IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1153 OF 2019

International Asset Reconstruction Co. Pvt. Ltd., acting in its capacity as the Trustee of the IARC-BOB-01/07 Trust. .. Petitioners

Vs

Maheshwari Polyspin Private Limited & Anr. .. Respondents

…

Mr. Rohit Gupta with Mr. Nikhil Rajani i/b V. Deshpande & Co. for the Petitioners.

Mr. Rafique Peermohamadin i/b Mr. S. Kanuga for Respondent Nos. 1 and 2.

CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATED : 11TH NOVEMBER, 2019.

P.C:-

1. Heard learned counsel for the parties.

2. It happens that a mistake is of a kind where it become impossible for a third party to identify with clarity and precision where the mistake lies. Instant case is one of such kind.

3. Bank of Baroda sought recovery of the amounts due to it from the principal borrower under CC (Hypothecation of Stock) Facility, CC (Hypothecation of Book Debts) Facility and under Inland LC Facility. In the Statement of Claim, interest was claimed @ 20.25% per annum; with quarterly rests. Apart from the principal debtor, two Guarantors and legal heirs of 3rd Guarantor were impleaded as Respondent Nos.2, 3, 4A to 4D.

4. Discussing the evidence led, concerning the Hypothecation Agreements, Ex-19 and Ex-21, as also Letters of Bill payable, undertaking concerning due payable under Inland LC being, Ex-23, the Tribunal in paragraph 17 of its Order date 24th February, 2003 returned findings as under:

> "*17. In view of the above, the application is liable to be allowed. The contention of the Defendants that the applicant is not entitled to penal interest unless it proves that it had suffered damages to that extent has to be upheld in the absence of the applicant's case that the quantum of penal interest was reasonable pre-estimate of the loss. This case, however, is worst because no agreement about penal interest has been brought to my notice. The applicant, therefore, is not entitled to penal interest of Rs.1,18,118/-. It is also not entitled to interest at the claimed rate from the date of filing of O.A. i.e. because the claimed rate is more than agreed rate (18% / 19%). The Applicant has not even averred that there was hike in the interest rate and as such the applicant is entitled to increased rate of interest.*

> *In fact, having regard to present PLR and the Defendants' readiness to pay, though at the stage of arguments, I am inclined to award interest @15% p.a. from the date of filing the O.A. till full realization. The releif in respect of mortgaged and hypothecated properties will have to be allowed. It goes without saying that liability of the Defendants No.4B to 4D would be limited to the extent of property of deceased Mohini Devi in their hands. The Defendant No.4A however is personally liable for he is also the Defendant No.2. So far as the Defendant No.5 is concerned order that if it has surplus it shall pay to the applicant will have to be passed."*

5. With reference to paragraph 17, it emerges that the Tribunal specifically noted that the Petitioner-Bank was not entitled to penal interest and thus the claim was reduced by ₹1,18,118/- being the penal interest debited to the account of the principal borrower. Since the *pendente lite* interest was claimed @ 20.25% per annum with quarterly rests, on the issue of rate of interest the Tribunal noted that agreed rate of interest was 18% / 19% and thus, categorically held that the Bank would not be entitled to interest at the rate claimed i.e. 20.25%. Holding in paragraph 17 that the Tribunal was inclined to award interest @ 15%, the Tribunal further recorded that the said percentage would be per annum from the date of filing of the Original Application till realization and suffice would it be to further highlight that the Tribunal did not record in paragraph 17 that this would be with quarterly rests. However, in the operative part of the order, the Tribunal directed

that the sum of ₹1,38,88,856.41 awarded by it would be paid with interest @ 15% per annum with quarterly rests from the date of filing of the Original Application. There obviously is a hiatus between what the Tribunal discussed and recorded in paragraph 17 and what was finally directed by way of a decree to be paid in the sub-paragraph (b) of paragraph 19 of the Order.

6. The Respondents filed an Application in the year 2009 which came to be registered in the year 2013 as Misc. Application No.85 of 2013 praying to the Tribunal to remove the hiatus between what was recorded in paragraph 17 and what was recorded in paragraph 19(B) of the Order. The same was disposed of on 01st July, 2014. The view taken by the Tribunal was that in the absence of a negative finding not being recorded in the Order dated 24th February, 2003 i.e. not opining that the Tribunal was not inclined to award the interest with quarterly rests, the view taken is that there is no error and thus the final operative part of the order would be required to be implemented and executed.

7. The Appeal filed by the Respondents has been allowed by the Debt Recovery Appellate Tribunal vide Order dated 7th December, 2017 and the view taken is that the finding, reasoning and inclinations of the Tribunal in paragraph 17 clearly envisaged that the Tribunal was inclined to grant interest @ 15% per annum and omissions of the words '*with quarterly rests*' show the positive

inclination of the Tribunal on the said issue. Thus, the Appeal filed was allowed. The impugned Order dated 1st July, 2014 has been set aside.

8. Now, if there was an omission to type the words '*with quarterly rests*' after the words '*interest @ 15% per annum*', in paragraph 17 of the Order dated 24th February, 2003, it can never be detected by anyone else other than the author of the Order. However, our task in law is to read the Order as it stands and find out if there is a hiatus between what is recorded in paragraph 17 of the Order and what is directed in paragraph 19(B) of the Order, and if yes, to rectify the same.

9. The hiatus is apparent. The inclination recorded *qua pendente lite* interest in paragraph 17 is to reduce the same from the claimed rate i.e. 20.25% to 15% because the claim amount was not only at the rate but even for the period i.e. quarterly rests, it has to be presumed that on the issue of interest the Tribunal applied its mind not only to the rates but even to the issue whether it be with or without quarterly rests and because the reduction is to the rate of interest with an omission to make the said rate with quarterly rests, it has to be presumed that the omission was intentional.

10. Thus, we find no infirmity in the view taken by the learned Debt Recovery Appellate Tribunal but would clarify. As conceded

by the learned counsel for the Respondents that the interest reduced with omission of the words '*with quarterly rests*' relates to *pendente lite* interest and not the pre-claim interest which had to be as per the decree.

11. The Writ Petition is disposed in the aforestated terms.

(SMT. BHARATI DANGRE, J.) **(CHIEF JUSTICE)**

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