

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1203 OF 2016

Sow. Meenabai Shantilal Tated,
Age: 72 Years, Occu: Household,
R/o: Subhash Nagar,
Tq. Barshi, Dist. Solapur.
Shri. Raichand Bhagchand Lodha, (Died)
Through its Power of Attorney Holder
Smt. Ulka W/o. Pradeep Jain,
Age: 51 years, Occu. Business,
R/o. Bungalow No.E-11,
Kapil Malhar, Baner,
Pune-45.

...Petitioner

Versus

M/s. Terkheda Chemicals Pvt. Ltd.
Post Terkheda, Tq. Kalamb,
Dist. Osmanabad.
Through its Directors

1. Barkatbhai Yusufbhai Patanwala,
Age: 78 years, Occu: Business,
R/o. Isaji Street, 50 Jamnabai Building,
3rd Floor, R.No.22, Mohammad Ali Road,
Mumbai-400003.
2. Ajgarbhai S/o. Abdulbhai Sachawala,
Age: 75 years, Occu: Business,
R/o. 151, Kube Street, Darukhana,
Mazgaon, Mumbai-10.
3. Hatimbhai S/o. Mohammadbhai Hardawala,
Age: 70 years, Occu: Business,
R/o: 165, Samual Street, 3rd Floor,
Mumbai-9.
4. Ganpat S/o. Mahadeorao Patil,
Age: 71 years, Occu. Business,
R/o. 258, Kanti Section, Ambarnath,
Parvati Bungalow, Mumbai.
5. Kantilalchand S/o. Chandulal Borana,
Age: 73 years, Occu: Business,

R/o. Terkheda, Tq. Vashi,
Dist. Osmanabad-413525.

...Respondents

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Mr. R.S. Apte, Senior Advocate i/b. Mr. J.M. Murkute,
Advocate for Petitioner.

Mr. R.N. Dhorde, Senior Advocate i/b. Mr. V.R. Dhorde,
Advocate for Respondent No.1.

Mr. V.S. Undre, Advocate for Respondent No.5.

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CORAM : P.R. BORA, J.

DATED : 04th JULY, 2019.

ORAL JUDGMENT:-

. The order passed by the Civil Judge, Senior Division, Bhoom below Exhibit-91 and 101 in Special Darkhast No.295 of 2014 is questioned in the present petition by the decree holder. Vide the impugned order, the Executing Court has directed the decree holder to submit better particulars in respect of the outstanding amount till date due from the judgment debtors.

2. The petitioner had filed the Special Civil Suit No.2298 of 1996 in the Civil Court at Pune against the present respondents which has been decreed by the said Court. I deem it appropriate to reproduce here-in-below the order passed by the learned 6th Joint Civil Judge, Senior Division, Pune on 30.01.2006 in the said suit, which reads thus:

"1. Suit is decreed.

2. *Defendant Nos.1 to 5 jointly and severally do pay Rs.2,30,000/- to the plaintiff with interest at the rate of 18% p.a. on principle amount of Rs.1,29,000/- from the date of suit, till realization of the amount.*
3. *Defendants do pay costs of this suit of the plaintiff and to bear their own costs.*
4. *Decree be drawn up accordingly."*

3. The material on record reveals that against the decree passed by the Trial Court, first appeal was preferred by the defendants in the High Court. Because of the enhancement in the pecuniary jurisdiction of the District Court, the said first appeal was transferred to the District Court at Pune to decide it in accordance with law and accordingly the same was decided by the said Court on 21.11.2015. The appeal was dismissed by the District Court. Though the second appeal was filed before this Court by the respondents, the same was also dismissed on 03.04.2018. Thus, the judgment and decree passed by the Trial Court attained the finality.

