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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on 14.11.2018

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Judgment Pronounced on 17.07.2019

+ **OMP (ENF.) (COMM.) 116/2018 & I.A. No. 6694/2018**

OSWAL AGRO MILLS LTD.

..... Decree Holder

Through: Mr. Sajiv Kakra with Mr. Gourav
Arora, Advs

versus

OSWAL WOOLLEN MILLS LTD.

..... Judgment Debtor

Through: Mr. Pramod B. Agarwala with Mr.
Aayush Agarwala, Advs

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

1. The instant petition raises an issue which falls in a narrow compass. The issue which arises for consideration is : as to how money deposited by the judgment debtor with the Registry of this Court under an interim order passed by the Division Bench of this Court in an appeal is to be appropriated towards the satisfaction of the decree.

Prefatory facts

2. The background in which this issue arises for consideration is as follows.

3. The judgment debtor appointed the decree holder as an agent *via* an agreement dated 30.3.1982 (hereafter referred to as “1st Agreement”) for importing Crude Palm Kernel Oil (in short “CPKO”) into the country. The

aggregate CIF value of CPKO was pegged Rs.1,85,95,100/-. In lieu of the service, which the decree holder was required to offer, it was to be paid remuneration at the rate of 5% of the value of the imported CPKO which included costs and expenditure incurred in that behalf.

3.1. The record shows that *via* another agreement dated 13.9.1982 (hereafter referred to as “2nd Agreement”), the judgment debtor agreed to sell the oil processed at its factory to the decree holder. The decree holder in terms of the 2nd Agreement was, required to pay at the price set out therein.

3.2. The record also shows that the disputes arose between the parties which led both of them to approach this Court via under Section 20 petitions filed under the Arbitration Act, 1940 (hereafter referred to as “1940 Act”).

3.3. Consequently, this Court *vide* order dated 18.7.1991 appointed two arbitrators in the matter. The two arbitrators appointed to adjudicate the disputes that had erupted between the parties could not reach a consensus which led to an umpire being appointed in the matter.

3.4. The umpire, who is a retired judge of this Court made and published the award on 21.2.2000. In the award passed by the umpire, decree holder was awarded a sum of Rs.64,65,782/- along with interest at the rate of 18% per annum. The interest awarded was to run from 1.11.1991 till the date of realization. Besides this, costs were awarded in favour of the decree holder.

4. The judgment debtor, however, assailed the award and in this behalf filed petitions under Sections 30 and 33 of 1940 Act.

5. The learned Single Judge, partially allowed the petition preferred by the judgment debtor *vide* judgment dated 17.4.2007. The operative portion of this judgment reads as follows:

“...In view of the objections being disposed of aforesaid, the

award is made Rule of the Court with the modifications referred to aforesaid. The petitioner is entitled to the principal amount of Rs.57,57,130/- with simple interest @ 18% per annum from 1.11.1991 till date of award and simple interest @ 12% per annum on the principal amount from date of award till date of recovery. Parties are left to bear their own costs but the respondent is liable and shall remit the balance fee of the umpire of Rs. 1,08,000/- to the wife of the late umpire.

On failure to so pay within one month the amount be recovered in execution along with the other amounts by the petitioner to be remitted as aforesaid. A decreesheet be drawn up accordingly.”

6. Pertinently, one of the major modifications brought about by the learned Single Judge was concerning the rate of interest. Learned Single Judge ordered that interest would be paid at the rate of 18% on the award amount from 1.11.1991 till the date of award, that is, 21.2.2000. As regards future interest, the learned Single Judge scaled-down the interest from 18% to 12% per annum, which was to run from the date of the award till the date of its realization.

7. The judgment debtor carried the matter in an appeal to the Division Bench. This appeal was numbered as FAO (OS) No.211/2007. The Division Bench via an order dated 5.8.2008 admitted the appeal and on the application for stay (i.e., CM No.8654/2007) passed the following directions:

“...There shall be an interim stay of the impugned judgment dated 17th April 2007 of the learned Single Judge subject to the appellant depositing in this Court within eight weeks from today the principal amount and 30% of the interest amount as awarded in terms of the impugned judgment. The respondent is permitted to withdraw the said amount subject to furnishing security to the satisfaction of the Registrar General of this

Court. If the aforesaid amount is not deposited within the time stipulated, the interim stay shall stand vacated without reference to this Court.

