

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2604 of 2013
and
M.P.No.1 of 2013**

Thiyagarajan

.. Petitioner

Vs.

J.Haridoss

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 10.01.2013, made in Memo in E.P.No.61 of 2008, in O.S.No.662 of 1991, on the file of the Subordinate Judge, Vellore, Vellore District.

For Petitioner : Mr.A.Gouthaman

For Respondent : Mr.A.Rajendiran

ORDER

The respondent in E.P.No.61 of 2008 in O.S.No.662 of 1991, on the file of the learned Subordinate Judge, Vellore, is the Civil Revision Petitioner before this Court. Challenging the order in Memo in

E.P.No.61 of 2008, dated 10.01.2013, this Civil Revision Petition has been filed.

2.Originally, a suit in O.S.No.662 of 1991 has been filed by the respondent/plaintiff before the learned Subordinate Judge, Vellore and the same was decreed on 30.06.1993. Again the said order, the petitioner, who is the defendant in the suit has filed an appeal in A.S.No.983 of 1993 before this Court and this Hon'ble Court by order dated 20.12.2006, allowed the appeal in part with regard to the rate of interest alone and this Court has passed the order as follows:

"9.The trial Court granted interest at 18% per annum on the basis of the claim made by the plaintiff. But the plaintiff miserably failed to produce any documentary evidence to show that in the business transaction, the rate of interest is at 18% per annum during the relevant point of time. "In such view of the fact, granting of interest 18% per annum on the loan amount by the trial Court appears to be on the higher side. I am satisfied that granting of interest at 6% per annum on the loan amount would meet the ends of justice." Hence this point is answered accordingly.

10.With the above observation, the appeal is allowed in part with regard to the rate of interest alone. With regard to other aspects, appeal fails. The rate of interest granted by the trial Court at the rate of 18% per annum till

the date of decree is modified with 6% per annum. The parties have to bear their respective cost."

3. Thereafter the respondent/plaintiff has filed E.P.No.61 of 2008 for the decree amount along with the interest by totally a sum of Rs.72,381.90/-. The said E.P. was allowed on 11.06.2009 against which the petitioner has filed a Civil Revision Petition before this Court in CRP(NPD)No.3080 of 2009 on the ground that when the appeal was filed, this Court an order of interim stay was granted on condition that the petitioner shall deposit a sum of Rs.12,000/- with interest at the rate of 18% per annum on the loan amount appears to be on the higher side and that the interest at the rate of 6% per annum on the loan amount would meet the ends of justice. Therefore, this Court directing the petitioner, who is the appellant in A.S.No.983 of 1993 to deposit a sum of Rs.12,000/-, but without credit to the deposit amount of Rs.12,000/-, the E.P. was ordered. Therefore, this Court by order dated 09.10.2009 by disposing the Civil Revision Petition directing the Executing Court to deduct the amount of Rs.12,000/- already deposited as per the orders of this Court in A.S.No.983 of 1993 whether it was deducting from the E.P. Amount, had it not been deducted in E.P.No.151 of 1993 or in the present E.P.No.61 of 2008 and therefore, directing the Executing Court after

deducting the said amount of Rs.12,000/-, the other amount may be ordered to execute as per the interest at the rate of 6% per annum shall be calculated on the loan amount as per the judgment of this Court in A.S.No.983 of 1993 dated 20.12.2006.

4. During the pendency of the Executing Petition in E.P.No.61 of 2008, the respondent/deGREE holder has filed a calculation memo as follows:

"Calculation memo

a) Decree Amount	Rs.31,200.00
b) Interest on principal Rs.15,000/- from 25.03.1991 to 18.08.2011 @ 6% per annum (20 Years)	Rs.18,360.00
c) Cost awarded	Rs. 4,104.00
d) Decree and other expenses	Rs. 500.00
e) Advocate Fee	Rs. 4,000.00
f) LESS deposit made in the court by the respondent @ Rs.12,000/-	Rs.58,164.00
And claimed along with bank interest	Rs.26,281.00
Balance amount	Rs.31,883.00

5. The petitioner, who is the Judgment debtor also filed his

objection stating that the respondent/deGREE holder is entitled the amount of Rs.15,000/- from the date of debt on 21.09.1985 till the last payment at the rate of 6% interest.

6.Apart from this, as per the orders of this Court in CMP.No.16187 of 1993 in A.S.No.983 of 1993 dated 06.01.1994, this petitioner/judgment debtor has deposit a sum of Rs.12,000/-. Therefore, by deducting the said amount of Rs.12,000/-, the respondent/plaintiff is entitled only Rs.3,000/- with interest. Therefore, he prayed for rejection of memo filed by the respondent/deGREE holder dated 16.07.2012.

