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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 08.02.2012

Judgment delivered on: 27.02.2012

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EFA(OS) No. 1/2001

M/S IRCON INTERNATIONAL LTD.

..... Appellant

Vs

M/S M. MOOLJI (BOMBAY)

..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr A.K. Singla, Sr. Advocate with Mr Gautam Anand, Advocate.
For the Respondent: Mr Mohit Khanna, Advocate.

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. It is said that the travails of a decree holder commence after he has obtained a decree in his favour. This case is no different. The case spans a period nearly two decades post the publication of an award in favour of the respondent/Decree Holder (DH). The captioned appeal has been filed to impugn the order dated 29.11.2000 passed by the learned Single Judge in EA No. 295/1999. By the impugned judgment learned single Judge dismissed the application filed by the appellant/ Judgment Debtor (JD) under Order 21 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short the Code). The said application, i.e., EA No. 295/1999, was filed in Execution Petition No. 184/1995.

2. In the appeal before us, the neat question of law raised is: Whether the interest on the decree would cease to run on payments being made, towards satisfaction of the decree; albeit with notice to the decree holder, which does not specify, the manner of the appropriation of the sum deposited in court? In other words, at the time of deposit of moneys in court, of which notice is served on the decree holder, there is no condition attached that the deposit should be adjusted towards the principal sum included in the decree.

3. In order to appreciate the contentions, following brief facts are required to be noticed.

3.1 The appellant/ JD, which is a public sector undertaking, wholly owned by the Central Government, in December, 1985, awarded the work of construction of pipe foundation and sub-structure of railway-cum-road bridge across the river Baran for Merry-go-round/Rihand Nagar Super Thermal Power Project/ National Power Thermal Power Corporation (hereinafter after referred collectively as the said work). Qua the said works, disputes arose between the appellant and the respondent which were referred to a sole arbitrator, one Sh. Ashok Trihan, General Manager, Engineering Services, New Delhi. The learned Arbitrator passed an award dated 25.12.1989. By virtue of the said award a sum of Rs 45,61,425/- alongwith interest at the rate of 15% from the date of the award till payment, was accorded, in favour of the respondent.

3.2 The respondent/DH took out proceedings, for filing the award in the court and for making the award, a rule of court. These proceedings were filed by the respondent/DH, in the court of Addl. Judge to the Court of Distt. Judge, Siddhi, Madhya Pradesh. The proceedings were numbered as: suit no. 2-B/191. The appellant/JD, filed objections under Section 30 and 33 of the Arbitration Act, 1940 (in short Arbitration Act) before the said court.

Even though objection with regard to jurisdiction were taken, these proceedings culminated in an order dated 31.03.1994, whereby the award was made a rule of court.

3.3 Against the order dated 31.03.1994, an appeal under Section 39 of the Arbitration Act was preferred, in the High Court of Madhya Pradesh, at Jabalpur. By an interim order dated 11.05.1994, a single judge of the Madhya Pradesh High Court, stayed the judgment and the decree carried in appeal to that court, pending adjudication of the appeal. By a subsequent order dated 21.09.1995, the appellant was directed to deposit the decretal amount in the trial court, within a period of two months. Simultaneously, permission was granted to the respondent/ DH to withdraw the moneys, on furnishing a bank guarantee, to the satisfaction of the Distt. Judge, Sidhi. It appears that a certified copy of the order was delivered to the appellant/ JD on 22.01.1996.

3.4 Consequent thereto, the appellant/JD moved the court of the Distt. Judge, Sidhi (Madhya Pradesh), for permission to deposit the amount, as directed, in the aforementioned order of the High Court of Madhya Pradesh. The appellant, tendered a cheque, in the sum of Rs 44,98,659/- dated 15.03.1996, in favour of the Distt. Judge, Sidhi. The said sum was tendered after the appellant/JD had deducted a sum of Rs 17325/- towards cost, and Rs 45441/-, against tax deducted at source (in short TDS). The Addl. Judge to the court of Distt. Judge, Sidhi (Madhya Pradesh), by an order dated 16.03.1996 granted permission to the appellant to deposit the amount with the District Collectorate. Admittedly, the said amount was deposited on 20.05.1996.