The application is disposed of.”

8. The judgment debtor being dissatisfied with the fact that the Division Bench had not granted an absolute and unconditional stay on the operation of the learned Single Judge’s judgment, carried the matter in an appeal to the Supreme Court. The Supreme Court disposed of the Special Leave to Appeal (Civil) No. 22001/2008 on the very first date *via* order dated 15.9.2008.

8.1. The Supreme Court *vide* its order dated 15.09.2008, while affirming the order of the Division Bench dated 5.8.2008, added a condition which required the decree holder to redeposit the money with interest at the rate of 12% per annum from the date it chooses to withdraw the amount deposited by the judgment debtor till the date when the money is redeposited, in the event the judgment debtor was to succeed in the appeal pending before the Division Bench.

8.2. The record also reveals that the judgment debtor thereafter deposited a sum of Rs.1,00,97,252/- under the cover of letter dated 26.9.2008 issued by its advocate.

8.3. Since a major part of the argument advanced on behalf of the judgment debtor pivots around the contentions of this letter, the relevant part of the letter on which emphasis is placed on behalf of the judgment debtor is extracted hereafter:

“...The said amount comprises of a sum of Rs.57,57,130.00 (Rupees Fifty Seven Lacs Fifty Seven Thousand One Hundred Thirty only) being the amount of award plus Rs.43,40,122.00

(Rupees Fort Three Lacs Forty Thousand One Hundred Twenty Two only) towards 30% of the interest on the said amount calculated w.e.f. 01.11.1991 to 30.09.2008.

May I request you to kindly receive the aforesaid amount and deposit the same as per the directions of the Hon'ble Court..."

9. The admitted position is that the execution was not taken out by the decree holder till after the main proceedings were over both before the Division Bench of this Court as well as the Supreme Court.

10. For the sake of completion of narration, it would be relevant to note that the Division Bench dismissed the appeal [FAO(OS) No.211/2007] on 23.10.2013, while the SLP preferred against the judgment of the Division Bench was dismissed on 13.4.2018.

11. The instant execution petition, as indicated hereinabove, was filed only thereafter i.e. on 4.5.2018.

12. Notice in the captioned petition was issued on 14.5.2018. Notice was made returnable on 23.7.2018.

13. On the returnable date, counsel for the judgment debtor took the stand that as per the judgment of the learned Single Judge dated 17.4.2007, which, as indicated above, was sustained right up till the Supreme Court, only a sum of Rs.1,01,26,951/- was payable to the decree holder.

13.1. Counsel for the decree holder, on the other hand, took the position that as on 1.5.2018, a sum of Rs.2,21,00,697/- was payable by the judgment debtor.

14. The coordinate bench noted that while this issue would be examined at a later date, the cheque which the counsel for the judgment debtor had brought to the Court be handed over to the counsel for the decree holder, *albeit*, without prejudice to the submission advanced on behalf of the decree

holder that the subject decree had not been fully satisfied.

15. It appears, thereafter, on the next date of hearing i.e. 10.8.2018, counsel for the judgment debtor was given time to file a reply to the captioned petition along with a calculation sheet concerning the amounts, if any, payable to the decree holder.

16. Finally, the matter was argued and the judgment in the enforcement petition was reserved on 19.11.2018. While doing so, counsel for the decree holder was directed to submit a calculation sheet as to what would be the decretal amount if future interest was calculated on the principal sum i.e. Rs.57,57,130/-.

Submissions of the counsel

17. Given this background, arguments were advanced on behalf of the decree holder by Mr. Sajiv Kakra while submissions on behalf of the judgment debtor were made by Mr. Pramod B. Agarwala.

17.1. In brief, the submission of Mr. Kakra was that the deposit of sum of Rs.1,00,97,252/- towards satisfaction of the subject decree, *albeit*, pursuant to the orders of the Division Bench as a condition of stay on the operation of the judgment of the learned Single Judge would not result in the interest as awarded by the learned Single Judge being frozen.

17.2. In other words, the argument was that neither did the subject decree direct the manner in which the decretal amount had to be paid nor was there any agreement between the parties with regard to the same and therefore, the decree holder was well within its rights to adjust the amounts received on 23.7.2018 in the manner contemplated by the law. In this behalf, Mr. Kakra submitted that the decree holder was entitled in law to appropriate the

amounts received by the decree holder in the first instance towards interest and cost and thereafter towards the principal sum.