4. The petitioner-decree holder thereafter, pressed the execution of the decree in the execution proceedings bearing Special Darkhast No.295 of 2014. The judgment debtors have deposited certain amounts in the aforesaid

execution proceedings. The material on record shows that the decree holder filed two applications in the aforesaid execution proceedings respectively at Exhibit-91 and 101. In the application at Exhibit-91, the decree holder has claimed issuance of recovery warrant for the amount of Rs.25,60,460/- and also has prayed for attachment and auction of landed and house properties of the judgment debtors. Application at Exhibit-101 is filed for expediting the execution of the decree. The decree holder thereafter furnished the calculations of the amount to be recovered from the judgment debtors under the decree passed in Special Civil Suit No.2298 of 1996. In the said calculations, the outstanding amount is shown to the tune of Rs.40,50,590/-.

5. The learned Executing Court while considering the said applications noticed that the decree holder has charged the interest on periodical rests and also capitalised the same so as to make it a part of the principal. As observed by the Executing Court, the calculations so submitted by the decree holder were prima facie not falling within the ambit of the decree passed in Special Civil Suit No.2298 of 1996. As further observed by Court in Para-6 of the impugned order, the decree holder must have calculated

the simple interest on the principle amount of Rs.1,29,000/-. The Court has further observed that in the order passed in the special civil suit, there was no whisper about compounding of the interest. In the circumstances, observing that the calculations submitted by the decree holder are not in consonance with the decree passed by the Court in the original suit, the Executing Court directed the decree holder to submit better particulars in respect of the outstanding amount till date due from the judgment debtors in terms of the decree. Aggrieved by, the decree holder-petitioner has preferred the present petition.

6. Shri Apte, the learned senior counsel appearing for the petitioner submitted that the Executing Court has exceeded its jurisdiction in passing the impugned order and in calling upon the decree holder to submit better particulars inspite of the fact that such particulars are already furnished on record. The learned senior counsel further submitted that the observations made by the Executing Court that the calculations submitted by the decree holder are not in consonance with the decree passed are unsustainable and unwarranted. The learned senior counsel further submitted that the learned Executing Court failed in appreciating that the final decree has to be read in tune and in consonance

with the findings in the judgment. The learned senior counsel submitted that the calculations submitted by the petitioner in application Exhibit-91 are worked out by the chartered accountant as per the written contract between the parties. The learned senior counsel further submitted that the application filed at Exhibit-91, though was not opposed by the respondents, the Executing Court found fault with the petitioner's calculations and thus in a way has exceeded its jurisdiction.

7. The learned senior counsel relied upon the judgment of the privy counsel in the case of "***Seth Manakchand Vs. Chaube Manoharlal and Another, INDIAN APPEALS VOL.LXXI. 65***" and more particularly invited my attention to some of the observations made in the last but one paragraph of the said judgment wherein, it is held that "Under the Code the decree is the formal expression of the adjudication (s.2); it is imperative that it should conform to the judgment (Or.XX. R.6); every court has power to amend its decree so as to carry out its own meaning (cf.s.152). For the purpose of interpreting a decree no other document is so directly in point as the judgment or can in the nature of things have comparable force".

8. Referring to and relying upon the aforesaid observations, the learned senior counsel further submitted that in the judgment passed in Special Civil Suit No.2298 of 1996, the Court has specifically observed that on perusal of the documents placed on record, it is revealed that the rate of interest is specified in the instrument and the plaintiff has charged agreed rate of interest on deposited amount. The learned senior counsel submitted that in the impugned judgment, the learned civil judge has categorically held that the plaintiff was entitled to claim interest at the rate of 18% p.a. to the tune of Rs.99,750/- till the date of filing of the suit. According to the learned counsel, the decree passed has to be read in consonance with the findings recorded as aforesaid in the impugned judgment. The learned counsel submitted that the interest of Rs.99,750/- till the date of the suit was calculated in terms of contract between the plaintiff and the defendants. The learned counsel also brought to my notice that the said amount of interest was calculated on periodical rests by capitilising the same so as to make it a part of the principal. The learned senior counsel submitted that by passing the decree for the amount of Rs.2,30,000/- claimed by the plaintiff, the learned Civil Judge has accepted the manner of calculation of interest on the amount which

was deposited by plaintiff-decree holder with the defendants-judgment debtors. In the circumstances, according to the learned senior counsel, the decree was liable to be read in consonance with the findings in the judgment passed in the suit.

