

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.M.(M) No.2/2014 & C.M.No.20/2014

% 26th August, 2014

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Mini Pushkarna, Advocate.

VERSUS

**M/S RADHEY SHYAM THR ITS SOLE PROPRIETOR SH RADHEY
SHYAM Respondent**

**Through: Mr.Arun K.Gupta with Mr.Achal
Gupta, Advocates.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India is filed by the judgment debtor impugning the order of the executing court dated 26.7.2013 by which the executing court has granted interest to the respondent/decreed holder @ 10% per annum from 25.5.2005 till 30.6.2012.

2. The issue before the executing court was whether the liability of the petitioner/judgment debtor to pay interest @ 10% per annum in terms of the Award for the post award period had ceased on account of depositing the amount on 25.5.2005 by the petitioner/judgment-debtor in an appeal filed

against the order/judgment dated 04.1.2005 by which objections filed by the petitioner/judgment debtor under Section 34 of the Arbitration and Conciliation Act, 1996 were dismissed.

3. The aforesaid issue arose in the facts of the case where an Award dated 27.5.2003 was passed in favour of the respondent/decreed holder for an amount of Rs.13,39,866/- @ 10% per annum *pendent lite* and future interest along with costs. The petitioner/judgment debtor filed objections to the Award under Section 34 of the Arbitration and Conciliation Act which were dismissed on 04.1.2005 and against which order an appeal was filed in this Court being FAO 52/2005. In this appeal, vide order dated 04.3.2005 while issuing notice the Court directed stay of the execution proceedings. The petitioner/judgment debtor as a condition for stay of the execution proceedings was directed to deposit the entire awarded amount with the trial court ie Rs. 23,93,779/- and petitioner/judgment-debtor deposited the said amount on 25.05.2005. Subsequently, on 04.8.2010, the appeal being FAO No.52/2005 was dismissed and thereafter vide order dated 20.4.2012, this Court directed release of the amount in favour of the respondent/decreed holder, and which was released to the respondent/decreed holder in terms of the order of the trial court dated 08.6.2012.

4. Whereas, the petitioner/judgment debtor claims that its liability to pay interest ceased from 25.5.2005 when the awarded amount was deposited in FAO No.52/2005 in this Court pursuant to the order dated 04.3.2005, the respondent/decreed holder claims that it is entitled to interest till 30.6.2012.

5. The trial court by the impugned order dated 26.07.2013 has held that the respondent/decreed holder will be entitled to interest in terms of the Award for the awarded amount post passing of the Award @ 10% per annum from 25.5.2005 till 30.6.2012 by placing reliance upon the judgment of the Supreme Court in the case of *State of Rajasthan & Anr. Vs. J.K.Synthetics Ltd. & Anr. (2011) 12 SCC 518* decided on 04.7.2011, which holds that any person who is successful in securing an interim order must when the interim order is vacated reconstitute the benefit to the aggrieved person as if the interim order was not passed.

6. Learned counsel for the petitioner in support of her argument that no interest was payable although the Award directed payment of interest post passing of the Award @ 10% per annum places reliance upon the judgment of the Supreme Court in the case of *H.P. Housing and Urban Development*

Authority & Anr. Vs. Ranjit Singh Rana, (2012) 4 SCC 505. The relevant

paras of this judgment are paras 3, 6, 9, 10, 11 & 12 which read as under:-

“3. After remand, the Arbitrator considered the matter and passed the award on February 14, 2001. The Appellants filed objections against the award dated February 14, 2001. They also deposited the entire amount due under the award before the High Court on May 24, 2001. The objections tiled by the Appellants were ultimately rejected by the single judge of the High court on February 26, 2008. Against this order, intra- court appeal is side to be pending. The respondent, however, started execution of the Award dated February 14, 2001 by filing Execution Petition of August 12, 2008. The Appellants filed objections to the Execution petition.

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6. There is no dispute that the entire amount due under the Award dated February 14, 2001 was deposited by the Appellants before the High court on May 24, 2001. The question that arises for determination before us is, whether deposit of the entire award amount by the Appellants on May 24, 2001 into the High court amounts to payment to the Respondent and the Appellants liability to pay interest @ 18% p.a. from the date of the award ceased form the date.

