

+ **Ex. 336/2008**

Date of decision: 18.03.2009

Through: Mr. Raman Kapur with Mr. R.P. Singh,
Advocates.

Through: Mr. Jitender Kumar Singh, Advocate

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

1. The only question remaining for adjudication in this execution is, as to till which date the decree holder is entitled to interest, till the date of filing of the execution application in this court or till the date of receipt of monies in this court pursuant to warrants of attachment or till the date of payment thereof to the decree holder.

2. Execution was sought of an arbitral award having the force of a decree under Section 35 of the Arbitration & Conciliation Act, 1996. The award directed the respondent/judgment debtor to pay the awarded amount within 90 days of the publication of the award, failing which interest at 18% was payable by the judgment debtor to the decree holder till the payment of the arbitration award. The record reveals that the judgment debtor preferred an application

under Section 34 of the Arbitration Act with respect to the said award. The same was registered as OMP No.327/2002 and was dismissed on 9th March, 2008. The appeal preferred by the judgment debtor against the order of dismissal of its application under Section 34 of the Act was also dismissed by a Division Bench of this court on 26th May, 2008. The decree holder applied for execution on 3rd September, 2008. It was stated in the execution application that as on 4th September, 2008 a sum of Rs.29,64,402/- was due under the award. Execution was sought by attachment and sale of the properties of the judgment debtor.

3. Notice of the execution application was issued to the judgment debtor on 5th September, 2008. The judgment debtor was served on 15th October, 2008 but none appeared for the judgment debtor on 22nd October, 2008. In the circumstances, warrants of attachment of the monies to the extent of Rs.29,64,402/- in the name of the Office of the Chief Administration/Construction Officer, Northern Railway, Kashmere Gate, Delhi and in the name of F.A. & CAO/Construction with the Reserve Bank of India returnable on 6th January, 2009 were issued. The Reserve Bank of India was also directed to make the pay order for the said amount in the name of the Registrar General of this court and to have the same transmitted to this court on or before the said date.

4. The judgment debtor on or about 10th November, 2008 filed E.A. No.530/2008 stating that it had preferred an SLP in the Apex court against the dismissal of its appeal by the Division Bench and the same was likely to be listed. It was further urged that thus the award had not become final and the execution was not maintainable. The decree holder thus sought stay of execution as well as of

attachment till the decision of the SLP stated to have been preferred by it.

5. E.A. No.530/2008 came up before this court first on 17th November, 2008. It was informed that the attachment had already been affected. In fact the cheque was received in the registry of this court on 18th November, 2008. The counsel for the judgment debtor thus on 17th November, 2008 only made a request for staying the release of the money to the decree holder. However, it was noted in the order dated 17th November, 2008 that till then there was no order for release of the money to the decree holder.

6. The decree holder thereafter filed E.A.No.548/2008 stating that the attachment in fact had been affected on 14th November, 2008; and seeking release of the sum of Rs.29,64,402/- received in this court pursuant to the attachment. The said application being E.A. No.548/2008 came up before this court on 26th November, 2008 and notice thereof was issued to the judgment debtor for 6th January, 2009.

7. E.As. No.530/2008 and 548/2008 both were heard on 6th January, 2009. After hearing, the E.A. No.530/2008 of the judgment debtor was dismissed. It may be noticed that it was informed on that date that the judgment debtor had since then withdrawn the SLP preferred in the Apex court. The counsel for the judgment debtor, however even on that date opposed the release of the monies to the decree holder by stating that the decree holder had not correctly calculated the amounts. It was further stated that only about Rs.28,50,000/- were due under the award to the decree holder. In the circumstances, on 6th January, 2009 it was ordered that out of the monies received on attachment in this court, the sum of Rs.28,50,000/- be released to the decree holder and the balance

amount was ordered to be retained in the court subject to final orders. The Registrar General of this court was requested to report on the amount due under the award.

8. The Registrar General of this court has in his order dated 4th February, 2009 recorded that the only dispute between the parties is that while the judgment debtor has calculated the interest on the award amount up to 4th September, 2008, the decree holder has calculated the interest up to the date of 18th November, 2008 when the monies were received in the registry of this court and in fact was claiming interest till 15th January, 2009 when the sum of Rs.28,50,000/- was actually released in favour of the decree holder. If the interest is to be calculated till 4th September, 2008 then the amount due is Rs.29,04,401/-. If the interest is calculated till 18th November, 2008, then the amount due under the award is Rs.29,52,418/- and if the interest is calculated up to 15th January, 2009 then the amount due under the award is Rs.29,89,847/-.

9. There is no basis whatsoever for the judgment debtor to calculate the interest till 4th September, 2009 only. Though in the execution application the decree holder disclosed the amount due as on 4th September, 2008 as Rs.29,64,402/- but has now admitted the calculation of the judgment debtor of the amount due as on that date being Rs.29,04,401/-only. However, the said fact is irrelevant for the present purposes.

