

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR no.8475 of 2015 (O&M)
Date of Decision: 25.03.2019**

Hari Om and others

...Petitioners

Vs.

Daya Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. S.S. Sodhi, Advocate, for the petitioners.
None for the respondents.

Amol Rattan Singh, J (Oral)

By this petition, the petitioners challenge the order of the learned trial court (Additional Civil Judge, Sr. Divn., Rewari), dated 30.09.2015, by which an application filed under Section 151 of the CPC (Annexure P-5), dated 30.04.2015 has been allowed, with that Court exercising jurisdiction under Section 152 of the CPC.

In effect it has been held that the judgment and decree issued on March 10, 2015 would stand modified to the extent that interest of 9% per annum ordered to be paid by the petitioners (defendants in the suit) to the respondents herein (plaintiffs in the suit), would run from 16.12.2010 till its payment, as earnest money had been paid to the petitioners upon execution of an agreement of sale dated 15.12.2010.

The operative part of the impugned order directing such payment to be made, is reproduced as follows:-

“It is made clear that the aforesaid amount shall be paid by the defendants to the plaintiff along with interest w.e.f. 16.12.2010 till its payment.”

The controversy arose because in the judgment and decree issued in favour of the respondents-plaintiffs, it was ordered as follows:-

“This suit coming on this 10th day of March, 2015 before me (Yogesh Chaudhary, Addl. Civil Judge (Sr. Divn.), Rewari for final disposal in the presence of Shri Satbir Singh, learned counsel for the plaintiffs and Sh. M.K. Gupta, learned counsel for the defendants.

It is ordered that the suit of the plaintiffs partly succeeds and is hereby partly decreed with costs. The defendants are hereby directed to pay Rs.20,00,000/- along with 9% interest, along with costs within a period of 90 days from the date of judgment, failing which, they shall be liable to pay the aforesaid amount along with simple interest @ 15% per annum along with costs.”

Thus, in the impugned order, it has been held that it was an error made on the part of the Court to not specify the date from which interest on Rs.20,00,000/- would be running, which was a correctable error/mistake in terms of the jurisdiction conferred on a court vide Section 152 of the Code of Civil Procedure.

Hence, this petition challenges that order.

2. Notice of motion having been issued in this petition on September 02, 2016, with the operation of the impugned order having been stayed at that stage, Mr. Arun Yadav, Advocate, had appeared for the respondents on various dates but was not present either on the last date of hearing, i.e. September 04, 2018, nor today.

3. Mr. Sodhi firstly submits that the trial court having issued the judgment and decree consciously on March 10, 2015, it was very obvious

that the interest ordered to be paid was to run only from the date of the judgment. @ 9% per annum if paid within 90 days thereof, failing which it would be payable @ 15% per annum thereafter, i.e. after 90 days.

He further submits that the decree actually having been complied with within two months, by a deposit of Rs.23,63,325/- on May 15, 2015, with a receipt/*challan* also issued to that effect (Annexure P-3 with the petition), the impugned order passed thereafter on September 30, 2015, i.e. more than 4 months later, is wholly unsustainable.

He also submits that the application filed by the respondents (Annexure P-5) having been filed under Section 151 of the CPC and not under Section 152 thereof, the trial court wholly erred in allowing the application by exercising jurisdiction under the latter provision.

He further submits that once the decree had been complied with, with the petitioners having deposited the amount of Rs.23,63,325/- on May 15, 2015, in any case the trial court would not have jurisdiction even under Section 152 of the Code, to alter the decree.

. Upon this court not agreeing with the learned counsel on his contention that interest was ordered to run only from the date of the judgment, he, in the alternate, eventually submits (while still maintaining his argument earlier made), that then the rate of interest should be reduced to 6% per annum and not 9% as directed by the trial court and further, that in any case it cannot be made to run beyond the date when the petitioners had deposited the amount of Rs.23,63,325/-, the said amount also having

been withdrawn by the respondents (decree-holders).

4. Having considered the aforesaid arguments, I do not agree with most of the arguments made, inasmuch as, firstly, the period of 90 days given in the decree passed on March 10, 2015, is seen to be wholly in the context of by when payment of the amount due from the petitioners was to be made to the respondents, and not in the context of the date from which the interest would start running, because other things apart, there is not even a 'comma' between the words "90 days" and "from the date of the judgment". Had that been so, perhaps an interpretation could have been taken in terms of what Mr. Sodhi has argued, on the ground that the interest to be paid and the time period within which it is to be paid, both would run from the date of the judgment. However, with there being a 'comma' after the words "9% interest" but thereafter it being a running sentence as regards the phrase "along with costs within a period of 90 days from the date of judgment", with no break in between, I find no error in the order of the trial court, holding that it had itself committed an error while not granting interest from the date that money was paid to the petitioners by the respondents-plaintiffs, pursuant to the aforementioned agreement dated 15.12.2010.

Similarly, I also do not agree with learned counsel that this Court should award only 6% interest from 16.12.2010 till the date of the payment, instead of 9%, because that would amount to varying the decree itself, with there being no appeal filed by the petitioners against the said judgment and decree, the present revision petition being only in the context

of the date from which the interest on the principal sum is to run and not as regards the rate of interest awarded in the decree itself.

5. As regards the last contention of Mr. Sodhi, to the effect that jurisdiction even under Section 152 of the Code could not have been exercised by the trial court after the decree dated March 10, 2015 had been complied with, that contention is also rejected, because the application filed by the respondents-plaintiffs for correction of the error in the decree is seen to be dated 30.04.2015, at a time when the decree had not been executed, the money having been paid on May 15, 2015, and simply because that application remained pending with the trial court till September 2015, that is not the fault of the respondent-decree holders.

6. As regards the contention that the application by the respondents having been made under Section 151 of the CPC and not under Section 152 thereof, and consequently no order under the latter provision could have been passed, Section 152 is seen to read as follows:-

“152.Amendment of judgments, decrees or orders.-

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

Thus, as has been already noticed by the trial court in the impugned order, an error that has crept in in any judgment, decree or order, can be corrected even *suo motu* by the Court and not necessarily on an application filed.

Hence, if an application has been filed not under Section 152

but under Section 151 of the CPC, bringing to the notice of the Court that it had committed an error, exercise of jurisdiction even *suo motu* under Section 152 of the CPC, cannot be faulted.

7. However, I do agree with him that interest cannot be made to run till the payment of such interest, because the petitioners undoubtedly paid the principal as also interest calculated from the date of the judgment and decree till the date of payment (amounting to Rs.23,63,325/-), as shown in the e-*challan* shown to be issued by the Government of Haryana, on May 15, 2015 (Annexure P-3 with the petition).

Hence, the period for which interest is to be paid to the respondents can only be from one day after the date that the principal sum of Rs.20 lacs was paid to the petitioners by the respondents, i.e. from 16.12.2010, till the date that they made that deposit along with interest as calculated in terms of the decree issued on March 10, 2015, and not beyond that.

Naturally, the effect of any error made by the Court in its judgment cannot be foisted upon the petitioners as regards extra interest to be paid even beyond what the intention of the court very obviously was, in the decree originally issued.

8. Consequently, this petition is allowed only to the extent that interest @ 9% per annum on the principal amount of Rs.20 lacs would run from 16.12.2010 till the date that the payment was made on May 15, 2015 and not later, if such payment is made within 4 months from today.

Thereafter, the interest would be calculated @ 15% per annum till the date of actual payment.

The petition is otherwise dismissed *qua* the other prayers made.

25.03.2019

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(Amol Rattan Singh)

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes