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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.04.2013

+ **EFA(OS) 31/2010**

PUSHPA BUILDERS LTD

..... Appellant

versus

VAISH COOPERATIVE ADARSH BANK LTD & ANR

..... Respondents

Advocates who appeared in this case:

For the Appellant : Ms Rekha Palli and Ms Shagun Sharma, Advs.

For the Respondent : Mr Rahul Gupta, Mr Kamal Mehta and Mr Lalit
Gupta, Advs.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

This appeal is directed against the order dated 28.07.2010 passed by a learned single judge of this Court in Ex.P.180/1997. It is unfortunate that the execution proceedings have taken such a long time and that the judgment debtor has been able to stall the proceedings and to avoid making payment under the preliminary decree as also to prevent execution of the final decree.

2. One of the issues that has been raised by the learned counsel for the appellant is that the preliminary decree dated 21.02.1992 directed payment along with the interest but there was no direction for payment of compound interest which the respondents are seeking. In order to understand this controversy it would be appropriate if we set out the relevant portion of joint application which was moved by the parties which was the foundation for the preliminary decree passed on 21.02.1992. The joint application for compromise under Order 23 Rule 1 and 3 read with Section 151 of the Code of Civil Procedure, 1908 being IA 1798/1992 in CS(OS) 1174/1991, inter alia, contains the following agreed terms :-

“(ii) That besides the above said amount, costs of the present suit have been agreed to be paid by the defendants Nos.1 and 2 to the extent of ₹22,638.75 inclusive of court fee, counsel’s fee and other expenses to the plaintiff. That the abovesaid amount of ₹23,37,177/- shall carry future interest w.e.f. 01.01.1992 as per latest directive of the Reserve Bank of India from time to time and Delhi Cooperative Societies Rules, 1973, which at present is 23% p.a. (i.e. 20% minimum as per R.B.I. Directives in force and 3% p.a. additional interest as per Delhi Cooperative Societies Rules, 1973) to be calculated on day to day basis and chargeable with quarterly rests subject to changes as per those directives.

(iii) That in view of the above admission, the plaintiff has acceded to the request of the defendants Nos.1 and 2 to allow the defendants 1 and 2 to make the payment of the above said amounts in monthly instalments of ₹50,000/- each payable latest by 15th of every succeeding month and first instalment payable latest by 15th of January, 1992 for which defendant No.1 has already given a cheque to the plaintiff at the time of signing this application which the plaintiff acknowledges to have received. Out of the amounts so paid every month, firstly it will be adjusted towards interest and surplus, if any, will be adjusted towards principal and so on and so forth. It has further been agreed that after payment of 40 instalments as above mentioned whatsoever balance is remaining due, the same shall be payable by the defendants Nos.1 and 2 in the next 8 months and the whole of the loan amount inclusive of interest and costs shall be paid latest by the end of 48 months i.e. 31.12.1995.”

(underlining added)

It is apparent from the condition No.(ii) extracted above that the said sum of ₹23,37,177/- was to carry future interest from w.e.f. 01.01.1992 as per the latest directives of the Reserve Bank of India from time to time and Delhi Cooperative Societies Rules, 1973, which at that time was 23% p.a. (i.e. 20% minimum as per R.B.I. Directives in force and 3% p.a. additional interest as per Delhi Cooperative Societies Rules, 1973). The said interest was to be calculated on a day to day basis and was chargeable with quarterly rests subject to changes as per the said directives. In other words, what was subject to change was the interest

rate as per the directions given by Reserve Bank of India. In the light of the above agreed terms and conditions it is apparent that the interest was payable in quarterly rests. This itself implies that compound interest was to be paid and not simple interest.

3. Accepting the compromise application, the Court passed the following order on 21.02.1992:-

“Parties have compromised the suit. They have filed a joint application under Order 23 rule 1 and 2 CPC being IA 1798/92. Their statements have been separately recorded. The compromise application is exhibit C-1. I have perused the compromise. It is lawful and valid. The suit of the plaintiff is decreed in terms of this settlement; Exhibit C-1 shall form part of the decree. Interim order dated 15th April 1991 shall stand vacated. The suit against defendant No.3 is dismissed. Parties shall be bound by this settlement.”