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9. **Learned counsel of the parties are ad idem that the Arbitrator has not exercised any discretion in the matter pertaining to the interest for the post-award period.** Obviously, in absence thereof, by virtue of Section 31 (7) (b) of the Act, the award would carry interest @ 18% p.a. from the date of the award

till the date of payment. Whether May 24, 2001 when the entire award amount was deposited by the Appellants into the High court is the date of payment?

10. Payment is not defined in the Act. The concise Oxford English Dictionary (Tenth Edition-revised) defines 'payment' '1. The action of paying or the process of being paid. 2. An amount paid or payable'. Webster Comprehensive Dictionary (International Edition) Volume two defines 'payment' '1. The act of paying. 2 pay; requital; recompense.' The Law Laxicon, 2nd Edition reprint by p. Ramanatha Aiyar, inter alia, states 'payment is defined to be the act of paying, or that which is paid; discharge of a debt, obligation or duty; satisfaction of claim; recompense; the fulfilment of a promise or the performance of an agreement; the discharge in money of a sum due.

11. The word 'payment' may have different meaning in different context but in the context of section 37 (1) (b); it means extinguishment of liability arising under the award. It signifies satisfaction of the award. The deposit of the award amount into the court is nothing but a payment to the credit of the decree-holder. In this view, once the award amount was deposited by the Appellants before the High court on May 24, 2001, the liability of post-award interest from May 24, 2001 ceased. The High Court, thus, was not right in directing the Appellants to pay the interest @ 18% p.a. beyond May 24, 2001.

12. The appeal is, accordingly, allowed in part. The impugned order of the High Court is modified and it is directed that the Appellants shall be liable to pay interest @ 18% p.a. for the post-award period from the date of award until May 24, 2001. After May 24, 2001, the Appellants are not liable to pay any interest on the award amount under Section 37(1)(b) of the Act.

(underlining and emphasis is mine)

7(i) It is argued by the petitioner that as per ***H.P. Housing case (supra)***, the Supreme Court has held that by making of the deposit, the liability to pay interest ceases.

(ii) *Per contra*, on behalf of the respondent/decreed holder, reliance is placed upon a Division Bench judgment of three Judges of the Supreme Court in the case of ***P.S.L. Ramanathan Chettiar & Ors. Vs. O.R.M.P.R.M. Ramanathan Chettiar, AIR 1968, SC 1047*** and a judgment of the Division Bench of this Court in the case of ***Delhi Development Authority vs. Bhai Sardar Singh & Sons, 2009 (109) DRJ 384 (DB)*** to argue that liability to pay interest to the respondent/decreed holder did not cease on the petitioner/judgment debtor after depositing the amount in this Court on 25.5.2005 pursuant to the order dated 4.3.2005 in FAO No.52/2005.

8. The relevant paras of the judgment in the case of ***Ramanathan Chettiar (supra)*** are paras 12, 13 and 15 which read as under:-

“12. On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 rule 1 C.P.C. in satisfaction of the decree.

13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor.

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15. The last contention raised on behalf of the respondent was that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order. **The deposit was not in terms of Order 21 rule 1 C.P.C. and as such, there is no question of the stoppage of interest after the deposit.**”

(underlining and emphasis is mine)

9. The relevant paras in the judgment of a Division Bench of this Court in the case of *Delhi Development Authority (supra)* are paras 11, 12, 13, 16, 17, 18, 19 & 20, and which read as under:-

11. In Hindustan Construction Corporation(supra) the DDA had deposited the amount pursuant to orders of the Division Bench before which appeal of the DDA was pending. It was held by a learned single Judge of this Court that the deposit of the decretal amount by the judgment debtor under the orders of the appellate court could not be construed as payment to the decree holder, as it does not satisfy the requirements of Order XXI Rule 1 CPC. The learned Single Judge FAO(OS) 93/02 & EFA(OS) relied upon P.S.L. Ramanathan Chettiar & Ors. v. O.R.M.P.R.M.

Ramanathan Chettiar, AIR 1968 SC 1047. Similar was the position in A. Tosh & Sons India Ltd. (supra) also decided by another learned Single Judge of this Court.