3.5 In the interregnum, the decree was transferred to this court. It may also be pertinent to note that the Madhya Pradesh High Court, by a judgment

delivered on 01.12.1998, modified the award to the extent that the claim no. 2 of the respondent/DH in the sum of Rs 1.50 lacs was set aside and, the pendente lite as also future interest, was reduced from 15% per annum to 6% per annum.

3.6 It appears that after the decree was modified by the High Court, the appellant/JD paid a sum of Rs 35,67,045/- to the respondent/ DH, after adjusting TDS, in the sum of Rs 65,833/-. According to the appellant/ JD this, additional payment: included a balance sum of Rs 32,25,792/- towards the decree; a sum of Rs 2,91,253/- towards refund of security; and a sum of Rs 50,000/- towards refund of earnest money.

3.7 Since, the respondent/ DH claimed that the decree had not been satisfied it continued with the proceedings for execution of the decree. At the point in time when, the matter was pending before the learned single Judge, the respondent/ DH took a stand that, a sum of Rs 19,07,062/- was payable to it. This fact is observed and noted in the impugned judgment of the learned Single Judge. As against this, the appellant/ JD, took the stand, as noticed above by us, that on the payment of the additional sum of Rs 35,67,045/-, the decree had been satisfied and, no moneys were due and payable to the respondent/ DH. It is this stand of the appellant/ JD, which resulted in an application being filed before the learned Single Judge, which came to be disposed of by the impugned judgment.

4. Before us, Mr A.K. Singla, learned senior counsel submitted that payments having been made in terms of Order 21 Rule 1 of the Code, no amount was due and payable to the respondent/ DH.

4.1 It is in this context that, Mr Singla submitted that the respondent/ DH was not entitled, as suggested, to adjust the amount deposited, in the first instance, as claimed towards interest and cost. In this context, it was Mr

Singla's submission that since moneys had been deposited in court, pursuant to a decree being passed, under the provisions of Order 21 Rule 1 of the Code, interest will cease to run on the decretal amount from the date of service of the notice of the said deposit upon the respondent/ DH. In other words, it was Mr Singla's contention that since, a sum of Rs 44,98,659/- was deposited by the appellant in court on 20.05.1996, no interest will run on the said amount pursuant to a notice in that behalf having been served on the respondent/ DH.

4.2 In support of his contention Mr Singla relied upon a Constitution Bench judgement, in the case of *Gurpreet Singh vs UOI*¹. Mr Singla further submitted that the deposit made in court by the appellant/ JD under Order 21 Rule 1 of the Code was akin to the deposits made prior to a decree being passed, in terms of, Order 24 of the Code. Mr Singla, thus submitted, that on a principle of parity, which according to him various courts have unreservedly accepted, interest would cease to run on the sums deposited in court, whether prior to a decree being passed or, thereafter (i.e., post decretal stage). Mr Singla further submitted that, therefore, the submission of the respondent/ DH that it had adjusted, the sum deposited, in the first instance, towards cost and interest was misconceived, as the provisions of Section 59 and 60 of the Contract Act were applicable only at the pre-decretal stage and not thereafter.

4.3 On the other hand, the learned counsel for the respondent/ DH submitted that the moneys deposited in court and paid, had been adjusted by it, in terms of section 59 and 60 of the Contract Act, 1870 (in short the Contract Act): firstly, towards cost awarded in its favour; secondly, towards interest accrued on the awarded amount and; lastly, towards the principal

¹ (2006) 8 SCC 457

amount accorded in its favour by virtue of the aforementioned decree. In other words, the stand taken was that the decree remaining unsatisfied, the respondent/ DH was entitled to interest, at the rate of 6% per annum from the date of the decree, on the outstanding amount.

5. The learned counsel for the respondent/ DH, however, contested the aforementioned submissions propounded by Mr Singla.

