

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6621 of 2013

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RAMASHISH PRASAD GUPTA S/O LATE GANESH PRASAD R/O
MOHALLA- CHANDMARI, P.S.- MOTIHARI, DISTRICT- EAST
CHAMPARAN

.... PETITIONER/S

VERSUS

1. VIKRAMADITYA PRASAD S/O RAMDEO PRASAD R/O TARKULWA
CHANDMARI, P.S. MOTIHARI, DISTRICT- EAST CHAMPARAN
2. SUNAINA DEVI W/O VIKRAMADITYA PRASAD R/O TARKULWA
CHANDMARI, P.S. MOTIHARI, DISTRICT- EAST CHAMPARAN
3. SMT. LILAWATI GUPTA W/O RAMASHISH PRASAD GUPTA R/O
MOHALLA- CHANDMARI, P.S. MOTIHARI, DISTRICT- EAST
CHAMPARAN

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Kishore Kumar Sinha, Adv.
For the Respondent/s: Mr. Sunil Kumar No.III, Adv.
Mr. Rajesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER
Date: 27-04-2016

One of the defendant/ judgment debtor/petitioner
has challenged the order dated 31.01.2013 passed by Munsif,
Sadar, Motihari in Execution Case No.11 of 2005 whereby and
whereunder the executing court, after forming its own to the effect
that direction to pay principal with interest @ 12% per month in
the judgment denotes compound interest, which has been directed
to be paid by the petitioner.

2. For proper appreciation of the dispute, certain facts
are to be taken note of. Respondent 1st set / decree holder
/plaintiff had drawn up Title Suit no.265 of 1979 asking for a
declaration, apart from others, that the sale deed executed by



plaintiff no.2, Smt. Sunaina Devi in favour of defendant no.2, Smt. Lilawati Gupta on 29.12.1976 did not confer right, title interest upon defendant no.2 as being illegal and inoperative. The aforesaid relief was based upon so many grounds and one of the same was that the consideration money whatever shown in the aforesaid sale deed appertaining to Rs.1800/- was not the actual consideration money. Negotiation was finalized over Rs.2,500/- instead thereof Rs.1800/- has been shown in the sale deed with ulterior motive. In likewise manner also, controverted handing over Rs.700/- as earnest money, and so, submitted that as the payment of consideration money was condition precedent for transfer of title and possession, which never materialized, hence, the document in question remained inoperative. The defendants/judgment debtor/petitioner, after appearance vehemently opposed, refuted the allegations whatever been incorporated in the plaint, and further insisted that the document had already been acted upon as payment of consideration money was already done. However, with ulterior motive, succeeded in retaining the sale deed. While deciding the issue, though the suit was dismissed but during course thereof, it has been observed that out of Rs.1800/- the consideration amount incorporated in the sale deed, only Rs.500/- has been paid as an earnest money and on account thereof, remaining amount appertaining to Rs.1300/- was to be paid and so it was directed to the defendant that "after payment of remaining money with 12% per month interest enforceable till the



date of payment, the defendant shall take the original sale deed under issue no.5 of the judgment. The aforesaid judgment and decree was challenged under Title Appeal no.118 of 1989 / 167 of 2004 where in cross-objection was also filed and the same was decided on 30.04.2015 by IVth Additional District Judge, East Champaran at Motihari dismissing the appeal as well as cross objection. However, from para-11 of the judgment of the title appeal it is evident that learned Appellate Court observed “the learned lawyer for the respondents submitted that an amount of Rs.1300/- was deposited after judgment of learned lower court through chalan. The balance amount of Rs.1300/- was withheld by the defendants for a period of 13 years and so considering the facts and circumstances of the case, awarding of 12% interest over said amount by the court below is reasonable.”

3. So from the judgment of appellate court, it is evident that remaining amount of Rs.1300/- had already been deposited after passing of the judgment and decree by the learned lower court.

4. Now the only question remains to be answered with regard to calculation of interest, whether it could be identified as simple or compound.

It has been submitted on behalf of petitioner that learned lower court during course of execution has wrongly and illegally construed that compound interest should be levied though the order impugned is silent with regard to mode of calculation of



the interest. Therefore, being an executing court, the learned lower court should not have deviated from the finding so recorded by the original court as well as appellate court in the background of the fact that after judgment of title appeal, the judgment of learned trial court had merged therewith. Even in title appeal compounding of interest has not been explained where it should be simple interest or compound interest. So, it should be identified as simple interest. Had there been intention of the successive courts to impose compound interest, then in that event, it should have held like so.

5. At the other end, the learned counsel representing respondent no.1/ decree holder /plaintiff has submitted that on account of non-payment of balance of consideration money appertaining to Rs.1300, which is found concurred by the appellate court, which attend finality, apart from directing the defendants/respondents/petitioner to pay the balance money, interest has also been inflicted thereupon in a manner @ 12% per month. Therefore, intention of the order is to be taken note of. The intention was to punish the defendant on account of non-payment of balance consideration money, appears to be penal in nature and so, it should be calculated as compound interest. To substantiate the same, the learned counsel for the respondent 1st party has referred ***Bank of Baroda Vs. Premnath Pigment and Chem. & Ors.*** reported in ***[1996(3) Civil LJ 699]***.

6. Admittedly the successive judgments are silent with

regard to nature of interest whether it should be simple interest or compound interest. The matter was taken into consideration by a Constitution Bench in **Central Bank of India Vs. Ravindra & Ors.** reported in **(2002) 1 SCC 367**. The Constitution Bench while identifying the nature as well as classes of interest under proper heading at para-38 had dealt with the event of penal interest. For proper appreciation the same is quoted below:

“38. However ‘penal interest’ has to be distinguished from ‘interest’. Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrong-doer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Penal interest can be charged only once for one period of default and, therefore, cannot be permitted to be capitalised.”