(underling added)

Thereafter, the formal preliminary decree was also drawn up as on the same date, to the following effect :-

“This suit coming on this day for hearing before this Court in the presence of the counsel for the parties as aforesaid, and the parties having arrived at a compromise and filed a joint application Ex. C-1 (I.A. No.1798/1992) under Order 23 Rules 1 and 3 read with section 151 C.P.C., and upon recording statement of Mr. J.R. Parikh, Secretary of the plaintiff-society; Mr. B.R. Dutta, Leal Adviser of defendant No.1; and the counsel for the defendant No.2; it is ordered that the compromise application Exc. 1 be and the same is taken on record and a decree for recovery of ₹23,37,177/-

which is due as on 31.12.1991, along with costs of the proceedings amounting to ₹22,688.75, and future interest @ 23% per annum from 1.1.1992, is hereby passed in favour of the plaintiff against defendants Nos.1 and 2, in terms of the compromise Ex. C-1 (I.A. No.1798/92) which shall form part of the decree.

It is further ordered that the suit against defendant No.3 is hereby dismissed.

It is also ordered that in case of default in payment of three consecutive instalments as stipulated in the compromise Ex. C-1, the whole of the balance then due, interest upto the date of realisation and costs as aforesaid shall be recoverable by execution and sale of the mortgaged property i.e. plot No.M-5, Greater Kailash-II, New Delhi together with buildings erected thereon. For the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in its possession or power relating to the mortgaged property. In case the net sale proceeds of the mortgaged property are found insufficient to pay the amount due to the plaintiff, the balance shall be realized from other assets of defendant Nos.1 and 2.

Witness the Hon'ble Mr. Justice Gokal Chand Mital,
Chief Justice of this High Court of Delhi at New Delhi, this
the 21st day of February, 1992.”

4. It is clear that the terms of compromise which were recorded in the said IA 1798/1992 were specifically made a part of the decree. It is also

apparent from the preliminary decree that, in case of default of three consecutive instalments as stipulated in the decree, the entire balance then due along with the interest would be recoverable by execution and sale of the mortgaged property namely, plot M-5, Greater Kailash-II, New Delhi with buildings erected thereon. Since the appellant had defaulted in making the payment in terms of the preliminary decree, the respondent filed an application for a final decree in order that the mortgaged property be sold and the decretal amount be recovered therefrom. Subsequently, a final decree was passed on 20.08.1996 in the following terms :-

“Upon reading the preliminary compromise decree passed in this suit on the 21st day of February, 1992 and the application of the plaintiff dated the 7th day of February, 1995 (I.A.No.1109/95) for a final decree and after hearing the parties and it appearing that the payment directed by the said compromise decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage.

It is hereby ordered and decreed that the mortgaged property mentioned herein, in schedule of property or a sufficient part thereof be sold, and that for the purpose of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary compromise decree and under any further orders that may have been

passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of ₹28.15 (Rupees eight and Paise Fifteen only) of this application and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other person entitled to receive the same.

Witness the Hon'ble Mr Justice M. Jagannadha Rao, Chief Justice of this High Court of Delhi at New Delhi, this the 20th day of August, 1996.”

5. In the course of execution proceedings, the appellant/judgment debtor had taken a plea that the interest should be computed on the basis of simple interest and not compound interest. This plea has been rejected by the learned single judge by virtue of the impugned order dated 28.07.2010. We have already indicated above that the specific and clear terms of compromise set out in the joint application for compromise clearly stipulated the charging of interest in quarterly rests. This implied that the interest was to be charged on compound interest basis. The learned single judge has correctly interpreted the terms of the compromise as also the preliminary decree. The learned single judge, inter alia, observed as under :-

“5. The Judgment Debtor contends not without some vehemence that the Decree Holder is not entitled to relief in

terms of this Court's order made in the present execution proceeding to compound the interest as is evident from a combined reading of the previous orders dated 10.09.2008 and 25.11.2008. It is pointed out that the said compounding was not in accordance with the RBI guidelines. On the other hand, the Decree Holder contends that the agreement of the parties stipulated a time limit, i.e. 30.06.1995 by which time all the amount principal and interest had to be paid. Such being a matter of contract and the basis of the compromise decree – the Judgment Debtor cannot take advantage of its lapses in not paying mortgage amounts and now seek refuge now under the RBI circulars, saying that compounding of interest is impracticable.

