IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8355 of 2018(O&M)
Date of Decision: 07.12.2018

Rajesh Kumar **...** Petitioner

Vs

Smt. Manju Yadav ... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ajay Jain, Advocate
for the petitioner.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 15.09.2018 passed by Additional Civil Judge (Senior Division), Rewari vide which objections filed by the petitioner/judgment debtor were dismissed.

[2]. Perusal of the record would show that a suit for recovery of Rs.31,80,000/- was compromised. The terms and conditions of the compromise were to the following effect:-

> *"1. That the defendant Rajesh Kumar admits the claim of the plaintiff to the extent that the defendant had taken loan to the extent of Rs.32,50,000/- from the plaintiff on 14.05.2009. Out of the said amount the defendant had repaid to the plaintiff an amount of Rs.14,85,000/- on 09.12.2010. The remaining amount has not been repaid by the defendant to the plaintiff till date.*

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2. That the defendant has no objection in case the suit filed by the plaintiff along with interest @ 11.5% per month from the date of taking loan till realisation along with cost of the suit is ordered to be decreed. Stay order of alienation qua 3 killa of land till repayment of the decretal amount would continue. There would be no objection in case of vacating stay qua the remaining portion.

3. That the defendant undertakes to pay the decretal amount along with cost and interest upto 01.08.2015. In case defendant fails to repay the amount by 01.08.2015, in that eventuality the plaintiff would be entitled to recover the decretal amount @ 18% per month along with cost of the suit from the date of filing of the suit till realisation.

4. That the compromise has been arrived between the parties without any pressure or coercion and of their free Will. Both the parties would be bound by the compromise. The same is acceptable to both the parties.

5. That the defendant has filed a suit for declaration titled Rajesh Versus Manju against the plaintiff. The same would be withdrawn by Rajesh today itself.

6. It is humbly prayed that the compromise should form part of the decree and the suit of the plaintiff be ordered to be decreed in terms of compromise."

[3]. Perusal of condition No.3 would show that defendant undertook to pay the decretal amount with cost(s) and interest upto 01.08.2015. In the event of failure to pay the aforesaid amount upto 01.08.2015, the plaintiff was held entitled to recover the decretal amount @ 18% per month along with cost(s) of the suit from the date of filing of the suit till realisation

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of the amount.

[4]. On the basis of aforesaid compromise, decree was passed and the suit was decided in terms of compromise by Additional Civil Judge (Senior Division)-cum-Presiding Officer Daily Lok Adalat, Rewari on 25.05.2015.

[5]. Thereafter, an application was filed by the plaintiff under Section 152 read with Section 151 CPC for correction/modification of order dated 25.05.2015 on 08.07.2015. Since the suit was decided on the basis of compromise, therefore, the plaintiff also filed an application under Section 151 CPC for refund of the Court fee.

[6]. The said application for modification of the compromise decree was allowed vide order dated 19.08.2015 to the extent of mentioning 18% per annum in place of 18% per month.

[7]. The contention of learned counsel for the petitioner is that since till the date of passing of order dated 19.08.2015, he was not required to pay the amount arising out of award despite his failure to pay the amount upto 01.08.2015, therefore, the penal interest is not payable and the entire issue has to be re-visited.

[8]. The contention of learned counsel for the petitioner is not tenable in law. A compromise decree was passed on the

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basis of agreed terms and conditions on 25.05.2015. There was a typographical error in mentioning the rate of interest as 18% per month in place of 18% per annum and the error was rectified vide order dated 19.08.2015 passed by Additional Civil Judge (Senior Division), Rewari and the said rectification relates back to the date of passing of the decree. With the aforesaid correction, the effect of the decree cannot be nullified and the judgment debtor/petitioner would be bound by the defect. Modification done vide order dated 19.08.2015 by the trial Court was in the interest of the petitioner himself as payment of the interest @ 18% per month was corrected as 18% per annum. Petitioner cannot be heard to say that the effect of the decree itself should be nullified.

[9]. In view of above, there is no error in the impugned order dated 15.09.2018 passed by Additional Civil Judge (Senior Division), Rewari. This revision petition is accordingly dismissed.

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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No

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