REASONS

6. Having heard the learned counsel for the appellant/ JD we are of the view that the proposition advanced by him appears to be untenable. The reasons for the same are as follows:

6.1 Order 21 Rule 1 of the Code sets out a procedure by which a decree can be satisfied. There is no procedure prescribed in the Code which allows, a partial satisfaction of the decree. The court which passes the judgment and the decree, is empowered, under Order 20 Rule 11, where a decree is passed for payment of money, for sufficient reasons, after hearing the concerned parties, to allow postponement of the decreed amount or, its payment in instalments, with or without interest, notwithstanding anything contained in the contract, under which the money is payable. However, once a decree is passed, the executing court has no power to permit payment of the decretal amount in instalments.²

6.2 In order to appreciate the contentions made on behalf of the appellant/ JD it may be appropriate at this stage to advert to the provisions of Section 59, 60 and 61 of the Contract Act.

² [See *Mahanarayana vs Vasudev* 1959 ALT 866 and *Vemula Srinivasa Rao vs Thumepalli Venkateswarlu* 2001 (6) ALT 791].

6.3 Section 59,³ applies to a situation where a debtor owes several distinct debts to a person and such debtor makes payment of the debt, he could either expressly or impliedly indicate to which particular debt the payment is to be applied. In such situation, if the creditor accepts the payment, the said Section mandates it must be applied accordingly.

6.4 Section 60,⁴ on the other hand, deals with a situation where, the debtor fails to intimate how the payment is to be applied or, there are no circumstances indicating its application to a particular debt. In such an eventuality, the creditor is entitled to apply the payment made by the debtor to any lawful debt actually due and payable at his own discretion, whether the same is or, is not barred under the statute of limitation applicable to suits.

6.5 Section 61,⁵ is a section, which takes into account a third situation, that is, where neither party makes an appropriation, the debt to which the payment made ought to be applied would be the one, which is, oldest in point of time, and if, the debts are of equal standing the payment made is required to be applied proportionately in discharge of the debtors liability.

7. The three sections are completely interlinked. These sections, however, i.e., Section 59 to 61 are applicable where, there are several

³ Section 59. Application of payment where debt to be discharged is indicated. – Where a debtor, owing several distinct debts to one person, make a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

⁴ Section 60. Application of payment where debt to be discharged is not indicated. – Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to limitation of suits.

⁵ Section 61. – Application of payment where neither party appropriates. – Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

distinct debts owed by the debtor to a creditor. In a situation where, there is a single debt, on which interest and costs are payable, the provisions of Section 59 and 60 of the Contract Act, have no applicability. Furthermore, Sections 59 and 60 of the, Contract Act are applicable only at a pre-decretal stage and not thereafter. Therefore, unless the court at the stage of passing a decree, prescribes a particular mode and manner of payment of decretal amount (and not just providing for payment by way of instalments), the general rule of appropriation is applicable, which is, that, in the absence of a specific condition or agreement to the contrary, the money paid by the judgment debtor is, first required to be applied in payment of interest and cost, and thereafter, towards payment of the principal amount. As indicated above, this general rule is subject to any agreement regarding mode of payment entered into by parties vis-à-vis payment of the decretal amount. See observations made in *Industrial Credit and Development Syndicate Now Called I.C.D.S. Ltd. vs Smithaben H. Patel (Smt.) & Ors*⁶. We may with profit quote, in particular, the observations made in paragraph 14 of the judgment.

“14. In view of what has been noticed hereinabove, we hold that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments, be made firstly in payment of interest and costs and thereafter in payment of the principal amount. Such a principle is, however, subject to one exception, i.e. that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 to 61 of the Contract Act are applicable in cases where a debtor

⁶ (1999) 3 SCC 80 in paragraphs 5, 9 & 14.

owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt.”