7. In **State of Haryana & Ors. V. M/s. S.L. Arora and Company** reported in **AIR 2010 SC 1511**, it has been observed:

“8. Payment of interest arises in different circumstances. It can be the consideration paid by a borrower to a lender for use of the money lent or made available by the lender. It can be the return given by a bank, financial institution or a company on amounts deposited or invested with them by a customer or constituent. It can be the compensation paid by a person who withholds or defaults in paying an amount or in discharging a liability, when it is due and payable. Interest may be payable in pursuance of a contract, or a provision in a statute, or the fiat of a court of tribunal. It is usually quantified in terms of a percentage of the ‘principal’

or the 'investment' or the 'amount of liability'. Interest unless otherwise specified, refers to simple interest, that is interest paid on only the principal and not on any accrued interest.

9. Compound interest refers to a method of charging interest where interest is computed not only on the principal, but also the accrued interest. For this purpose, periodical rests are provided for computation of interest, say yearly, or quarterly or monthly. At the end of the first 'rest', the interest accrued till then is added to the principal, so that for the second interest bearing period, the aggregate of the original principal and interest thereon becomes the enhanced principal. At the end of the second rest, the accrued interest on the enhanced principal is added to the enhanced principal so that such further enhanced principal becomes the principal for charging the interest for the third period. It goes on in this manner until repayment, by progressively enlarging the principal base by adding interest at regular intervals. As a result, the debtor is made to pay interest not only on the original principal, but on the interest on the principal, and on the interest upon the interest on the principal and so on. A variant of compound interest, involves limited compounding, where interest is not added to the principal with periodical rests, but only once or twice at agreed stages. For example, where a loan is repayable within one year, if a provision is made in the contract that in the event of the loan not being repaid within one year, the interest which had accrued during the one year period will be added to the principal, and as a consequence, after one year, interest will be payable on the aggregate of the principal and the interest for one year, it is a provision for interest upon interest. Compound interest can be awarded only if there is a specific contract, or authority under a Statute, for compounding of interest. There is no general discretion in courts or tribunals to award compound interest or interest upon interest.

10. Section 3 of the Interest Act, 1978 enables the courts and arbitral tribunals to award interest

from the date of cause of action to the date of institution of legal proceedings or initiation of arbitration proceedings. Sub- section (3)(c) of section 3 of the Interest Act, 1978 makes it clear that nothing in the said section shall empower the Court or arbitrator to award interest upon interest. It should be noted that section 3 of Interest Act does not deal with either pendente lite or future interest.

11. This Court in *Renusagar Power Co. Ltd v. General Electric Co.* - [1994 Supp.(1) SCC 644] held that award of interest on interest was not opposed to the public policy of India, but could be awarded only if authorized by contract or statute. This Court observed:

"Merely because in Section 3(3)(c) of the Interest Act, 1978, the court is precluded from awarding interest on interest does not mean that it is not permissible to award such interest under a contract or usage or under the statute. It is common knowledge that provision is made for the payment of compound interest in contracts for loans advanced by banks and financial institutions and the said contracts are enforced by courts. Hence it cannot be said that award of interest on interest, i.e., compound interest, is against the public policy of India. We are, therefore, unable to accept the contention that award of interest on interest i.e. compound interest is contrary to public policy of India."

[emphasis supplied]

In *State Bank of India vs. Ganjam District Tractor Owners Association* - 1994 (5) SCC 238, this Court again observed that in the absence of a provision for compound interest or interest with periodical rests in the agreement between a bank and the borrower, the bank cannot claim such interest.

In *Central Bank of India vs. Ravindra* - 2002 (1) SCC 367, a constitution bench of this Court, after exhaustive consideration of the case law, summarized the legal position regarding compound interest thus:

"The English decisions and the decisions of



this Court and almost all the High courts of the country have noticed and approved long established banking practice of charging interest at reasonable rates on periodical rests and capitalising the same on remaining unpaid. Such a practice is prevalent and also recognised in non-banking money lending transactions. Legislature has stepped in from time to time to relieve the debtors from hardship whenever it has found the practice of charging compound interest and its capitalization to be oppressive and hence needing to be curbed. The practice is permissible, legal and judicially upheld excepting when superseded by legislation. There is nothing wrong in the parties voluntarily entering into transactions, evidenced by deeds incorporating covenant or stipulation for payment of compound interest at reasonable rates, and authorising the creditor to capitalise the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalised sum for the succeeding period. Interest once capitalised, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower."

[emphasis supplied]"

8. As is evident from relevant portions of the judgment passed by the learned trial court in Title Suit no.265 of 1979 as well as judgment of the appellate court passed in Title Appeal no.118 of 1989 / 167 of 2004, that both the courts have not specifically directed calculation of interest in a nature of compound interest. Therefore, it should be identified as simple interest and accordingly, the petitioner / judgment debtor / defendant is liable to pay in terms of finding so recorded by the successive courts whereunder in clear term withholding the remaining consideration money appertaining to Rs.1300/- for

thirteen months have been specified at a rate of 12% per month till realization of the principal amount Rs.1300/-.

9. Accordingly, the order impugned is set aside. Petition is allowed in terms of finding so recorded herein above. However, in the facts and circumstances of the case, parties will bear their own cost.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 27th day of April, 2016
Prakash Narayan

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