

Sigappiachi and ors. Vs. M.A.P.A. Palaniappa Chettiar

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Court : Chennai

Decided On : Oct-22-1971

Reported in : AIR1972Mad463

Judge : Kailasam and ;Ganesan, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 34

Appeal No. : Appeal Nos. 201 of 1962, 44 of 1963 and Review C.M.P. No. 5447 of 1971

Appellant : Sigappiachi and ors.

Respondent : M.A.P.A. Palaniappa Chettiar

Advocate for Def. : Mr. D. Ramaswami Iyengar

Judgement :

1. The appellants in A. S. No. 201 of 1962 have filed this review petition on the ground that there is an error apparent on the face of the record. Their contention is that interest has not been awarded under Section 34, C.P. Code. It is also contended that the principal sum adjudged in Rs. 34,773.68 on which alone interest can be awarded under Section 34, C.P. Code.

2. It is unfortunate that in the course of the prolonged hearing of the appeal, this point relating to interest was not raised by either of the parties. In the concluding part of our judgment, we directed that the interest that had been allowed by the

lower Court upto the date of suit be confirmed and that from the date of suit compound interest on the amount found due at 7 1/2 per cent will be calculated upto the date of realisation.

3. Section 34, Civil P.C. provides:--

"(1) Where and in so far as a decree is for the payment of money, the court may, in the decree order interest at such rate as the court 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 six per cent per annum as the court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

The section provides that the award of interest from the date of suit to the date of the decree is at the discretion of the court, while the rate of interest shall not exceed six per cent per annum on the principal sum from the date of decree to the date of payment.

4. On behalf of the respondent, it was contended that the suit is one of accounts and that the provisions of Section 34 are not applicable thereto. Order VII, Rule 2, Civil P.C. is the provision that is applicable to a suit for money. The rule provides that if the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for, One other provision that is relatable to an account is Order XX, Rule 16, which reads thus--

"In a suit for an account of pecuniary transactions between a principal and an agent,..... where it is necessary, in order to ascertain the amount of money due to

or from any party, that an account should be taken, the court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit".

In the plaint, the plaintiff has valued the suit at Rs. 1,00,000 and paid a court-fee of Rs. 1,425 plus Rs. 15 i.e. Rs. 1,440 thereon, and stated that as and when the accounts are rendered and the exact sum due from the defendant is ascertained, he is prepared to pay the full and correct court-fee assessable thereon in addition.

5. From the provisions of O. VII, R 2. it is clear that an account suit is also treated as a money suit. Therefore, the provisions relating to money suit will apply to a suit for taking of accounts also. Prima facie, the provisions of Section 34 would be applicable in awarding interest in an account suit. But the question arises as to what is the 'principal sum adjudged' in an account suit.

6. Taking into account the provisions of the Code of Civil Procedure and the method in which an account suit is valued and court-fee paid thereon, the principal sum adjudged would be the principal amount that is found payable by the defendant on the date of suit.

7. On behalf of the review petitioners it was submitted that this suit was based on several items of charges, numbering about twentysix, in which specific amounts with interest were claimed and it was contended that in this suit, the principal sum adjudged would be the amount claimed under each of the charges. We are unable to agree with this contention, for the suit was filed as an account suit and proceeded as an account suit. In the course of the trial, the plaintiff was able to rely on certain specific amounts which he charged the defendant as not having been accounted for and for the purpose of convenience they were treated as separate charges and the amount and interest due thereon were calculated. But as this is an account suit the various charges are in relation to various sums under different heads and the principal amount can only be the one which is ascertained on the date when the relationship between the parties ceased and the suit was filed i.e. the sum that is found due on the date of the suit. In this view, we are unable to agree with the learned counsel for the review petitioners that the principal sum is the sum that is covered by the various charges.

8. Having found that Section 34, C.P. Code is applicable and that the 'principal sum adjudged' is the amount found due on the date of the suit, our direction in the judgment that "from the date of suit, interest on the amount found due at 7 1/2 per cent, compound" the plaintiff will be entitled to, is not in accordance with the provisions of Section 34, in that the court could only award interest not exceeding six per cent per annum on the principal sum adjudged from the date of the decree to the date of payment.

9. As the direction in our judgment regarding 'further interest' from the date of the decree is not in conformity with Section 34, C.P. Code which is an error apparent on the face of the record we direct that the principal sum adjudged will carry 'further interest' at six per cent per annum simple, from the date of the decree till date of realisation.

10. Regarding interest that is payable from the date of suit to the date of the decree, it is at the discretion of the court, and we affirm our direction that interest from the date of suit to the date of decree shall be at the rate of 7 1/2 per cent per annum, compound. It has not been made clear in our judgment regarding rests, so far as compound interest is concerned. We now direct that compound interest allowed will have yearly rests.

11. The next question is an regards the fixing of the 'principal sum adjudged' for awarding interest from the date of suit to the date of decree. It was contended on behalf of the petitioners that the principal sum adjudged is the sum found due as on the date of suit and that the same rule should be made applicable in the matter of calculating interest from the date of suit to the date of decree. But Mr. D. Ramaswami Iyengar, learned counsel for the respondent, submitted that the trial Court in its final decree has directed--

"That the defendants 2 to 9 do pay to the plaintiff the sum of Rs. 3,56,750-35 with subsequent interest at six per cent per annum of Rs. 3,28,424-83 from 29-11-1961 till the date of realisation".

This clause in the final decree was not specifically challenged in any of the grounds of appeal and was not argued before us when the appeal was heard.

According to Mr. Ramaswami Iyengar, the decree of the trial Court has become final and is not open to review at this stage. On the other hand, Mr. Kesava Aiyangar, for the petitioners, would submit that the non-raising of the point in the grounds of appeal would not render the judgment of the lower Court valid and that as the error is one which is apparent or patent on a reference under Section 34, C.P. Code, the failure to raise a ground in the appeal memorandum would not make the error in the judgment with respect to award of interest any the less an error apparent on the face of the record.

12. Having held that Section 34, Civil P.C. is applicable to an account suit and that the 'principal sum adjudged' will be the sum total found due as on the date of suit, it would irresistibly follow that the interest that is awardable from the date of suit to the date of the decree can only be on the 'principal sum adjudged' i.e. the amount found due as on the date of suit.

Mr. Ramaswami Iyengar contended that as the matter has not been agitated in appeal, it cannot be construed as an 'error apparent on the face of the record'. But we find there is no escape from the conclusion which we arrive at, because, the decree will have to be in conformity with the provisions of Section 34. Therefore though the decree of the trial Court was erroneous and was not challenged in the grounds of appeals and was not argued before us during the hearing of the appeal we come to the conclusion that interest is payable from the date of suit to the date of decree only on the 'principal sum adjudged' as payable on the date of suit.

13. One other minor correction in our judgment is also necessary, in that, in our direction "A.S. No. 44 of 1963 is dismissed with costs with proportionate costs" we meant only that "A.S. No. 44 of 1963 is to be partly allowed with proportionate costs". The judgment will be corrected accordingly.

In the result the review petition is allowed to the extend indicated above. No order as to costs.

Review allowed.