8. Thus, the general rule is that payments made by the debtor unless there is an agreement to the contrary between the parties, are to be applied in the first instance to interest and cost, and thereafter, to the outstanding principal amount. In the present case, undoubtedly a notice was issued by the appellant/ JD indicating that an amount equivalent to Rs 45,44,659/- had been deposited. The notice, however, did not intimate the mode and manner of appropriation of the sum paid by the appellant/ JD. This fact is not disputed before us by Mr Singla. Mr Singla, however, argued that based on the observations made in *Gurpreet Singh* case, that the principles which are applicable to a deposit made prior to a decree ought to be applied in this case as well. In other words, the provisions of Order 24 of the Code, be made applicable. Specific stress was laid on the observations of the Supreme Court, in paragraph 16 at page 468 of the judgment, passed in *Gurpreet Singh* case. In order to appreciate the observations of the Supreme Court in *Gurpreet Singh* case one would have to first advert to the relevant provisions of the Code, i.e., Order 21 Rule 1⁷ and Order 24 Rule 1⁸, Rule 2⁹, Rule 3¹⁰ as also the judgment of the

⁷ **1. Modes of paying money under decree.** – (1) All money, payable under a decree shall be paid as follows, namely:-

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank, or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the court, which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3)

Allahabad High Court in *Amtul Habib vs Mohd. Yosuf*¹¹ which finds reference in paragraph 16 of *Gurpreet Singh* case.

9. Order 21 Rule 1 provides for modes of satisfying a decree. Sub-rule 1 of Order 21 provides that money payable under a decree shall be paid either by depositing the same in court whose duty it is to execute the decree or be sent to the court by postal money order or through bank; [See Sub-rule 1 clause (a)]. However, where money is paid outside the court, it may be paid to the decree holder once again either by postal money order or through bank or any other mode wherein payment is evidenced in writing; [See Sub-rule 1 clause (b)]. The aforesaid alternatives are available unless the court making the decree directs otherwise. Sub-rule (2) of Order 21 provides that where payment is made under Sub-rule (1) clauses (a), (b) and (c), the judgment debtor is required to give notice to the decree holder either through court or directly by registered post; by acknowledgment due, i.e., by recorded

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

⁸ **1. Deposit by defendant of amount in satisfaction of claim.** – The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

⁹ **2. Notice of deposit.** – Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

¹⁰ **3. Interest on deposit not allowed to plaintiff after notice.** – No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full satisfaction of the claim or falls short thereof.

¹¹ AIR 1918 ALL 234

delivery. It is only when notice is issued under sub-rule (2), in respect of payments made under clause (a) or (c) of Sub-rule (1) of Order 21, that interest ceases to run from the date of service of notice.

9.1 The important thing to be borne in mind is that, these provisions by themselves, do not speak of partial satisfaction of the decree. Therefore, in our opinion, the interest will continue to run. The only exception perhaps is where the decretal amount is enhanced in appeal by an appellate court. However, even where there is intimation by the judgment debtor that the payments towards the decree are to be applied, in a particular manner, the general rule, as discussed above, would be applicable, which is, that the creditor will be well within his rights to apply the payment made by a debtor towards interest and costs in the first instance, and thereafter, towards principal. If it is held otherwise it would amount to the judgment debtor taking advantage of his own default by making partial payments towards satisfaction of the decretal amount.

9.2 In coming to this conclusion we may notice once again briefly, the observations made in the *Industrial Credit & Development Syndicate* case, at page 87, placitum E to H. These observations, (which are extracted hereinbelow) were made in the background of the fact that the judgment debtor, while making payments in instalments as indicated in the decree, had sought appropriation of the payments towards the principal amount, by a specific intimation in that behalf. The court, came to the conclusion that such “unilateral discretion” could not be conferred in favour of a defaulter as it would not only be against the provisions of law, but also, against public policy. The court went on to say that such a variation of the general rule, could only be brought about either by an express or, implied agreement between the parties; the burden of which, would be on one, who propounds such an agreement. The relevant observations read as follows:

“.....We are of the opinion that Sections 59 and 60, Contract Act, would be applicable only in pre decretal stage and not thereafter. Post-decretal payments have to be made either in terms of the decree or in accordance with the agreement arrived at between the parties though on the general principles as mentioned in Sections 59 and 60 of the Contract Act. As and when such an agreement either express or implied is relied upon, the burden of proving it would always be upon its propounder. The judgment debtors, in the instant case, are proved to have failed in discharging such an onus. There does not appear to be any obligation on the decree holder to intimate the judgment debtor that the amount paid to him had not been accepted in the manner specified by him in the letter accompanying the payment insisting upon such a course would result in unnecessary burden upon the financial institutions and conferment of unwanted unilateral discretion in favour of the defaulters. Acceptance of the plea that the amount paid first should be adjusted in the principal amount would not only be against the provision of law but against the public policy as well. To provide security, continuity and certainty in business transaction, the Legislature has been making specific provisions in that regard which may be found in various provisions of the Negotiable Instruments Act or Order 37, CPC and other statutory provisions....”