12. The submission of learned counsel for the appellant DDA is that the decretal amount computed with interest @ 18% per annum, amounting to Rs. 58,80,380/- having been deposited even before the passing of the decree on 15th July, 2005 there was no question of the appellant judgment debtor incurring any further interest, and that the interest stopped accruing against the appellant from the date the said deposit was made. Since the deposit existed on the date of passing of the decree dated 15th July, 2005, it is contended that the appellant was entitled to avail of the concessional rate of interest granted in the said decree. Learned counsel for the appellant has also sought to place strong reliance upon the decision of the Constitution Bench of the Hon'ble Supreme Court in Gurpreet Singh v. Union of India, 2006 (1) Scale 393. She places particular emphasis on paragraphs 20 and 21 of the aforesaid judgment which read as follows:

“20. Thus, in cases of execution of money decrees or award decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree holder and there is no question of the decree holder claiming a re-appropriation when it is found that more amounts are due to him and the same is also deposited by the judgment debtor. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.

21. As an illustration, we can take the following situation. Suppose, a decree is passed for a sum of Rs. 5,000/- by the trial court along with interest and costs and the judgment debtor deposits the same and gives notice to the decree holder either by approaching the executing court under Order XXI Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order XXI Rule 1 of the Code. The decree holder is not satisfied with the decree of the trial court. He goes up in appeal and the appellate court enhances the decree amount to Rs. 10,000/- with interest and costs. The rule in terms of Order XXI Rule 1, as it now stands, in the background of Order XXIV would clearly be, that the further obligation of the judgment debtor is only to deposit the additional amount of Rs. 5,000/- decreed by the appellate court with interest thereon from the date the interest is held due and the costs of the appeal. The decree holder would not be entitled to say that he can get further interest even on the sum of Rs. 5,000/- decreed by the trial court and deposited by the judgment debtor even before the enhancement of the amount by the appellate court or that he can re-open the transaction and make a re-appropriation of interest first on Rs. 10,000/-, costs and then the principal and claim interest on the whole of the balance sum again. Certainly, at both stages, if there is short-fall in deposit, the decree holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment debtor would still be liable for interest on the whole of the principal amount in case the appellate court enhances the same and awards interest on the enhanced amount. This position regarding execution of money decrees has now become clear in the light of the amendments to Order XXI Rule 1 by Act 104 of 1976. The argument that what is awarded by the appellate court is the amount that should have been awarded by the trial court and so looked at, until the entire principal is paid, the decree holder would be entitled to interest on the amount awarded by the appellate court and therefore he can seek to make a re-

appropriation by first crediting the amount deposited by the judgment debtor pursuant to the decree of the trial court towards the cost in both the courts, towards the interest due on the entire amount and only thereafter towards the principal, is not justified on the scheme of Order XXI Rule 1 understood in the context of Order XXIV Rules 1 to 4 of the Code. The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment debtor to pay interest on that part of the principal which he has already paid or deposited.”

13. On the other hand, learned counsel for the respondent decree holder places reliance upon P.S.L. Ramanathan Chettiar & Ors. (supra) and also on the decision of the Supreme Court in Mathunni Mathai v. Hindustan Organic Chemicals Ltd., (1995) 4 SCC 26 to submit that the mere fact that the appellant-judgment debtor had created the aforesaid deposit in FAO(OS) 93/2002, it does not relieve the appellant of its liability to pay interest for the period after the deposit was made and also does not entitle the appellant to avail of the concessional rate of interest of 9% p.a. in accordance with the decree dated 15th July, 2005. The said deposit did not enure for the benefit of the respondent, and the respondent could not have withdrawn any part of the amount deposited in Court on its own, without either the no objection from the appellant, or by pursuing an execution petition.