10. In my view, the decree being for payment of interest till the date of payment, the date of filing of execution application is irrelevant and the interest allowed under the decree would not cease to run merely because the execution has been filed. Thus, the interest will continue to run notwithstanding the filing of the execution application.

11. The next question to be considered is as to whether the interest will cease to run on the date when the attachment is affected or will continue to run even thereafter till the money is released to the judgment debtor. The CPC does not provide the answer to the said question. The question really is whether the future interest allowed under a decree ceases the moment the monies are out of the pocket of the judgment debtor or continues to run till payment to decree holder.

12. This court is an executing court and cannot go behind the decree. The decree is not of payment of interest till attachment but is for payment of interest till the date of payment of the awarded decretal amounts to the decree holder. Can the attachment of monies on the execution application of the decree holder be regarded as payment to the decree holder? In my opinion the same cannot be so regarded. The purpose of attachment is merely to prevent further alienation/encumbrance and to make the attached goods/money available for execution.

13. Help in this regard can be derived from Order 21 Rule 1 providing mode of paying money under the decree. It provides for the judgment debtor to deposit the monies in the court and to give notice to the decree holder either directly or by Registered Post AD through court of such deposit. Sub-rule 4 provides that on amounts so deposited the interest shall cease to run from the date of service of such notice on the decree holder. The purport of law appears to be that the interest will cease to run on the day when the decree holder has knowledge that money is deposited in the court and there is no impediment to his withdrawing the same. The decree holder thereafter cannot be heard to say that he withdrew the money after a few months and since the money was received by him on that date

only, he is entitled to interest till then. In these circumstances, the payment unto court with intimation to the decree holder is deemed to be the payment to the decree holder.

14. Applying the aforesaid principles to the present case the following factors are relevant:-

- a. The judgment debtor did not pay/deposit money on its own and compelled the decree holder to apply for execution.
- b. The judgment debtor did not appear before the court pursuant to the notice of execution.
- c. Though the judgment debtor filed E.A. No.530/2008 on 10th November, 2008 i.e. prior to execution of warrants of attachment but did not have the same listed till after the execution of warrants of attachment; even after the warrants of attachment had been executed a prayer was made for not releasing the monies attached and received in the court to the decree holder.
- d. On 6th January, 2009 also inspite of withdrawal of the SLP objections were raised. It was only after disposal of the said objections on 6th January, 2009 itself that the order for release was made.

15. It would thus be seen that till 6th January, 2009, inspite of the money having been received pursuant to warrants of attachment in this court, the same was not in a position to be released to the decree holder.

16. Drawing the analogy of Order 23 Rule 1 aforesaid, the decree holder would be entitled to interest till 6th January, 2009, in as much as on that date the decree holder had notice that the monies attached were releasable to it. The amount due till 6th January, 2009 as reported by the Registrar General of this court and which has not been disputed by any of the parties is Rs.29,52,418/-.

17. The decree holder is not entitled to interest till 15th January, 2009 on which date the monies were actually released to the decree holder, in as much as the order of release was made on 6th January,

2009 itself. The delay, if any, in release of the money thereafter is not attributable to the judgment debtor and the judgment debtor cannot be made liable for interest for such delay.

18. I may before concluding notice **M.B. Patel & Co. Vs. ONGC** (2008) 8 SCC 251 relied upon by the counsel for the judgment debtor. In that case the arbitral award awarding interest when the agreement between the parties expressly provided that no interest shall be allowed was remanded for reconsideration. The counsel for the judgment debtor has argued that the agreement between the parties in the present case is also to the same effect and thus no interest whatsoever is payable to the decree holder and the judgment debtor is entitled to refund out of the amount of Rs.28,50,000/- already released to the decree holder.

19. I do not find any merit in the contention of the counsel for the judgment debtor. The Apex court in **M.B. Patel & Co.** was concerned with appeal/SLP arising from proceedings challenging the award. However, in the present case, the award admittedly directs payment of interest and application under Section 34 with respect to the said award has been dismissed and the appeal against the said order has also been dismissed and the SLP preferred to the Apex court has been withdrawn. Thus the award has attained finality and now has the force of the decree. This court is merely executing the award and cannot go behind the award.

20. The counsel for the decree holder had also relied upon the full bench of the Madras High Court in **O.R.M. P RM. Ramanathan Chettiar Vs. S.L.Ramanathan Chettiar** AIR 1960 Madras 207 holding that payment under Order 21 Rule 1 must be unconditional and if any restrictions are placed while depositing the money in the court, the interest does not cease to run. He has also relied upon the

judgment of this court in **Kali Charan Sharma Vs. NOIDA** MANU/DE/1367/2008 holding that interest does not cease to run where monies are deposited as security for stay of execution.

21. The conclusion reached by me is inconsonance with the principle leading to the aforesaid two judgments.

22. Accordingly, it is directed that out of the monies received in this court pursuant to attachment, a further sum of Rs.1,02,418/- be released to the decree holder within ten days of today and the balance amount, if any, be refunded to the judgment debtor; with these directions the execution petition is disposed of as satisfied.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**March 18, 2009
PP**