9. The learned senior counsel also invited my attention to the observations made by the First Appellate Court while deciding the Civil Appeal No.858 of 2012 in para-36 of the said judgment which reads thus:

"36. Considering all these aspects, I find that the grounds raised by the appellant/defendant in the appeal are not found to be sustainable. The plaintiff has proved her case within four corner of law. As per provisions of Sec.80 of the N.I. Act, whenever there is no rate of interest is specified in the instrument, it to be calculated at the rate of 18% p.a. In present case, I have already stated and observed that the receipts issued by the defendant company in favour of the plaintiff are shows that the rate of interest is 1.5% per month. It means 18% per annum. Therefore, the plaintiff is entitled for claim amount along with past and future interest at the same rate as prayed."

Emphasis of the learned senior counsel was on the observations that the plaintiff is entitled to claim the amount along with the past and future interest at the same rate as prayed. The learned senior counsel further submitted that it

was not within the jurisdiction of the Executing Court to go behind the decree. The learned senior counsel, therefore, prayed for setting aside the impugned order and consequently to allow the application filed by the petitioner-decree holder at Exhibit-91.

10. Shri R.N. Dhorde, the learned senior counsel appearing for respondent no.1 supported the impugned order. He submitted that the said decree entitles the decree holder to recover the interest at the rate of 18% p.a. on the principle amount of Rs.1,29,000/- from the date of suit till its realization. The learned senior counsel further submitted that as per the decree passed, the judgment debtors have infact already deposited the entire decreetal amount in the Executing Court. The learned senior counsel further submitted that if the amount of interest is worked out in terms of the decree passed, the judgment debtors have deposited more amount than they were liable to pay. The learned senior counsel submitted that the calculations submitted by the decree holder before the Executing Court wherein, the interest at the rate of 18% p.a. has been charged on quarterly rest is not in tune with the decree passed and in the circumstances, the learned Trial court was well within its power to direct the decree holder to submit

better particulars of his claim. The learned senior counsel submitted that no fault can be found in the observations made by the Executing Court in the impugned order that the decree does not speak of charging compound interest. The learned senior counsel further submitted that inspite of the fact that the judgment debtors have deposited the entire decretal amount, the decree holder is harassing them by attaching their properties and by moving applications at different forums. The learned counsel in the circumstances, prayed for direction to Executing Court to decide the decree proceedings finally so that the harassment to the judgment debtors is stopped.

11. Shri. Undre, The learned counsel appearing for respondent no.5 adopted the arguments advanced by the learned senior counsel Shri Dhorde. He also tendered across the bar the written submissions along with the copies of the citations on which the reliance is placed by him. The same is taken on record.

12. The question which falls for consideration in the present petition is *"how the decree passed in Special Civil Suit No.2298 of 1996 is to be interpreted in so far as the part of interest is concerned"*?. As argued by the learned

senior counsel appearing for the decree holder, it has to be calculated in terms of the contract between the plaintiff and the defendants i.e the decree holder and the judgment debtors. It is not in dispute that the agreement between the plaintiff and the defendants was to pay the interest at the rate of 18% p.a. There is further no dispute that in the suit claim, the plaintiff had claimed the interest of Rs.99,750/- in terms of the agreement. On perusal of the particulars as about the interest calculated of Rs.99,750/- which are brought to my notice by the learned senior counsel, it is evident that the compound interest was charged. There is further no dispute that the entire said amount has been awarded by the Trial Court.