6. The compromise terms indicate what the parties had envisioned at the stage (of contracted settlement) that the entire sum of ₹23,37,177/- with the interest as provided for, i.e. according to the RBI's then prevailing rates had to be paid over to the Judgment Debtor. The terms of the compromise which are no more and no less than what the parties agreed were so stringent that three successive defaults entitled the plaintiff/Decree Holder to move the Court for execution of the decree. It is undeniable that the Judgment Debtor did not comply with the terms of the decree; the amounts paid before the stipulated deadline; i.e. 30.06.1995 were apparently approximately ₹2,55,000/-. In these circumstances, the Court is unable to agree with the Judgment Debtor's contention. The rationale for rejection of such argument is obvious. The effect of accepting such submission would be that the Judgment Debtor's default would be in fact rewarded with the Court mandating the Decree Holder to be satisfied with a rate of interest which the Judgment Debtor agrees was paid upto 30.06.1995. It has to be emphasized that the parties did not envision any default in payments beyond 31.12.1995. The consequence was to be that the Decree Holder was entitled to press for a final decree and request the Court to sell the mortgage property. In these circumstances, this Court does not see any

conflict between two orders dated 10.09.2009 and 25.11.2009. The previous order mandating that 18% interest per annum with compounded quarterly rests is the most equitable one, having regard to the overall circumstances since the RBI had left the field free both as regards minimum as well as maximum lending rates with or without quarterly rests to the lending cooperative banks. The Court is of the opinion that the Judgment Debtor's argument is untenable also for the reason that it was a commercial advance and any money decree, including a mortgage decree as in the present case, carries with it an in-built interest component, which is to be regarded as an integral part of the decree (Ref. to Central Bank of India v. Ravindra and Ors. AIR 2001 SC 3095).

7. The Decree Holder has placed on record a statement indicating that the amounts payable by the Judgment Debtor with effect from 01.07.1995 and also at 18% per annum per annum compounded with quarterly rests in accordance with Court's directions. The said statement of accounts shows amounts credited by the Judgment Debtor from time to time. The same shall form part of this order. The Judgment Debtor is granted eight weeks to pay the said amounts. List on 25.10.2010, for further directions in the execution proceedings.

Order dasti.”

6. The learned counsel for the appellant finally contended that the terms of compromise as also the preliminary decree had already been interpreted by another learned single judge of this Court by virtue of an order dated 10.09.2008. She drew our attention to paragraph 5 of the said order dated 10.09.2008 where it is recorded that the dispute is with regard

to the rate of interest and whether it can be compounded. Our attention was also drawn to paragraph 11 of the very same order where the learned single judge observed as under :-

“11. On the question whether the interest can be compounded, I find that the contractual terms did not provide for compounding of interest. Only simple interest was payable to the decree holder by the judgment debtors.”

7. Finally, the learned counsel for the appellant invited our attention to the following observations in paragraph 13 of the said order dated 10.09.2008:-

“In these circumstances, I do not think that the decree holder bank is entitled to claim interest over and above 18% per annum even with effect from 1st April, 2002, 1st July, 2002 or 1st April, 2003 or compound the same so as to exceed 18% rate of interest. Thus, the judgment debtors will be liable to pay interest @ 18% per annum with effect from 1st July, 1995 onwards and even if compounding is done for the period after 1st April, 2002, it will be in terms of the Circular dated 26th August, 2002 and the effective rate of interest will not exceed 18% p.a. The decree holder will make calculation in terms of this order. Copy of the calculation sheet will be furnished to the judgment debtors within a period of fifteen days and copy thereof will be given to the counsel for the judgment debtors, who assures this Court that balance amount, if any, shall be paid within four weeks.”

8. We do not agree with the submission made by the learned counsel for the appellant that these observations indicate that the interest was to be charged only on simple interest basis and not on the basis of

compounding. First of all, the observation in paragraph 11 of the said order dated 10.09.2008 referred to the original contract between the parties. There is no doubt that the original contract did not provide for compound interest. However, it is not the original contract which is the subject matter of consideration in this appeal. It is the decree which has been passed on the basis of the joint application for compromise which is in question. We have already indicated above that under the compromise agreement and the decree, interest was to be charged with quarterly rests, which implies that the interest was to be compounded. We may also point out that observation made in paragraph 13 of order dated 10.09.2008 themselves contemplate compounding of interest inasmuch as is stated therein that even if compounding is done for the period after 1.04.2002, it will be in terms of the Circular dated 26.08.2002 and the effective rate of interest would not exceed 18 per cent per annum. Therefore, we do not see as to how the learned counsel for the appellant could contend that the learned single judge in the order dated 10.09.2008 had interpreted the compromise decree as permitting only simple interest and not compound interest. It is in these circumstances, that we entirely agree with the observations of the learned single judge in the impugned

order dated 28.07.2010 and, therefore, we feel that no interference is called for. The consequence of this discussion is that the appeal is liable to be dismissed. It is ordered accordingly.

9. Costs of the appeal shall also be borne by the appellant and the costs are awarded to the respondent against the appellant. The amount which was deposited by the appellant as a condition for grant of stay in this appeal shall be released by the Registrar General to the respondent along with any interest accrued thereon within a period of two weeks.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

APRIL 02, 2013

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