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16. Before advertng to the judgments relied upon by both the sides, it is necessary to analyze a few relevant facts. To ward off a possible execution of the decree that followed the dismissal of the objections to the Award by the learned Single Judge on 2nd

August, 2001, the appellant judgment debtor deposited the decretal amount of Rs. 58,80,380/- in this Court in terms of order dated 15th March, 2002 in CM No. 219/2002 in FAO(OS) 93/2002. This FAO(OS) 93/2002 was allowed, as aforesaid, on 20th April, 2004 reviving the objections of the appellant. Therefore, there was no question of the amount deposited in the Court being available for appropriation to the respondent decree holder after the judgment dated 20th April, 2004. Even when the fresh decree was passed on 15th July, 2005, the amount already lying deposited in the FAO(OS) 93/2002 did not become available to the decree holder for appropriation automatically. It is not the appellant's case that it communicated its consent to the respondent for the withdrawal of the amount lying in deposit in the disposed of FAO(OS) 93/2002 at any point of time within a period of six weeks from the date of the passing of the decree dated 15th July, 2005. In fact, the appellant appears to have taken no steps whatsoever to either tender the decretal amount with concessional rate of interest within six weeks, or even otherwise to facilitate the withdrawal of the amount deposited in the disposed of FAO(OS) 93/2002 by the decree holder to the extent of the decretal amount. It was only after the decree holder had preferred Execution Petition 168/2005 well after the expiry of the six weeks period from 15th July, 2005, the appellant judgment debtor for the first time gave its no objection to the decree holder withdrawing the amount deposited in the aforesaid FAO(OS) 93/2002 on 14th December, 2005. Consequently, even if one were to assume that the giving of the no objection by the judgment debtor to the withdrawal of the decretal amount from the deposit lying in FAO(OS) 93/2002 amounted to making payment within the meaning of Order XXI Rule 1 CPC, the said no objection came well after the expiry of the period of six weeks from 15th July, 2005.

17. In our view, the act of making payment to the decree holder under Rule 1 of Order XXI CPC would require a positive act on the part of the judgment debtor of either depositing into the Court whose duty it is to execute the decree or to make payment out of court to the decree holder through a postal money order or through a bank or by any other mode wherein payment is evidenced in writing, unless the Court which made the decree otherwise directs. The payment made under a decree, to fall within the ambit of Order XXI Rule 1 CPC has therefore, necessarily, to be an unconditional payment by the judgment debtor to the decree holder either directly, or indirectly through the medium of the Court whose duty is to execute the decree. Mere deposit of the decretal amount in a Court, other than an executing Court can never amount to payment and even where the decretal amount is deposited in the executing court, the judgment debtor's liability to pay interest does not cease until notice contemplated by sub-rule(2) of Rule 1 of Order XXI is given. This is evident from sub-rule(4) above. Order XXI Rule 1 CPC does not contemplate the decree holder having to chase the judgment debtor to realize the decretal amount by seeking attachment of one or the other accounts of the judgment debtor or the properties of the judgment debtor. If resort to the execution process of the Court is required to be made by the decree holder, and the decretal amount is recovered in pursuance of the order of attachment of the accounts of the judgment debtor, and/or sale of assets of the judgment debtor, such realization of the decretal amount would not amount to payment of the decretal amount under Rule 1 of Order XXI.

18. When the learned Single Judge, while passing the decree dated 15th July, 2005, granted remission in interest to the judgment debtor on the condition of the payment being made to

the decree holder within six weeks, the Court did not intend that the decree holder should have to take out execution proceedings, or to chase the judgment debtor to realize the payment under the decree. It was for the judgment debtor to itself come forward and tender the decretal amount, or at least to facilitate the withdrawal of the amount deposited by the judgment debtor in Court, within the time granted by the Court. It is not the appellants case, and it could not have been its case that upon passing of the decree dated 15th July, 2005, the decree holder could have on its own approached the appellant Court for withdrawal of the decretal amount from the deposit lying in FAO(OS) 93/2002. The amount lying deposited in FAO(OS) 93/2002, which was allowed in favour of the judgment debtor, could not have been accessed by the decree holder without the consent/no objection of the judgment debtor, or through the medium of the execution of the decree holder by obtaining orders from the executing Court.

19. The submission of the appellant judgment debtor that the mere deposit of the amount in the FAO(OS) 93/2002 resulted in the stoppage of accrual of any further interest from the date of deposit is also meritless. Even in cases where the decretal amount flows into the coffers of the decree holder, subject to the decree holder being required to furnish a security during the pendency of an appeal, the Supreme Court has held in P.S.L. Ramanathan Chettiar & Ors. FAO(OS) 93/02 & EFA(OS) 9/07 Page 16 of 19 (supra) that such payment does not tantamount to payment of money under the decree. In paras 12 and 13 of P.S.L. Ramanathan Chettiar & Ors. (supra), the Hon'ble Supreme Court held as follows:

“12. On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the

order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 rule 1 C.P.C. in satisfaction of the decree.

