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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 399/2016

YOGENDRA KUMAR ZONSA

..... Petitioner

Through: Ms.Rachna Aggarwal, Advocate

versus

SURJIT YADAV

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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26.04.2017

1. This petition under Article 227 of the Constitution of India impugns the order dated 19th January, 2016 of the Executing Court by which the Executing Court had ordered that as the petitioner/decreed holder avoided to take steps which were directed by the Court, in the circumstances, he shall not be entitled to any interest ever since the year 2008.

2. The grievance of the petitioner is that the Executing Court could not have gone beyond the decree by denying the petitioner/decreed holder the interest which has been awarded vide judgment and decree dated 18th May, 2006 in Civil Suit No.237/05 @ 9% from the date of filing of the suit till its realization.

3. The petitioner has placed on record copy of the judgment and decree dated 18th May, 2006 passed in Civil Suit No.237/05 which was sought to be executed vide Execution Petition No.24/2014. The above civil suit was filed under Order XXXVII CPC seeking recovery of ₹ 6,00,000/- along with

interest @2% per month. The suit was based on two cheques of ₹3,00,000/- each vide which the petitioner advanced a loan of ₹6,00,000/- to the respondent/defendant.

4. Leave to defend was filed by the respondent/defendant. After considering the ground seeking leave to defend, the learned trial Court, in the concluding paragraphs while dismissing the application seeking leave to defend, granted the following relief:-

*“The defendant, in my opinion, has failed to raise any triable issue. This application for leave to contest is accordingly dismissed. The suit of the plaintiff for a sum of ₹10,32,000/- with costs is decreed. So far as the interest from the date of filing of the suit till realization is concerned, admittedly, it was a commercial transaction. However, since the rate of interest even on commercial transaction has gone down. **Therefore, the plaintiff is awarded @ 9% per annum from the date of filing of the suit till realization. Decree sheet be prepared. File be consigned to Record Room.**”*

5. During the execution proceedings, vide impugned order the petitioner/deGREE holder has been denied interest w.e.f. the year 2008 by passing the following order:-

Present: None

DH had appeared on the previous date, and produced his ID proof as well. No doubt there has been unnecessary and unexplained delay in execution of this decree which includes principal amount of ₹10,32,000/- and interest of ₹95,220/-, besides cost of ₹12,610/- and which comes to a total of ₹19,96,630/-. For some reasons the DH appears not serious to pursue this execution.

It is evident that DH in the circumstances shall not be entitled to any interest ever since the year 2008 as he avoided to take steps which were directed by the Court. However, W/A be issued on filing of PF qua movable properties in the first instance.

DH to appear before Ld.ACJ on 01.03.2016, and before this Court for report on 11.03.2016.

Sd/-

Addl.District Judge (Central)

Delhi: 19.01.2016”

6. A bare perusal of the impugned order shows that the learned Executing Court has neither mentioned what steps were required to be taken by the decree holder and under what provision failure to take such steps could have resulted in denying the interest to the decree holder with effect from the year 2008 onwards. The order has been passed on 19th January, 2016 without giving any reasons for denying the interest to the decree holder with effect from the year 2008.

7. Law is well settled that an executing Court cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. (Ref. 2009(2) ALD 61 (SC) “*Deepa Bhargava & Anr. Vs. Mahesh Bhargava and Ors.*”.)

8. Proceedings under Article 227 of the Constitution of India is an extraordinary discretionary constitutional remedy to advance justice which can be exercised when error or law is apparent on the face of record which has resulted in gross injustice.

9. In the instant case vide impugned order dated 19th January, 2016 the Executing Court has gone beyond the decree which awarded the interest to the decree holder @9% per annum from the date of institution till realisation. While denying the interest to the decree holder learned Executing Court without specifying any reason or under what provision the Executing Court could have gone beyond the decree ordered that the petitioner/decreed holder was disentitled to have interest with effect from the year 2008 onwards.

10. The petition is allowed. The impugned order dated 19th January, 2016 to the extent that the decree holder has been disentitled to claim interest with effect from the year 2008 onwards, is set aside.
11. Copy of the order be given dasti, as prayed.
12. Copy of the order be sent to the Executing Court.

PRATIBHA RANI, J.

APRIL 26, 2017/ 'pg'