

GAHC010154522022



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRP(IO)/179/2022

1. Ananda Das
S/O Late Muktaram Das,
R/O Khanamukh,
P.O.-Gauhati University, P.S.-Jalukbari,
Guwahati, Dist-Kamrup(M), Assam
.....Petitioner

-Versus-

1. Bhabesh Das
S/O Sri Dinesh Das,
R/O Vill-Alekjari,
P.O. and P.S.-Chayygaon,
Dist-Kamrup (M), Assam
.....Respondent

For Petitioner : Mr. M. Saikia, Advocate
For Respondent : Ms. P. Talukdar, Advocate

Date of Order : 08.08.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER**

- 1.** Heard Mr. M. Saikia, learned counsel for the petitioner. Also heard Ms. P. Talukdar, learned counsel for the respondent.
- 2.** This application under Article 227 of the Constitution of India, read with Section 151 of the Code of Civil Procedure, 1908, has been filed by the applicant/judgment debtor, impugning the order dated 08.07.2022 passed by the learned Munsiff No. 1, Kamrup (M) in Money Execution Case No. 12/2021, whereby the prayer of the applicant/judgment debtor for allowing the payment of decretal amount in instalment was rejected.
- 3.** Learned counsel for the petitioner has submitted that the respondent had filed a Money Suit against the present petitioner before the Court of learned Munsiff No. 1, Kamrup (M), for realization of an amount of Rs. 1,60,000/-.
- 4.** The said money suit was registered as Money Suit No. 783/2009. The present petitioner contested the suit by filing the written statement and adduced the evidence.
- 5.** However, by the judgment dated 30.06.2014 passed in Money Suit No. 783/2009, the suit was decreed and the present petitioner was directed to pay an amount of Rs. 1,60,000/- to the respondent along with an interest at the rate of 14% per annum from the date of filing of the suit till final realization of

the decretal amount.

- 6.** Being aggrieved by the aforesaid judgment and decree, the present petitioner preferred an appeal before the Court of learned Civil Judge, Kamrup (M). The said appeal was registered as Money Appeal No. 05/2014.
- 7.** However, by the judgment dated 15.09.2021 passed in Money Appeal No. 05/2014, the said appeal was dismissed and the judgment of the Trial Court was affirmed.
- 8.** Thereafter, the respondent/decreed holder filed a Money Execution Case before the Executing Court, which was registered as Money Execution Case No. 12/2021.
- 9.** Learned counsel for the petitioner has submitted that the amount due from the present petitioner/judgment debtor has been computed at the time of filing of this Revision Petition as Rs. 4,45,468/- including the principal amount of Rs.1,60,000/- as well as the interest due thereon at the rate of 14% per annum as directed by the judgment of the Trial Court.
- 10.** Learned counsel for the petitioner has submitted that the petitioner is a Sub-Inspector working in Assam Police Radio Organization and he has taken one car loan from the Mahindra Finance and another term loan from the State Bank of India and he had to pay the EMI for the aforesaid loans to the tune of Rs. 31,828/- and Rs. 10,190/- respectively which leaves only an amount of Rs. 25,886/- in his hand after paying of the EMI

of the said loan. Hence, he approached the Executing Court for allowing him to pay the decretal amount in instalments.

- 11.** However, by the order impugned in this Civil Revision, the Executing Court had dismissed his application for payment of decretal amount in instalments.
- 12.** Learned counsel for the petitioner has submitted that considering the financial condition of the present petitioner and considering the fact that he has two loans where he had to pay monthly installment to the banks, he is not in a position to pay the decretal amount at one go and therefore, he had approached the Executing Court for allowing him to pay the decretal amount in installments.
- 13.** It is submitted by learned counsel for the petitioner that there is no bar in the Code of Civil Procedure, 1908 for Executing Court to allow payment of decretal amount in installment. He has also submitted that considering the circumstances in which the petitioner is presently situated, the Executing Court ought to have exercised its inherent powers under Section 151 of the Code of Civil Procedure, 1908 by allowing the prayer of the petitioner.
- 14.** Learned counsel for the petitioner has also submitted that by dismissing the prayer of the petitioner for paying the decretal amount in installments, the decretal Court has caused injustice to the petitioner and therefore, he prays that this Court should

interfere in the impugned order.

- 15.** On the other hand, Ms. P. Talukdar, learned counsel for the opposite party/decreed holder, has vehemently opposed the application filed by the petitioner on the grounds that there is no infirmity in the order of the Executing Court, which has been impugned in this revision petition.
- 16.** She has also submitted that the petitioner/judgment debtor has not availed the benefit under Order 20 Rule 11 of the Code of Civil Procedure, 1908 within 30 days of the date of preparation of the decree. She has submitted that the order for payment of decretal amount in instalment may be passed only if the decree has been passed by the Trial Court in terms of Order 20 Rule 11 (1) of the Code of Civil Procedure, 1908.
- 17.** Learned counsel for the opposite party/decreed holder has submitted that in the instant case, no such application was made by the applicant/judgment debtor on the last date of hearing before judgment, praying for payment of decretal amount in instalment. Hence, there is no such provision in the Code of Civil Procedure, 1908, which would allow a decretal Court to allow the judgment debtor to pay the decretal amount in instalment unless and until the decree holder consent to the same.
- 18.** Learned counsel for the opposite party/decreed holder has also submitted that Article 126 of the Schedule to the Limitation Act,

