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HIGH COURT OF DELHI : NEW DELHI

CM (M)No. 1155/2010 & CM No. 16129/2010

% Judgment reserved on: 08th September, 2010

Judgment delivered on: 14th September, 2010

1. Smt. Sneha Prabha Bansal,
Wife of Sh. S. R. Bansal,
R/o B-277,
Greater Kailash Part-I,
New Delhi.

2. Shri Sita Ram Bansal,
S/o Shri Gajadhar Lal,
R/o B-277,
Greater Kailash Part-I,
New Delhi.

....Petitioners

Through: Mr. Ashish Dholakia with Mr.
Akashdeep Kakkar, Adv.

Versus

Life Insurance Corporation of India,
Having its Divisional Office at;
Jeevan Prakash,
25, Kasturba Gandhi Marg,
New Delhi.

....Respondent

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

Present petition has been filed under Article 227 of the Constitution of India, challenging order dated 6th August, 2010 passed by Civil Judge, Delhi in execution proceedings and also for recall of the orders dated 23rd May, 2001 and 18th October, 2003, in so far as they provide for interest to be paid on the sum of Rs.1,73,628.80/- in excess of simple interest at the rate of Rs. 6 per cent per annum.

2. Brief facts are that in year 1998 respondent (plaintiff in trial court) filed a suit for recovery of Rs. 1,73,628.80/- against present petitioner (defendant in trial court). As per averments made in the petition /lists of dates and events, no summon was served upon petitioners and they were proceeded ex parte. Petitioners, filed an application under Order 9 Rule 7 of the Code of Civil Procedure (for short as 'Code') for recalling of the said order which was dismissed.

3. Vide judgment dated 24 February, 2001, Additional District Judge, Delhi decreed the suit of respondent for sum of Rs.1,73,628.80.

4. On 30th April, 2001, respondent filed application for modification of the rate of interest. Without notice to the petitioners that application was allowed and ex parte judgment dated 24th February, 2001 was rectified.

5. On coming to know about rectification made in the decree, petitioners filed an application for recall of orders dated 24th February and 23rd May 2001. Vide order dated 18th October, 2003, Civil Judge dismissed that application. Petitioners filed CM (M) No. 316 of 2004 against that order, on which this Court passed following orders on 5th December, 2006:

“After some hearing, learned counsel for the petitioner seeks to withdraw the petition and states that he would move an appropriate application before the trial court and make an endeavour to persuade the trial court that a reduced rate of interest is liable to be granted pendent lite and future. Liberty granted to the petitioner to do so in accordance with law.
Dismissed as withdrawn.”

6. Subsequently, petitioner no. 2 was informed that if he paid a sum of Rs.2,00,000/-, the same would be regarded as full and final

settlement of the petitioners' dues. Accordingly, he paid that amount vide cheque. Petitioner was assured that letter acknowledging as full and final payment would be issued in a day or two, however, no such letter was subsequently sent.

7. On 13th July, 2007, petitioner wrote a letter to re-confirm that payment had been accepted in full and final settlement. In view of aforesaid, petitioners did not file any application for recall of orders dated 24th February and 23rd May, 2001, since the matter stood settled.

8. In 2007, respondent filed execution petition. In view of order dated 5th December, 2006, passed by this Court, petitioners filed application for recall of orders dated 23rd May, 2001 and 18th October, 2003. By impugned order dated 6th August, 2010, Civil Judge, dismissed the said application on the ground that application is barred by principle of res judicata.

9. It is contended by learned counsel for petitioners that Civil Judge erroneously held that application was barred by principle of res judicata as similar application had been dismissed, vide order dated 18th October, 2003.

10. It is further contended that rate of interest imposed post decree is without jurisdiction and can be challenged at any stage in any proceedings. The Court having no jurisdiction whatsoever to grant interest in excess of 6 per cent, passed wholly illegal order by directing payment of interest at 18 per cent with half yearly, rests for the period post decree until payment.

11. It is also contended that interest claimed by respondent is inequitable, penal, punitive and excessive especially when it had already recovered nearly double the principal amount before the suit was filed. Since trial court had no jurisdiction to grant interest in excess 6 per cent, orders passed by trial court granting interest in excess 6 per cent are null and void. Thus petitioners have got right to challenge those orders which are nullity under the law and no limitation has been provided for challenging such orders.

12. In support, learned counsel cited following judgments;

- (i) ***Balvant N. Viswamittra and Others Vs. Yadav Sadashiv Mule (Dead) through LRs and Others,***
(2004) 8 Supreme Court Cases 706;
- (ii) ***Gaon Sabha and Another Vs. Nathi and Others***
(2004) 12 Supreme Court Cases 555;

(iii) *Sarwan Kumar and Another Vs. Madan Lal Aggarwal*,
AIR 2003 Supreme Court 1475 and

(iv) *Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani*,
AIR 2004 Supreme Court 1084.

13. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

14. Article 227 of The Constitution of India reads as under;

“227. Power of superintendence over all courts by the High Court- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.”

15. In *Waryam Singh and another Vs. Amarnath and another*, **AIR 1954, SC 215**, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in –‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

16. In *Mohammed Yusuf Vs. Faij Mohammad and Ors.*, 2009 (1) **SCALE71, Supreme Court held;**

“The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

17. In *State of West Bengal and Ors. Vs. Samar Kumar Sarkar*, **JT 2009 (11) SC 258 Supreme Court held;**

‘10. Under Article 227, the High Court has been given power of superintendence both in judicial as

well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta* (AIR1975SC1297) this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court's function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.'

18. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, *JT 1995(7)SC400*, Apex Court observed;

“The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of

fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

19. In light of principles laid down in the above decisions, it is to be seen as to whether this petition under Article 227 of the Constitution of India, against impugned orders is maintainable or not.

20. Petitioners have made prayer for recall of orders dated 23rd May, 2001 and 18th October, 2003, which were passed about nine and seven years ago, respectively. These orders were not challenged at all during the period of limitation. Even if the same were wrong or void, same should have been challenged during the period of limitation.

21. In *State of Punjab and Others Vs. Gurdev Singh, JT 1991 (3) SC 465*, Supreme Court observed;

“8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for.”

22. Since, petitioners did not challenge these orders within the prescribed period of limitation, they have become final. Trial court,

rightly dismissed the application for recall of orders dated 23rd May, 2001 and 18th October, 2003 observing as under:

“By the present application the Jds/applicant are seeking a review of the order dt. 23.05.2001. Vide order dt. 23.05.2001 the DH was granted interest @ 18% p.a. with half yearly rests. Thereafter, the Jds/applicant filed an application u/s 151 CPC for setting aside the order dt. 23.05.2001 on the ground that the DH could not be granted interest at the rate more than 6% p.a. as per Section 34 of the CPC. That application of the Jds/applicant was dismissed by my Ld. Predecessor vide order dt. 18.10.2003 with costs of Rs.1000/- imposed upon the Jds/applicant. This application filed by the Jds/applicants is not maintainable for the following reasons. Firstly, the Jds/applicant have not paid the costs imposed upon them vide order dt. 18.10.2003. Secondly, the present application is barred by the principle of res-judicata for agitating the same point repeatedly which has been decided vide order dt. 18.10.2003. In the guise of present application the Jds/applicant are seeking recall of the above mentioned orders, and the same amounts to a review application. The Jds/applicant have not been able to point out as to how the Court can review the orders passed by the Ld. Predecessors when they have not been able to show any mistake or error apparent on the face of record or coming up of any new matter in the knowledge of Jds/applicant. Merely by citing Section 34 of CPC the Jds/applicant cannot be allowed to have indirectly which they could not have directly. The

arguments raised by the Ld. Counsel for Jds/applicant that my Ld. Predecessors had committed an error by granting interest at an hefty rates is not tenable as this should have been ground for the Jds/applicant to file an appeal. This Court is merely an execution Court and as such cannot go behind the decree under execution. I have already held that the same ground was taken by the Jds in their previous application which was dismissed by my Ld. Predecessor vide his order dt. 18.10.2003. As such the present application of Jds/applicant is devoid of merits and is hereby dismissed.”

23. Respondent filed suit for recovery in 1998. Now we are in 2010, this shows that more than 12 years have passed but, petitioners till date have not paid the entire decretal amount. This clearly shows that only purpose of filing of this petition is to deprive the decree holder, the fruits of the decree which was passed long ago. Present petition is nothing but gross abuse of the process of law. In this regard, observations made by Apex Court in ***Ravinder Kaur vs. Ashok Kumar & Another (2003) 8 SCC 289*** are quite relevant which read as under:-

“Courts of law should be careful enough to see through such diabolical plans of the judgment debtors to deny the decree holders the fruits of the decree obtained by them. These type of errors on the part of

the judicial forums only encourage frivolous and cantankerous litigations causing laws delay and bringing bad name to the judicial system.”

24. Recently Supreme Court in *Vinod Sethi Vs. Devinder Bajaj and Anr.*, 2010 (8) JT 66 observed;

“We do think that the courts cannot look helplessly at such tactics and ignore the problem of huge docket, which arises on account of meritless claims being filed. The heavy docket does not permit early disposal of suits and thus parties may take advantage of keeping frivolous claims alive”.

25. None of the judgments cited by learned counsel for petitioner are applicable to the facts of the present case.

26. Since, there is no illegality or infirmity in the impugned orders, this petition being most bogus and frivolous one is not maintainable at all under Article 227 of the Constitution of India and same is hereby dismissed with costs of Rs.30,000/-.

27. Petitioners are directed to deposit the costs by way of cross cheque with Registrar General of this court, within four weeks from today.

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28. Dismissed.

29. List for compliance on 20th October, 2010.

14th September, 2010
ab

V.B.GUPTA, J.