17.3. In support of his submissions, Mr. Kakra relied upon the following judgments:

- (i) *Pramod Kumar Mittal & Anr. vs. Kiri Associates (P) Ltd.*, 245 (2017) DLT 71
- (ii) *P.S.L. Ramanathan Chettiar & Ors vs. O.R.M.P. RM. Ramanathan Chettiar*, (1968) 3 SCR 368
- (iii) *South Delhi Municipal Corporation vs. Radhey Shyam*, 2014 (4) Arb. LR 524 (Delhi)
- (iv) *Walchandnagar Industries Limited vs. Cement Corporation of India Limited*, 2012 IX AD (Delhi) 4
- (v) *Royal Construction Company Pvt. Ltd. vs. National Projects Construction Corporation Ltd. (NTPC)*, [Ex.P. No.131/2015 decided on 13.9.2018 by this Court].

18. On the other hand, Mr. Agarwala submitted that with the payment of a further sum amounting to Rs.1,00,97,252/- on 23.7.2018, except for a sum of Rs.79,301.75, no other amount was payable. Mr. Agarwala, thus, submitted that not only had the decree been substantially satisfied insofar as the judgment debtor was concerned, the judgment debtor in consonance with the operative directions contained in the subject decree had also remitted the balance fee amounting to Rs.1,08,000/- to the wife of the umpire who passed away during the proceedings. Therefore, the contention of Mr. Agarwala was that the decree holder having secured release of the amount which was deposited by the judgment debtor with the Registry of this Court under the

cover of letter dated 26.9.2008 could not now contend that the appropriation of the amounts released in favour of the decree holder should first made towards interest and cost and thereafter towards the principal sum.

18.1. In support of his contention, learned counsel relied upon the following judgments of the Supreme Court : *Gurpreet Singh vs. Union of India* (2006) 8 SCC 457; *Kerala State Electricity Board and Another vs. Kurien E. Kalathil and Another* (2018) 4 SCC 793; and *Leela Hotels Limited vs. Housing and Urban Development Corporation Limited*, (2012) 1 SCC 302.

Reasons

19. Having heard the counsel for the parties, what clearly emerges is that upon disputes having arisen between the parties, a reference was made to the arbitrators by this Court on 18.7.1991. Since the two arbitrators appointed to adjudicate upon the disputes could not reach a consensus *qua* the matter, it was referred to an umpire.

20. The umpire rendered an award on 21.2.2000.

21. The learned Single Judge in a petition filed by the judgment debtor under Section 30 and 33 of the 1940 Act gave partial relief to the judgment debtor. This judgment was passed on 17.4.2007.

22. The judgment debtor carried the matter in an appeal.

22.1. The Division Bench while admitting the appeal on 05.08.2008, stayed the operation of the judgment of the learned Single Judge on the condition that the judgment debtor would deposit the entire principal amount along with 30% of the interest component in terms of the impugned judgment. For this purpose, eight weeks were granted to the judgment debtor.

22.2. Furthermore, decree holder was permitted by the Division Bench to

withdraw the amounts which the judgment debtor had been directed to deposit, *albeit*, against security to be furnished to the satisfaction of the Registrar General of this Court.

22.3. The judgment debtor, being aggrieved, carried the matter to the Supreme Court. The Supreme Court disposed of the SLP and while sustaining the order dated 5.8.2008 passed by the Division Bench, added a condition to the same. The condition which the Supreme Court added was, that in case, the judgment debtor was to succeed in the appeal, the decree holder would redeposit the money along with interest at the rate of 12% per annum, commencing from the when the money is withdrawn to the date of its redeposit.

23. In the backdrop of the aforesaid circumstances, on 26.9.2008, the judgment debtor deposited a sum of Rs. 1,00,97,252/-, which according to it, comprises a sum of Rs.57,57,130/- towards the principal amount and a sum of Rs.43,40,122/- towards 30% of the interest component as dovetailed in the learned Single Judge's judgment dated 17.4.2007.