13. Controversy is about the grant of pendent-lite and future interest. The order passed by the Trial Court which I have reproduced here-in-above, demonstrates that the pendentelite and future interest is awarded by the said Court at the rate of 18% p.a. on principle amount of Rs.1,29,000/- from the date of the suit till realization of the said amount. It is quite evident that nothing is mentioned in the aforesaid order, whether the interest awarded is simple or compound. According to the learned senior counsel appearing for the decree holder, though there may

not be any specific mention as about the method and manner of calculating interest, the same has to be read in consonance with the observations made and the findings recorded in the judgment. It was also argued by the learned senior counsel that when the Court has acknowledged and approved the right of decree holder to receive the interest from the defendants-judgment debtors in terms of the contract between them, though there is no specific mention as about the manner of charging pendent-lite and future interest, it has to be assumed that the same has to be charged as per the terms of contract; in other words in the same manner the interest of Rs.99,750/- was charged and determined by the petitioner-decree holder.

14. As against it, as has been argued by Shri Dhorde, the learned senior counsel appearing for the judgment debtors, the order passed by the Court will have to be read as it is and nothing can be added or substituted in the said order. The learned senior counsel further submitted that had it been the intention of the Court to award the future interest at the compounding rate, it would have been expressly mentioned in the order. The learned senior counsel submitted that in absence of any such specific mention, the order can only be interpreted to mean that the

Court has awarded the simple interest at the rate of 18% p.a. In the circumstances, according to the learned counsel, the judgment debtors were and are liable to pay to the petitioner-decree holder the simple interest at the rate of 18% p.a. on the principle amount of Rs.1,29,000/- from the date of filing of the suit till its realization.

15. There cannot be a dispute that the interest payable for the period prior to date of filing of the suit is governed by the provisions under the Interest Act, 1978; whereas, the pendentelite and future interest is awarded under Section 34 of the Code of Civil Procedure. In the instant matter, in the receipts issued by the respondents to the petitioner towards the amounts deposited by the petitioner, it is mentioned that the interest shall be paid at the rate of Rs.1.5% per month. While filing the suit, the plaintiff has calculated the interest payable on the deposits made by her at the rate of 18% p.a. in terms of the said receipt. The Trial Court has, therefore, awarded the entire said amount, in view of the provisions under the Interest Act, 1978. However, while decreeing the suit of the plaintiff, the award of interest, pendentelite and post decree, was in discretion of the Court, as it is essentially governed by Section 34 of the Code of Civil Procedure. In the instant

matter, the learned Trial Court has exercised the said discretion by awarding the interest at the rate of 18% p.a. on the principle amount of Rs.1,29,000/- from the date of filing of the suit till its realization. The decree so passed by the Trial Court has to be read as it is and nothing can be added or substituted in the said decree. In absence of any express direction in the impugned decree, it has to be assumed that the defendants are directed to pay the simple interest at the rate of 18% p.a. on the principle amount of Rs. 1,29,000/-.

16. It has been argued by the learned senior counsel appearing for the petitioner that though in the operative order, it may not have been expressly mentioned by the Trial Court as to how the future interest is to be calculated, it has to be inferred that the interest is liable to be charged in terms of the written contract between the parties and confirming to the observations made by the learned Trial Judge in the body of the judgment. Record reveals that in fact, there was no written contract as such between the plaintiff and defendants. The record further reveals that in the receipts which are issued by the defendants towards the amounts accepted by the defendants from the plaintiff by way of deposit, it is mentioned that the interest on the said

amount shall be payable at the rate of Rs.1.5% per month. In the suit plaint, the plaintiff has however everywhere mentioned that the defendants have agreed to pay her the interest on the amounts deposited by her at the rate of 18% p.a. Even in the prayer clause, the interest is claimed at the rate of 18% p.a.

