

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2342 OF 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners - respondents - defendants, challenging the order, dated 31.12.2014, in I.A. No.663 of 2014 in O.S. No.33 of 2012, passed by the learned Principal District Judge at Visakhapatnam, whereby the trial Court by exercising power under Section 152 of the Code of Civil Procedure, 1908 (for short 'Code'), amended the preliminary decree in a suit for recovery of amount based on mortgage deed deleting the word "per annum" in 6th line of sub-paragraph (i) of paragraph No.2 of the preliminary decree by incorporating rate of interest in accordance with mortgage deed as granted by the Court.

2. The respondent - petitioner - plaintiff filed the petition under Section 152 of the Code to amend the preliminary decree, dated 05.11.2012, deleting the words 'per annum' in 6th line of sub-paragraph No.(i) of paragraph No.2 of the preliminary decree to see that the rate of interest is in accordance with the mortgage deed as granted by the Court, alleging that he filed suit based on mortgage seeking a preliminary decree for a sum of Rs.16,76,638/- together with subsequent interest at the rate of 2.5% per month with monthly rests from the date of filing the suit till the date of realization together with costs. On contest, the suit was decreed on 05.11.2012 and a final decree was also passed by the trial Court on 17.07.2013. But, while

preparing an execution petition as per the decree, found mistake in 6th line regarding rate of interest and, therefore, he requested to amend the decree by exercising power under Section 152 of the Code.

3. The trial Court upon hearing argument of both counsel, allowed the petition amending the preliminary decree substituting certain words as claimed by the respondent - plaintiff before the trial Court.

4. Aggrieved by the order, the present revision is filed by the petitioners - defendants under Article 227 of the Constitution of India, on the ground that the plaintiff is aggrieved by the judgment and decree, has to prefer an appeal and cannot invoke the jurisdiction of the Court under Section 152 of the Code if they are aggrieved by rate of interest, if any, awarded by the trial Court and the Court granted interest in consonance of Section 34 of the Code, therefore, the same cannot be modified by exercising power under Section 152 of the Code as it is neither arithmetical nor typographical mistake in drafting the decree and prayed to set aside the order passed by the trial Court as it is erroneous on the face of record.

5. During hearing, learned counsel for the petitioners, Sri R. Sivasai Swaroop, reiterated the contention urged in the revision. Whereas, none appeared for the respondent though notice was served and proof of service is filed.

6. It is an admitted fact that the suit was filed and a preliminary decree was passed granting interest at the rate of 2.5% per month on compounding basis with monthly rests, but filed an application under Section 152 of the Code to rectify the decree deleting the words 'per annum' and substitute 'per month' as it is an arithmetical mistake, the trial Court granted the same.

7. In view of the contention raised by the learned counsel for the petitioners herein, it is necessary to advert to the operative portion of the judgment in O.S. No.33 of 2012, dated 05.11.2012 and it extracted for better appreciation.

“In the result, suit is preliminarily decreed with costs for an amount of Rs.16,76,638/-(Rupees sixteen lakhs seventy six thousand six hundred and thirty eight only) against defendants with subsequent interest at the rate of 2.5% per month on compounding basis with monthly rests from the date of filing of the suit till the date of decree and at 6% per annum from the date of decree till the date of its realization. The time for redemption is two months.”

8. As seen from the operative portion of the judgment i.e., paragraph No.9, the suit was decreed for Rs.16,76,638/- against the defendant with subsequent interest at the rate of 2.5% per month on compounding basis with monthly rests from the date of filing the suit till the date of decree and at 6% per annum from the date of decree till the date of realization. But, the preliminary decree was passed, which runs as follows:

“2. And it is hereby ordered and decreed as follows:

(i) that the Defendant do pay into Court within two months from today, i.e., 05.11.2012 onwards the date of redemption or any later date up to which time for the payment may be extended by the Court, and the same sum of Rs.17,30,618/- (Rupees Seventeen Lakhs Thirty Thousand Six Hundred and Eighteen only) with interest at the rate prescribed in the mortgage deed per annum from the date of the suit, i.e., 02.07.2010 till realization.

(ii) x x x x

(iii) x x x x

(iv) x x x x

(v) x x x x

(vi) x x x x..”

In the last two lines of paragraph No.2 (i), the amendment is sought to delete the words ‘per annum’, and earlier to that the petitioner sought for amendment to insert the date ‘30.01.2012’ in place of ‘02.07.2010’, which was already amended as per orders, dated 24.03.2014 in I.A. No.325 of 2014.

9. In ordinary course of events, operative portion of the judgment is the judgment of the Presiding Officer of the Court. But, the preliminary decree was prepared by the concerned staff of the Court, and it must be inconsonance with the operative portion of the judgment. The operative portion of the judgment is clear that the rate of interest awarded by the Court is at the rate of 6% per annum from the date of decree till the date of its realization, but whereas, while drafting the decree, there is a clear error in paragraph No.2(i). There is a mistake in drafting the decree, instead of mentioning the date of decree, date ‘02.07.2010’ was mentioned in the last line before the words ‘till realization’, which is an error as the suit was decreed on

05.11.2012. But, the operative portion of the judgment clearly indicates that rate of interest at 2.5% per month on compounding basis with monthly rests from the date of filing of the suit till the date of decree and at 6% per annum from the date of decree till the date of its realization. But, the decree is totally silent with regard to the interest from the date of decree till the date of realization. Therefore, the order passed by the trial Court by exercising power under Section 152 of the Code is erroneous and the same is hereby set aside, while directing the trial Court to draft a decree afresh inconsonance with paragraph No.9 of the judgment i.e., operative portion of the judgment.

10. With the above direction, the Civil Revision Petition is allowed. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

November 8, 2018.

Mgr