

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1954/2015

Nanakram s/o Hargundas Jagwani and another
...Versus...
Rahul s/o Mahendra Agrawal and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.R. Borkar, Advocate for petitioners
Ms Harshika Bondre, Adv. h/f Shri M. Anilkumar, Adv. for respondents

CORAM : SMT. VASANTI A NAIK, J.
DATE : 06.09.2016

By this writ petition, the petitioners challenge the order of the executing Court, dated 19.3.2015 overruling an objection raised by the petitioners – Judgment Debtors for payment of interest @ 6% per annum from the date of the suit till the date of the realization of the amount.

The respondents are the original plaintiffs. A suit was instituted by the respondents against the petitioners for refund of an amount of Rs.1,75,000/- with interest @ 12% per annum. The suit filed by the respondents was partly decreed by the trial Court by the judgment, dated 22.10.2010. The trial Court directed the defendants – petitioners to pay a sum of Rs.1,75,000/- jointly and severally to the plaintiffs with future interest @ 6% per annum. Since the defendants – petitioners paid the interest @ 6% per annum only from the date of the decree and not from the date of

the suit, the plaintiffs - respondents filed execution proceedings for seeking the interest from the date of the suit till the realization of the amount. In the said execution proceedings, an objection was filed by the petitioners vide application (Ex.50). According to the petitioners, as per the decree, the interest was payable from the date of the decree and not from the date of the suit, as per the provisions of Section 34 of the Code of Civil Procedure. The objection of the petitioners was, however, overruled by rejecting the application (Exh.50). The order of the executing Court, dated 19.3.2015 is challenged by the petitioners in the instant petition.

On hearing the learned Counsel for the parties and on a perusal of the judgment and decree, dated 22.10.2010 as also the provisions of Section 34 of the Code of Civil Procedure, it appears that the executing Court was justified in rejecting the application filed by the petitioners. The plaintiffs - respondents had sought the recovery of the amount of Rs.1,75,000/- with interest @ 12 % per annum. In paragraph 13 of the judgment, the trial Court observed that there was no agreement to pay 12% interest and the petitioners were entitled to interest @ 6% per annum on the earnest amount, as per the provisions of Section 34 of the Code of Civil Procedure. Sub Section 1 of Section 34 of the Code of Civil Procedure provides for a decree for payment of interest on the principal sum for the period from the date of institution of the suit till the date of the decree and payment of future interest. In the instant case, the trial Court had directed the petitioners to pay the interest @ 6% per annum, as per the provisions of Section 34 of the Code of Civil Procedure. The executing Court, therefore, rightly overruled the objection raised

on behalf of the petitioners and held that the defendants were liable to pay the interest from the date of institution of the suit till the date of payment of the decretal amount. The order of the executing Court is in consonance with the decree passed by the trial Court and the same is not liable to be interfered with in exercise of the writ jurisdiction.

Hence, the writ petition is dismissed with no order as to costs.

JUDGE

Wadkar

CERTIFICATE

I certify that this order uploaded is a true and correct copy of original signed order.

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