24. Notably, in the course of the proceedings carried out in the instant enforcement petition, on 23.7.2018, the judgment debtor paid a further sum amounting to Rs.1,01,26,951/- to the judgment debtor *via* a banking instrument.

24.1. This sum was accepted by the counsel for the decree holder on 23.7.2018, *albeit*, without prejudice to the rights and contention that the subject decree was partially satisfied. On that date, counsel for the decree holder had indicated that as on 1.5.2018, the judgment debtor was required to pay a sum of Rs.2,21,00,697/-.

25. Counsel for the decree holder in consonance with the directions issued

on 19.11.2018, when the judgment in the matter was reserved, has placed on record a calculation sheet which shows that as on 30.11.2018, a further sum of Rs.71,10,566.37 is payable by the judgment debtor after adjusting the amounts already paid by the judgment debtor.

25.1. On the other hand, the judgment debtor's stand is that, save and except, the sum of Rs.79,301.75, no further amounts are payable to the decree holder.

25.2. It is important to note that though I had permitted the counsel for the judgment debtor to file a counter to the calculations placed on record by the counsel for the decree holder, no such counter calculations have been filed on behalf of the judgment debtor.

26. Be that as it may, the issue which has been framed right at the outset of this judgment is to be examined in the context of the decisions rendered both by the Supreme Court as well as this Court.

27. Before I proceed further, it would be helpful to note the relevant provisions of the Code of Civil Procedure, 1908 (in short "the Code") which would impact the decision in this case : the relevant provision being Order XXI of the Code. There can be no cavil that the provisions of the Code would apply given the provisions of Section 41 of the 1940 Act.

28. I may only note that in the reply filed to the instant enforcement petition under Section 36, the judgment debtor has erroneously averred that the judgments of the learned Single Judge and the Division Bench were rendered in the context of Section 34 and 37 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as "1996 Act").

29. As a matter of fact, the decree holder has also referred to Sections 36 of the 1996 Act in the caption of the enforcement petition alongside the

provisions of Order XXI of the Code.

30. Continuing with the discussion, Order XXI of the Code provides for the modes of paying money under a decree.

30.1. Broadly, Rule 1 of Order XXI¹ provides that money under a decree can be paid either by depositing the money in the Court whose duty is to execute the decree or by having money sent to the Court via postal money order or through a bank.

30.2. The other prescribed mode is by having the judgment debtor pay the money to the decree holder out of Court either via postal money order or through bank or any other mode wherein payment is evidenced in writing.

30.3. The third mode prescribed under the Code is the mode prescribed by

¹ ORDER XXI

Execution of Decrees and Orders Payment under Decree

1 [1. Modes of paying money under decree.—(1) All money, payable under a decree shall be paid as follows, namely:—

(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:—

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment: Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

the Court which made the decree.

30.4. An important aspect to be noticed is that Sub-rule (1) of Rule 1 of Order XXI commences with the expression “all money, payable under a decree”. In other words, the provision speaks about modes of payment of the entire decretal amount and not a partial amount. Sub-rule (2) of Rule 3 of Order XXI, in my opinion, is required to be construed bearing this aspect in mind.

30.5. Sub-rule (2) of Rule 1 of Order XXI provides that where payment is made either by deposit in Court or outside the Court, the judgment debtor is required to give notice of the same to the decree holder either through court or directly via registered post (recorded delivery).

30.6. Sub-rule (3) of Rule 1 of the Order XXI provides for particulars to be given by the judgment debtor when money is paid *via* postal money order or through a bank. I need not elaborate on this Sub-rule as such a situation does not arise in the instant case.

30.7. Moving further, Sub-rule (4) of Rule 1 of Order XXI provides that where payment is made either by making a deposit in Court or in the manner as prescribed by the Court which passed the decree, interest will cease to run from the date of service of the notice referred to in Sub-rule (2).

30.8. Likewise, Sub-rule(5) of Rule (1) of Order XXI provides that where payment is made through postal money order or via bank or any other mode, evidenced in writing, interest will cease to run from the date of such payment.

30.9. The proviso to Sub-rule (5) of Rule 1 of Order XXI encapsulates a situation where the decree holder refuses to accept the money remitted through postal money order or bank. The proviso states that in case such a

situation obtains, interest shall cease to run from the date on which money would have been tendered to the decree holder in the ordinary course of business by the postal authorities or as the case may be, the bank.