13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor.”

20. The situation in the present case is still worse for the appellant, inasmuch as, the amount deposited in FAO(OS) 93/2002 was not released to the respondent till after the passing of the order dated 27.4.2006. The amount lying in deposit in the disposed of FAO(OS) 93/2002 was not a deposit made in the executing court in terms of Order XXI Rule 1 CPC. Admittedly, the said deposit could not be construed as direct payment made to the decree holder. As noticed by the learned Single Judge, when the decree dated 15th July, 2005 was passed, it was not informed by the judgment debtor to the learned Single Judge passing the decree, that the amount of Rs. 58,80,380/- stood deposited in FAO(OS) 93/2002. Had the same been intimated, possibly the Court may have passed an order directing payment of the decretal amount to be made to the decree holder from out of the said amount deposited in the Registry of the Court, which would have been amounted to payment under Order XXI Rule 1 CPC.”
(underlining added)

9(i) In my opinion, the judgment relied upon on behalf of the petitioner in the case of *H.P.Housing (supra)* will not apply to the facts of the present

case because it is not clear from the reported judgment in the case of ***H.P. Housing (supra)*** that whether the deposit made while filing objections by the judgment debtor under Section 34 of the Arbitration and Conciliation Act was or was not such a deposit of the awarded amount which the decree holder could have withdrawn without any hindrance from the court in which the amount was deposited. Also, the court in the case of ***H.P.Housing (supra)*** was influenced by the fact that the Award did not describe the grant of interest for the post award period. It is in these circumstances that in para 11 in the case of ***H.P.Housing (supra)***, the Supreme Court has observed that deposit of the awarded amount in court is nothing but payment to the credit of the decree holder viz there shall be no restriction upon the person in whose favour the Award was passed to withdraw the amount as per the court where the same awarded amount was deposited.

(ii) In any case, in my opinion if there is any doubt as to whether the ratio in the case of ***H.P. Housing (supra)*** will apply or the ratio of ***Ramanathan Chettiar (supra)*** case will apply, what will bind this Court is a larger bench judgment of the Supreme Court in the case of ***Ramanathan Chettiar (supra)*** inasmuch as the judgment of the Supreme Court in the case of ***H.P.Housing (supra)*** is by a Division Bench of two Judges and the judgment in the case

of *Ramanathan Chettiar (supra)* is of a Division Bench of three Judges. In *Ramanathan Chettiar's* case (*supra*), the Supreme Court in the paras as already reproduced above has specifically observed that unless there is a complete right to the decree holder to freely withdraw the amount deposited in court, the amount deposited in court cannot be taken as payment to the decree holder under Order XXI Rule 1 of the Code of Civil Procedure, 1908 (CPC) and unless the deposit is specifically made under Order XXI Rule 1 CPC the running of interest does not stop.

10. It is relevant to note that the order dated 04.3.2005 passed in FAO No. 52/2005 directing the present petitioner to deposit the entire awarded amount was for taking benefit of stay of the execution proceedings. The deposit was not a deposit which the respondent/decreed holder could have withdrawn unconditionally inasmuch as the deposit in court pursuant to order dated 04.3.2005 in FAO No.52/2005 was admittedly not under Order XXI Rule 1 CPC, and which provision prescribes the only method with respect to discharge of the decretal amount/dues.

11. In law, it cannot be the position that a decree holder cannot withdraw the awarded amount and cannot take benefit thereof, yet, he should not be paid interest for the period for which he does not get benefit of the awarded

amount. It was for the petitioner on the dismissal of its appeal being FAO No. 52/2005 to make a statement or file an application that the amount deposited be taken under Order XXI Rule 1 CPC, however, admittedly that was not done. Accordingly, till the respondent/deGREE holder is entitled to withdraw the deposited amount, it is entitled in terms of the Award to get interest @ 10% per annum till the trial court passed the order for release of the deposited amount.

12. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

AUGUST 26, 2014
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