17. The perusal of the judgments passed by the Trial Court as well as the First Appellate Court reveal that there is little discussion about the manner of interest calculated of Rs.99,750/- till the date of filing of the suit though, the Court has awarded the said claim in toto. Nevertheless, the fact remains that while granting the pendentelite and future interest, the Court, though has granted it at the same rate of 18% p.a. but only on the amount of Rs.1,29,000/- from the date of filing of the suit till its realization. Law is well settled that the award of interest till the date of filing of the suit, in other words, of the period prior to filing of the suit, is governed by the provisions under the Interest Act, 1978, and the pendentelite and future interest is governed by Section 34 of the Code of Civil Procedure, de hors the contract between the parties. Award of such interest is within the discretion of the Court. No doubt such discretion has to be exercised by the Court fairly judiciously and not in

arbitrary or fanciful manner. The Constitution Bench of this Court in the case of "**Central Bank of India Vs. Ravindra and Ors, AIR 2001 SUPREME COURT 3095**", has held as under:

"(8) Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner."

18. In the same judgment, the Hon'ble Apex Court has also observed that though Section 34 of the Code of Civil Procedure is general in its application to all money suits, its application may be different in the suits filed by banks and in the suits filed by creditors other than the bankers. The Hon'ble Apex Court has further held that Section 34 is general procedural provision and whether it would apply or not and if apply then to what extent would obviously depend on the fact situation of each case. In the instant case, it is evident that though the Trial Court did not

interfere in the claim made by the plaintiff of the interest till the date of filing of the suit, has exercised its discretion while granting the pendente lite and future interest and has granted it only on the principle amount from the date of filing of the suit till realization of the said amount. I reiterate that the discretion exercised by the Trial Court cannot be said to have been exercised by the said Court in arbitrary or fanciful manner. The decree passed by the Trial Court has to be therefore read and interpreted as it is. When the decree does not contain any order or direction for the payment of compound interest, it is not open for the decree holder to claim the compound interest under the said decree. The Executing Court is bound by the terms of the decree. It cannot add or alter the decree at its own or at the instance of the decree holder or according to the interpretation being made of the said decree by the decree holder irrespective of the fact that the judgment debtors have not filed any reply to the application submitted by the decree holder.

19. In the above circumstances, it does not appear to me that the Trial Court has committed any error in not accepting the calculations submitted by the plaintiff-decree holder made by charging compound interest and has rightly

directed the decree holder to submit better particulars of the amount to be recovered from the judgment debtors, strictly in terms of the decree passed. I, therefore, see no reason for causing any interference in the impugned order.

20. One more issue is raised by the learned senior counsel Shri Apte that since, the judgment debtors did not unconditionally deposit the decretal amount in the Court while obtaining the stay to the execution of the impugned decree at the time of filing first appeal, there is no question of stoppage of interest on the said amount. To buttress his contention, reliance is placed by the learned senior counsel on the judgment of the Hon'ble Apex Court in the case of **"P.S.L. Ramanathan Chettiar Vs. O.R.M.P.R.M. Ramanathan Chettiar, AIR 1968 SC 1047."** The submission so made is opposed by learned senior counsel Shri Dhorde appearing for the respondents-judgment debtors. The learned senior counsel submitted that this Court while confirming the order of stay to the execution of the impugned decree, has given liberty to the decree holder to file an application for withdrawal of the said amount and if the decree holder has not filed such application and has chosen not to withdraw the said amount, the judgment debtors cannot be held liable to pay any more interest on the said amount. I, however,

do not wish to enter into the said controversy and leave the said issue to be decided by the Executing Court in the execution proceedings by giving due opportunity of hearing to the parties on the said issue and considering the legal position in that regard.

21. Further submission is made by the learned senior counsel Shri Dhorde that though, the judgment debtors have deposited the entire amount due in terms of the impugned decree, they are being harassed by the decree holder by protracting the execution proceedings on one or other count. The learned senior counsel submitted that the valuable properties of the judgment debtors are unnecessarily attached and the decree holder is still making applications making out huge claims. The learned senior counsel in the circumstances, prayed for a direction to the Executing Court to decide the execution proceedings finally as expeditiously as possible.

22. In the forgoing circumstances and for the reasons assigned here-in-above, the following order is passed:

ORDER

- I) The writ petition is dismissed with costs.
- II) The Executing Court shall decide the execution

proceedings as expeditiously as possible.

(P.R. BORA, J.)

Mujaheed//