31. In the instant case, the facts as set out above would show that the Court which passed the decree i.e. the learned Single Judge did not indicate the mode by which the decretal sum had to be paid. Therefore, Clause (c) of Sub-rule (1) of Rule 1 of Order XXI of the Code would have no applicability.

32. Likewise, Clause (b) of Sub-rule (1) of Rule 1 of Order XXI would not apply as the decretal amount was not paid by the judgment debtor to the decree holder out of court through postal money order or a bank or any other mode of payment, evidenced in writing.

33. The only Clause which would apply in the instant case, if at all, is Clause (a) of Sub-rule (1) of Rule 1 of Order XXI.

34. Pertinently, as noted above, even according to the judgment debtor, the entire decretal amount was not deposited in the Court. Therefore, to my mind, Sub-rule (4) of Rule (1) of Order XXI would not get triggered and thus, interest will continue to run.

34.1. The facts, as obtaining in the instant case, would show that the judgment debtor had deposited, as a condition of stay, *albeit*, under order of Division Bench dated 5.8.2008, the principal sum and 30% of the interest component as envisaged in the judgment of the Single Judge dated 17.4.2007. The fact that the decree holder had notice of the deposit which led to the withdrawal of the first tranche amounting to Rs. Rs.1,00,97,252/- will not, to my mind, trigger the provisions of Sub-rule (4) of Rule 1 of the Order XXI of the Code.

35. The judgment debtor had deposited the aforementioned amount only to protect itself from the consequences of an execution proceeding. The receipt of money by the decree holder was concededly against security and hence cannot be treated at par with payment of the decretal debt. (See *A. Tosh & Sons India Ltd. vs. N.N. Khanna*, 2006 (89) DRJ 248, wherein learned Single Judge has cited with approval, a judgment of another Single Judge in the matter of *Hindustan Construction Corporation vs. DDA & Ors.* 2002 (65) DRJ 43².)

36. It is, to my mind, well established principle of law that the general rule of appropriation *qua* payments made by the judgment debtor towards satisfaction of a decree is that such amounts are to be adjusted firstly, in accordance with the directions contained in the decree, and secondly, in the absence of any agreement between the parties, in the first instance towards interest and cost and thereafter towards the principal sum.

36.1. As alluded to hereinabove, there are no directions in the subject decree with regard to mode of payment of the decretal amount. Furthermore, concededly, there is no agreement between the parties with regard to the payment of the decretal debt. Therefore, in the instant case, the general rule of appropriation of the amounts deposited towards satisfaction of a decree

² "...5. The only question to be determined in this petition is as to whether the deposit of the decretal amount by the judgment debtor under the orders of the Appellate Court, could be construed as payment to decree Holder or not. According to Rule 1 of Order 21 of the Code of Civil Procedure, the modes of payment of a money decree are (a) by depositing into Court whose duty it is to execute the decree or sent to that Court by postal money order or through a Bank; or (b) out of court to the decree holder by postal money order or through a Bank or by any other mode wherein payment is evidenced in writing; or (c) otherwise as the Court, which made the decree directs. A perusal of the judgments cited by the learned Counsel for the decree holder and particularly the judgment of the Apex Court in the case of *PSL Ramanathan Chettiar & Ors v. ORMPRM Ramanathan Chettiar (Supra)* make it clear that the deposit of decretal amount by judgment debtor in the Court to purchase peace by way of stay of execution of the decree does not pass title in the deposited money in favour of the decree holder and as such, is not a payment in terms of Order 21 Rule 1 of the Code of Civil Procedure which prescribes specific modes for the satisfaction of a money decree".

would apply which, as indicated above, would require adjustment of the amount reported, in the first instance, towards interest and cost and thereafter towards the principal sum. (See *Rai Bahadur Seth Nemichand vs. Seth Ratha Kishen*, AIR 1922 PC 26; *Leela Hotels Limited vs. Housing and Urban Development Corporation Limited*, (2012) 1 SCC 302; and *Bharat Heavy Electricals Limited vs. R.S. Avtar Singh and Company* (2013) 1 SCC 243).

37. The argument advanced by Mr. Agarwala, on behalf of the judgment debtor that an implied agreement obtained between the parties as to the manner in which the amount deposited had to be adjusted, since money was withdrawn by the decree holder only after notice of deposit of the first tranche was given under the cover letter dated 26.9.2008, to my mind, is a submission which, in the given facts, is completely untenable.