1963 prescribes the limitation of 30 days for making an application for payment of decretal amount by instalment from the date of the decree. However, no such application was made by the petitioner/judgment debtor in this case within the said period. Hence, it is submitted by the learned counsel for the opposite party/decreed holder that the Executing Court was right in passing the impugned order. In support of her submission, learned counsel for the petitioner has cited several rulings. However, she has pressed mainly the ruling of the High Court of Andhra Pradesh in the case of "***Seelam Ramadevi vs Gadiraju Yanadi Raju and Another***" reported in <http://indiankanoon.org/doc/18367399>

19. Learned counsel for the opposite party/decreed holder has also submitted that the reasons shown by the petitioner/judgment debtor for seeking to pay the decretal amount in instalment are also not tenable and reasonable. Learned counsel for the opposite party/decreed holder has also submitted that from the documents available on record, it would be clear that the loans, which the decree holder is citing for allowing him to pay the decretal amount in instalments, were taken after passing of the decree by the Trial Court, hence, the petitioner/judgment debtor was well aware of his liabilities towards the opposite party/decreed holder at the time when he availed the aforesaid loans.

- 20.** Learned counsel for the petitioner has also submitted that though, the opposite party/decreed holder has the advantage of concurrent opinion of the Trial Court as well as the First Appellate Court and though, the Money Suit was filed by the opposite party/decreed holder in the year 2014, however, due to the delaying tactics adopted by the petitioner/judgment debtor, the opposite party/decreed holder is still unable to enjoy the fruits of the decree even after such a long time.
- 21.** I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record. I have also gone through the rulings cited by learned counsel for both the sides in support of their submissions.
- 22.** It appears from record that the suit filed by the opposite party/decreed holder was decreed in his favour by the judgement dated 30.06.2014, passed in Money Suit No. 783/2009.
- 23.** It also appears that thereafter, the appeal which was filed by the petitioner/judgement debtor impugning the judgement of the Trial Court, was also decided in favour of the opposite party/decreed holder on 15.09.2021. The appeal filed by the petitioner/judgement debtor was dismissed. Thereafter, the Money Execution Case No. 12/2021 was filed by the opposite party/decreed holder.

- 24.** It also appears that though, the petitioner/judgement debtor by filing a petition bearing No.354/2022 prayed for allowing him to repay the decretal amount at the rate of Rs. 10,000/- per month, the said petition was dismissed by the Executing Court mainly on the ground that in the decree which was put to execution by the opposite party/decreed holder, there was no stipulation regarding payment of decretal amount in instalments and it was for full and final realization of the whole of the decretal amount. Further, the Executing Court also took into consideration that there is no out of Court settlement between the parties regarding payment of the decretal amount in instalments.
- 25.** The Code of Civil Procedure, 1908 in Order 20 Rule 11 makes a specific provision providing for payment of decretal amount in instalments. The stipulation for such payment of the decretal amount in instalments has to be there in the decree itself. Under Order 20 Rule 11 of the Code of Civil Procedure, 1908 such a condition may be incorporated in the decree only for any sufficient reason after hearing the parties at the last hearing before judgement. Even if such, a direction is made in the decree itself, then also the judgement debtor shall have to file an application under Order 20 Rule 11(2) of the Code of Civil Procedure, 1908 for payment of decretal amount in instalments. Only on such an application by the judgement

debtor and with the consent of decree holder, the Court may make an order for payment of decretal money in instalments.

- 26.** In the instant case, the decree holder never consented to the payment of decretal amount in instalment by the judgement debtor. Moreover, the decree in question, does not mention any such stipulation that the decretal amount may be paid in instalments, hence, the judgement debtor cannot claim as of right that any application filed by him for the payment of decretal amount in instalment shall have to be allowed.
- 27.** Moreover, Article 126 of the Limitation Act, 1963 prescribe the limitation period of 30 days for making an application for payment of decretal amount in instalments and the said period of 30 days commences from the date of the decree.
- 28.** In the instant case, the judgement debtor had filed the application for paying for allowing the payment of decretal amount in instalments, which was registered as petition No. 354/2022, on 31.03.2022, i.e., much beyond the period of limitation as prescribed in Article 126 of the Limitation Act, 1963.
- 29.** Further, as discussed hereinbefore, as per the provisions in Order 20 Rule 11 of the Code of Civil Procedure, 1908, only the Court which passed the decree, has the power to allow such payment of the decretal amount in instalments, that too by making the stipulation in the decree itself. Under the scheme of

Order 20 Rule 11 of the Code of Civil Procedure, 1908, the Executing Court does not have the power to allow the judgement debtor to deposit the decretal amount in instalments and therefore, in the considered opinion of this Court, the impugned order dated 08.07.2022, passed by the Executing Court in Money Execution No. 12/2021 suffers from no defect and the Executing Court has rightly dismissed the application filed by the judgement debtor praying for allowing him to pay the decretal amount in instalment.

- 30.** This Court finds no irregularity or illegality in the impugned order passed by the Executing Court, therefore, this case is not a fit case where the impugned order may be interfered with by this Court in exercise of its revisional jurisdiction.
- 31.** The instant Civil Revision filed by the petitioner/judgement debtor is, accordingly, dismissed.
- 32.** No orders as to cost.

JUDGE

Comparing Assistant