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding 6% per annum, as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. The Counsel for the revision petitioner contends that it should be presumed that the Court had exercised the jurisdiction under Section 34(1) of the Code of Civil Procedure and granted interest from the date of suit, so long as it is not specifically denied as per the judgment and decree. The Counsel added that a decree could speak only in terms of Section 34 of the Code of Civil Procedure.

6. Mrs. Vaheeda Babu, learned Senior Government Pleader, on the other hand contended that the decree was in fact passed on consent and a statement was

filed by the second defendant, the Assistant Executive Engineer, at the trial stage. That statement was accepted by the plaintiff and the judgment and decree were passed in terms of such concession or agreement. It was pointed out that the amount claimed in the plaint is Rs. 26,332/-, while the amount decreed is Rs. 22,243.95. Though interest up to the date of plaint was claimed on the amount due, that was not granted nor agreed to by the defendants. Learned Senior Government Pleader also pointed out that though interest claimed is 18% per annum what was granted is only 12% per annum. Answering the contention based on Section 34, the learned Senior Government Pleader contended that Section 34 empowers the Court to grant future interest only at 6% per annum unless the proviso to Section 34 of the Code of Civil Procedure is attracted. Still, even without any specific finding as to the availability of the proviso, the Court has granted interest at 12% and not at 6% which could be granted under Section 34(1). This, according to her, only points out the consensus arrived at between the parties. A decree granted on consent cannot be varied at the instance of a party, she contends.

7. I am not inclined to accept the contention raised by the decree holder. A fair reading of the judgment and decree would indicate that a package was suggested by the second defendant and it was agreed to by the decree holder. The fact that interest before the date of institution of the suit was not agreed to be paid nor awarded, that a specified sum was agreed upon between the parties and that interest at 12% per annum was granted even without a finding that the transaction was a commercial transaction, would lead to the conclusion that the Court was recording an agreement between the parties and a decree was being passed in terms of such agreement. That the Court could pass a decree awarding interest from the date of suit, on the merits of the case, is not a ground to accept the contention raised by the decree holder that Section 34(1) of the Code of Civil Procedure would have been taken into account by the Trial Court in its full vigor and application.

8. It is well settled that when there is no ambiguity in the decree, the Executing Court cannot go behind the decree, though it has competence to construe the decree. The Executing Court shall execute the decree as it stands. The Executing

Court has no jurisdiction to modify or add to or vary the terms of the decree in execution. In execution, the Executing Court is not empowered to arrive at a finding as to what would have been in the mind of the Court at the time of passing the judgment. The decree is to be interpreted on its terms. The decree holder has no case that there is any clerical or arithmetical mistake in the judgment. There is also no case that an error occurred due to any accidental slip or omission. Even if it is so, the Executing Court has no jurisdiction to examine such a contention and to arrive at a finding on that basis. In such a situation, the jurisdiction under Section 152 could be exercised only by the Trial Court, and not by the Executing Court. The principle is that it is the Court which commits the mistake which must remedy its error. That the Trial Court could, in the given case, pass a decree granting interest from the date of suit is not a ground to hold that the decree must be read as one granting such interest.

9. To construe the terms of a decree is different from correcting it. The jurisdiction of the Executing Court under Section 47 of the Code of Civil Procedure is quite different from that under Section 152 of the Code of Civil Procedure or Order 47 Rule 1, C.P.C. Even if the decree is based on an erroneous judgment, the Executing Court is not entitled to correct it. Such correction or review can be had only by recourse in Section 152 of the Code of Civil Procedure or Order 47 Rule 1 of the Code of Civil Procedure, as the case may be, depending upon the nature of the error. Under the guise of construing or interpreting the decree, the Executing Court cannot exercise the powers vested in the Court which passed the decree, under Section 152 of the Code of Civil Procedure or Order 47 Rule 1 of the Code of Civil Procedure; not could it vary the decree.

10. Justice Krishna Iyer (as His Lordship then was) in *Mytheen Kimju Abdul Hained v. State Bank of Travancore, Quilon Branch* 1969 K.L.J. 549, while considering the scope and ambit of Section 152 of the Code of Civil Procedure held:

To err is human, and, since Judges are also human, they are also liable to err and so, the procedural laws of this country have provided for remedying judicial errors by others above, through appeals and revisions, and by themselves through

processes of review and rectification..After-thought enlightenment, of course, cannot be fobbed off as a slip, because the 'slip rule' does not apply when the judgment correctly represents what the Court in fact, albeit wrongly, intended. But, if, in the course of the judgment, an inadvertent mistake, thanks carelessness, forgetfulness or absent-mindedness-creeps in, it is amenable to correction under the 'slip rule'. A slip of the tongue or a slip of the brain, be it a positive slip in the sense of slating something by mistake for something else or a negative slip in the sense of failing to mention something which you intended to state, will come within the wider sweep of the 'slip rule'.

11. In *Bhavan Vaja and Ors. v. Solanki Hanuji Khodaji Mansang and Anr.* : AIR 1972 SC1371 . Honourable Supreme Court held:

It is true that an Executing Court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the Court, often has to ascertain the circumstances under which those words came to be used....

12. In *Padmalaya v. Shyamsundar Sahu and Ors.* : AIR1980 Ori1 , the final decree did not specify which of the defendants are liable to pay mesne profits.

The fourth defendant was appointed as Receiver. In execution, mesne profits were claimed against him. It was held:.Mere acceptance of the Commissioner's report does not give rise to liability unless there be a clear determination that for the entire mesne profits as decreed by the Court, the liability is of defendant No. 4. In the instant case, on the basis of ambiguity, liability of the fourth defendant cannot be found out by construing the decree. It is open to the plaintiff to move the Trial Court for suitable amendment of the final decree passed by it fixing the liability of any of the parties for the mesne profits and until that is done, in execution defendant No. 4 cannot be proceeded against on the basis of liability arising out of construing of the decree.

13. As per the decree, had the defendant paid a sum of Rs. 22,243.95, the plaintiff/decree holder could not claim anything further. Payment of interest is provided only as a default clause, i.e., in case the amount is not paid within three months from the date of decree. The Court below having not specifically granted interest from the date of suit, on a fair reading of the judgment and decree the only reasonable interpretation that could be placed is that the Court granted interest only from the date of decree. The judgment debtor having deposited the decree amount as well as interest from the date of decree, the Court below was justified in recording full satisfaction of the decree. I am of the view that there is no error warranting interference under Section 115 of the Code of Civil Procedure.

The Civil Revision Petition Jails and it is accordingly dismissed. No order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**