

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.No.233 of 2016 against A.No.7600/15
in
CS.No.852 of 87

1. M/s.Essor Hotels (P) Ltd.,
rep. by its Managing Director,
P.V.R.Kutty Menon (Deceased)
No.1089, Poonamallee High Road,
Chennai 600 084.

2.K.Pankajakshina Amma
3.K.Ramesh
4.K.Sudhakaran
5.K.Indra Rajan
6.Anup Kumar P.V.
7.Ajitha Satheesh .. Appellant

versus

1.N.Borolingaiah
2.K.Ramakrishna Prabhu
3.H.N.Gopalakrishnan
4.Ratanlal
5.H.L.Durai
6.S.N.Nayak
7.Padmini
8.Chitra
9.H.S.Padmaraj
10.H.S.Kandaraj
11.S.Ananthi
12.G.Maniammal
13.Padma Amarnath
14.Grapriya Sampath
15.M.S.Sreekanth
16.M.S.Shashikanth
17.M.Padma
18.Anitha Selvaraj

.. Respondents

Appeal filed under Order 36 Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent Act, against the Decree and Judgment dated 25.11.2015 in A.No.7600 of 2015 in C.S.No.852 of 1987, on the file of this Court.

A.No.7600/15 in CS.852/87

This Applicant praying be pleased to order for amendment of the decree dt.22.12.95 in CS.No.852/87 as suit decreed for Rs.59,09,000/- and there after interest at 6% p.a. on Rs.38,00,000/- (Rupees Thirty Eight Lakhs only) from the date of decree till the date of realisation instead of decreeing the suit with further interest @ 18% p.a. on the sum of Rs.59,09,000/- (Rupees Fifty Nine Lakhs and nine thousand only) from this date till the date of realisation.

For Appellants .. Mr.K.Mani

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J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

The suit filed by the original plaintiff consisted of two components - Principal amount of Rs.38 lakhs and interest amount of Rs.21,09,000/-, totalling to Rs.59,09,000. The decree prayed for was for recovery of the last amount with interest at 18% per annum from the date of institution of suit till the date of decree. C.S.No.852 of 1987 resulted in a contested decree passed on 22.12.1995, whereby the decree claimed by the plaintiffs was granted in full, except the relief of the first charge, the same being with the bank, along with full costs against the original two defendants.

2. Thereafter, in the execution proceedings, the matter has dragged on for almost two decades, no appeal having been filed and the decree having become final.

3. The appellant is the first defendant in the suit. The appellant endeavoured through indigeneous methods of moving A.No.7600 of 2015 under Section 152 of Code of Civil Procedure, 1908, in effect to modify the decree by claiming that the interest component in the suit should have been excluded for the purposes of calculation of interest post institution of the suit and that interest should have been calculated only on the principal amount. This endeavour has failed vide the impugned Judgment dated 25.11.2015.

4. We have heard the learned counsel for the appellant and perused the impugned order and the documents filed, through which we have been taken by the learned counsel for the

appellant. We find no infirmity in the impugned order as the resort to Section 152 of the Code of Civil Procedure, 1908 is only for a correction of typographical error. There is no typographical error in the present case inasmuch as consciously a decree has been passed as prayed for. The court had the option to grant or not to grant interest on the interest component, but in its wisdom, has granted the interest. If the appellant was aggrieved by the same, it should have preferred an appeal, which it did not, and thus, the decree has become final. The decree cannot be now modified under the guise of an application under Section 152 of Code of Civil Procedure, 1908, treating it as a mistake in recording of the decree.

5. The learned single Judge has rightly concluded that the concept of interest on interest arising from the merger of the interest component with the principal is not unknown to commercial transactions and has referred to the Judgment of the Central Bank of India vs. Ravindra and Others (AIR 2001 SC 3095).

6. We are not required to go into the greater details, but suffice to say that the well reasoned impugned order has dealt with the provisions of law and the Judgments. In our view, the matter stands within a very short compass - can the recourse to correction of decree of typographical error be utilized to actually modify the decree which has been passed. The answer to the same is in the negative.

7. We thus find no merit in the appeal and it is dismissed accordingly, leaving the parties to bear their own costs. Consequently C.M.P.No.18057 of 2016 is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1 cc to Mr.K.Mani,advocate,sr.66425.

rj(co)
krd 30/11

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