(emphasis is ours)

10. As a matter of fact the Supreme Court in *Industrial Credit & Development Syndicate* case went further than the principle that had indicated in *Mathunni Mathai vs Hindustan Organic Chemicals Ltd. & Ors*¹². wherein the court applied the general rule of appropriation, on account of absence of the notice under sub-rule (2) of Rule 21, stipulating the manner of appropriation. The observations of the Court in this regard are contained in paragraph 3 and 4 at pages 29 to 31 of the said judgment.

11. In *Gurpreet Singh* case both judgments, i.e., *Mathunni Mathai* and *Industrial Credit & Development Syndicate* have been cited at pages 479c,

¹² (1995) 4 SCC 26

480d, 480f, 482c & 482g and at pages 471b-c respectively. The principles enunciated in these judgments have not been overturned in *Gurpreet Singh* case. The question still remains, which is, as to what would be the impact of the observations made in paragraph 16 of *Gurpreet Singh* case which are based on the judgment of the Allahabad High Court in *Amtul Habib* case; apparently suggesting that the provisions of Order 24 of the Code would apply even to a post decretal situation. In order to appreciate the observations one would have to examine the facts obtaining in *Amtul Habib* case very minutely.

11.1 The facts in the case of *Amtul Habib* were as follows:

11.2 An appeal came to be heard by a Division Bench of the Allahabad High Court, which arose out of execution proceedings. The decree holder had obtained a decree qua her claim for dower, for a sum of Rs 5000/- alongwith interest and costs, against her husband. It appears that at the stage the decree came to be executed, the husband had died and, it was sought to be executed by the decree holder against the estate of her deceased husband, held by his heirs. The heirs objected to the decree being executed against the entire estate, in view of the fact that, the decree holder herself was entitled to $\frac{1}{4}^{\text{th}}$ of the estate. It was their contention that, the decree could be executed, therefore, only for $\frac{3}{4}^{\text{th}}$ of the amount. Accordingly, the legal heirs, that is, the judgment debtors deposited $\frac{3}{4}^{\text{th}}$ of the amount of the decree, the principal, interest and costs. This objection of the judgment debtors was allowed by the court of first instance, though in appeal the Distt. Judge came to the conclusion that since the decree was for a particular amount, i.e., Rs. 5000/-, it ought to be executed as such. The High Court sustained this view of the Distt. Judge. The execution thus continued. The issue which arose in the second round and reached the High Court once again was, whether the decree holder could be allowed to claim interest on

the amount already deposited by the judgment debtor. The judgment debtors on the other hand took the stand that they had deposited the full amount of the decree in court, and that, they should be relieved from paying interest, on the sum deposited, from the date of the deposit.

11.3 There was another peculiar circumstance in this case, which was, that after the judgment debtors had deposited the money in court a third party, who had a decree against the decree holder, attached a portion of the money which had been deposited in court, and moneys were paid to the said third party, without objection.

11.4 It is in these circumstances that the court held that although the matter was not free from difficulty, the provisions of Order 24 Rule 1, 2 & 3 ought to apply to even a situation post a decree, as the decree holder could very well have executed the decree, at least for the sum, which had been deposited by the judgment debtors in court. The court observed that they had come to this conclusion, in the circumstance which obtained, involving the intercession of the third party, which resulted in release of moneys to the said parties, deposited essentially for the benefit of the decree holder.