7.Considering both side cases, the learned Subordinate Judge, Vellore was pleased to passed the following orders:

"2.Heard Decree Holder. As per memo of calculation it is found that the decree amount is Rs.31,200/- since the principal amount is Rs.15,000/- the interest for the said amount for the period 25.3.1991 to 30.3.1994 calculated at 6% p.a. and the amount comes to Rs.2712/-. Since the J.D has deposited Rs.12,000/- as per order of High Court thereafter interest calculated only for Rs.3000/- (i.e.)

Rs.15,000/-, Rs.12,000/-) and interest for Rs.3000/- for the period from 31.3.1994 to 30.6.2012 is Rs.3285/-. The case records reveals that amount of Rs.12,000/- deposited by JD was deposited in UCO Bank and so the said amount along with its interest in the bank balance Rs.26,281/-. Hence, this court on considering this calculation memo finds the JD has to pay Rs.45,801/- with said observation memo is closed."

8.The learned Subordinate Judge, Vellore directing the petitioner/judgment debtor to pay a sum of Rs.45,801/- and closed the memo. Challenging the said memo, the present Civil Revision Petition has been filed by the petitioner/judgment debtor.

9.I heard Mr.A.Gauthaman, learned counsel appearing for the petitioner and Mr.A.Rajendiran, learned counsel appearing for the respondent and perused the entire records.

10.It is the case of the petitioner/judgment debtor is that the Principal amount of Rs.15,000/- along with the interest amount, the interest calculated at the rate of 18% per annum by the plaintiff and

filed a suit for recovery of Rs.31,200/-.

11. Aggrieved against the decree dated 30.06.1993, the petitioner/judgment debtor has filed an appeal in A.S.No.983 of 1993 and as per the judgment of this Court dated 20.12.2006, the A.S.No.983 of 1993 is allowed partly. Therefore, this Court by order dated 20.12.2006 modified the rate of interest granted by the trial Court as 6% from 18% per annum. After reaching the finality of the appeal preferred in A.S.No.983 of 1993, the respondent/plaintiff has filed the present E.P.No.61 of 2008 by giving wrong calculation, but as per the judgment in A.S.No.983 of 1993 dated 20.12.2006, on the file of this Court, the respondent/plaintiff is entitled for interest at the rate of 6% per annum to the Principal amount of Rs.15,000/-. The learned Judge has miserably failed to note that the calculation given by the respondent/deGREE holder is absolutely wrong and is not entitled for a sum of Rs.72,381/-. Thereafter, the respondent/deGREE holder has filed another calculation memo on 16.07.2012 by stating that the respondent/deGREE holder is entitled to Rs.45,801/-. But as per the orders of this Court in CMP.No.16187 of 1993 in A.S.No.983 of 1993, the petitioner/judgment debtor also deposited a sum of Rs.12,000/- and out of Rs.15,000/-, Rs.12,000/- already deposited, only

Rs.3,000/- amount to be calculated.

12.This Court directed the petitioner/judgment debtor to deposit a sum of Rs.12,000/- in CMP.No.16187 of 1993 in A.S.No.983 of 1993 dated 06.01.1994, but the order passed by the learned Judge without deducting the said amount of Rs.12,000/- in memo in E.P.No.61 of 2008 and directing the petitioner to pay a sum of Rs.45,801/- is totally not correct and after considering the order passed by this Court in A.S.No.983 of 1993 then the learned Judge ought to have calculate the amount in proper manner and to pass appropriate order in E.P.No.61 of 2008. Therefore, this Court warranting interference in the order passed in Memo in E.P.No.61 of 2008 in O.S.No.662 of 1991. Accordingly, the same is liable to be set aside.

13.In the result:

(a) this Civil Revision Petition is allowed, by setting aside the order passed in Memo in E.P.No.61 of 2008 in O.S.No.662 of 1991, dated 10.01.2013, on the file of the learned Subordinate Judge, Vellore, Vellore District;

(b) the matter is remand back to the learned Subordinate Judge, Vellore, for fresh consideration, on the calculation filed by the judgment debtor and the decree

holder, based on the orders passed by this Court in CMP.No.16187 of 1993 in A.S.No.983 of 1993 on 06.01.1994 and to pass appropriate orders;

(c) the learned Judge shall complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2017

Note: Issue order copy on 07.12.2017

Index: Yes/No

Internet: Yes/No

vs

To

The Subordinate Judge,
Vellore, Vellore District.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2604 of 2013
and
M.P.No.1 of 2013

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