11.5 In our opinion, the observations of the Supreme Court in paragraph 16 have to be understood in the light of the circumstances which obtained in *Amtul Habib* case, triggering the application of the provisions of Order 24 Rules 1, 2 & 3. It would be relevant to highlight the fact that the judgment debtors had deposited the decretal amount as per the stand taken by them, which was accepted by the court of first instance. The issue that interest did not cease to run since only a partial sum was deposited, arose because the view of the original court was reversed by the first appellate and thereupon sustained by High Court. The relevant observations in *Amtul Habib* case are extracted hereinbelow:

“....The matter is not altogether free from difficulty. Order XXIV, Rules (1), (2) and (3), provide that in the case of a suit the defendant may pay into court such sum of money as he considers as satisfaction in full of the claim. Notice of the deposit is given to the plaintiff, who is entitled to draw the money out, whether he takes it in full discharge or not, and no interest is allowed to the plaintiff upon the amount of the deposit, There is no corresponding provision as to payment out of court and, the cessation of interest in execution matters, but there does not seem to be any reason why the same thing should not happen in execution proceedings as in the case of suits. In the present case the plaintiff had admittedly a decree which could be executed for at least the sum which had been deposited by the judgement-debtors. We think that there can be very little doubt that if the decree-holder had asked the court executing the decree, and in which the money had been deposited, to pay out this money, at the same time stating that the taking of the money out was without prejudice to the questions raised by the pending appeal, the court would have allowed the decree-holder to withdraw the money, just as the court would have allowed a plaintiff in a suit to withdraw money deposited by the defendant, although the plaintiff does not take it in full discharge. We are borne out in this view by a circumstance which happened in this very case. After the money had been deposited a third party who had a decree against the decree-holder attached a portion of the money which had been deposited in court and the sum was paid out without objection. To hold that the court is not entitled to pay money out to a decree-holder in part discharge of his claim in a case like the present would mean that the money deposited should lie in court of no use to either party, while all the time interest would be running up against and judgement-debtor in the event of the court deciding that there was a greater liability on foot of the decree. Even the decree-holder would not profit, because, if the case was eventually decided against him, he would not have had the benefit of the money which had been deposited by the judgement-debtor. We think that in this case we ought to apply the analogy of the rules which relate to payment into court of money by the defendant in a suit, and that in this view the decisions of the courts below were correct and should be affirmed.”

11.6 On the other hand, *Gurpreet Singh's* case concerns the application of principle of appropriation of compensation paid by the State qua acquisition of land under the Land Acquisition Act, 1894. The Supreme Court in *Gurpreet Singh's* case was not dealing with a situation concerning satisfaction of a money decree, and therefore, the application of principles of appropriation to a money decree. The Supreme Court in the said case, while discussing the scheme of Land Acquisition Act, came to the conclusion that compensation qua acquisition of land is paid in stages, that is, at the stage of collector, and thereafter, perhaps enhancement of the compensation by the court, to which a reference is made, or in an appeal, by the High Court or, the Supreme Court; and therefore, there is no scope of re-opening the entire transaction, at the behest of the decree holder, and seek re-appropriation, in the light of an appellate decree. The principle of appropriation, would apply at different stages. Thus, only if, at a particular stage, there is a shortfall, the awardee decree holder, whose land is acquired, would be entitled to apply the general principle of appropriation, which is, that the compensation deposited, would be first applied towards interest, then towards cost, and only thereafter, towards principal; unless the deposit made by the judgment debtor indicates specific heads towards which the money has been deposited, of which, the decree holder has intimation. This in nut shell, in our opinion, is the ratio of the judgment of the Supreme Court in *Gurpreet Singh's* case. The relevant observations, in this behalf are contained in paragraphs 47 to 54 of the said judgment. The said judgment is, therefore, confined to application of the principle of appropriation of the money paid towards a judgment debt under the scheme of the Land Acquisition Act. In our opinion, it would have no application to a money decree, whose satisfaction is sought in terms of Order 21 Rule 1 of the Code; see observations made in

paragraph 48, at pages 482-483 of the judgment in *Gurpreet Singh* case, where the judgment in the case of *Mathunni Mathai* is distinguished.

12. For the reasons given above, we are of the view that the submissions made by the appellant are untenable, and hence, rejected. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

SANJAY KISHAN KAUL, J

FEBRUARY 27, 2012

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