37.1. The facts, as noticed hereinabove, would show that the deposit of the first tranche of Rs.1,00,97,252/- was made, to comply with the condition imposed by the Division Bench to stay the operation of the learned Single Judge's judgment dated 17.4.2007. The decree holder, as per the condition imposed by the Division Bench, could withdraw the amount only upon furnishing a security. There was neither express nor implied consent of the decree holder concerning the appropriation of the amount deposited with the Registry of the Court. In my opinion, if the argument advanced on behalf of the judgment debtor is accepted, it would give an unfair advantage to a recalcitrant judgment debtor who delays the satisfaction of the decretal debt.

38. A deposit made with the Court which is conditional can never be construed in law as payment by the judgment debtor towards satisfaction of the decretal debt as the decretal holder can seek its release only upon

fulfilment of the condition. The judgment of the Supreme Court in the case of *Gurpreet Singh* does not in any way dilute the general rule of appropriation of payment made towards satisfaction of the decretal debt, as articulated hereinabove by me. This aspect has been noticed by the Supreme Court in another judgment rendered in *Bharat Heavy Electrical Limited*. The Supreme Court in this judgment, after noticing the ratio of the Constitution Bench in *Gurpreet Singh* case in paragraph 26 to 30, culls out the following principles that are required to be followed for appropriation of the amounts paid towards satisfaction of the decretal debt:

“31.1. The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and costs and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.

31.2. The legislative intent in enacting sub-rules (4) and (5) is a clear pointer that interest should cease to run on the deposit made by the judgment-debtor and notice given or on the amount being tendered outside the court in the manner provided in Order 21 Rule 1(1)(b).

31.3. If the payment made by the judgment-debtor falls short of the decreed amount, the decree-holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree.

31.4. Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter.

31.5. In cases where there is a shortfall in deposit of the principal amount, the decree-holder would be entitled to adjust interest and costs first and the balance towards the principal

and beyond that the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for reappropriation.”

39. I may also indicate that while the Constitution Bench in *Gurpreet Singh* made the observations with regard to appropriation of payments made in satisfaction of money decree passed by the Civil Court, the matter before the Court pertained essentially to the application of principle of appropriation in respect of compensation paid by the State *qua* acquisition of land under the Land Acquisition Act, 1894. [See *M/s Ircon International Ltd. Vs. M/s M. Moolji (Bombay)*, (2012) 188 DLT 52 (DB).

40. Therefore, to my mind, *Gurpreet Singh*'s case does not in any way dilute the general principle of appropriation of money paid towards satisfaction of the decretal debt. Pertinently, *Gurpreet Singh*'s case refers, *inter alia*, to the following judgments of the Supreme Court rendered in the *Industrial Credit and Development Syndicate (now called I.C.D.S. Ltd.) vs. Smithaben H. Patel* (1999) 3 SCC 88 and *Mathunni Mathai vs. Hindustan Organic Limited* (1995) 4 SCC 26. Both judgments affirm the aforementioned principle of appropriation of payments made towards satisfaction of the decretal debts. Reliance by Mr. Agarwala on the judgment of the Supreme Court in *Kerala State Electricity Board*, cannot help the judgment debtor's cause as in that case the judgment debtor/contractor had himself indicated that the payment made should be adjusted towards the principal amount. This aspect of the matter has been noticed in paragraph 21 of the judgment.

41. Thus, for the foregoing reasons, I am of the view that none of the objections raised on behalf of the judgment debtor can be sustained. Given

the fact that the calculation submitted by the decree holder with regard to the balance decretal amount payable by the judgment debtor as on 30.11.2018 has not been put in issue, the judgment debtor will pay a sum of Rs.71,10,566.37/- to the decree holder. Since this amount was calculated only as on 30.11.2018, a further sum of Rs. 4,33,283.18/- being interest at the rate of 12% per annum on the principal sum i.e. Rs. 57,57,130/- for the period 1.12.2018 till 16.07.2019 shall also be paid.

42. The aforestated amount will be deposited with this Court, or in the alternate, the same will be paid directly to the decree holder within a period of four weeks from today.

43. In case the balance decretal debt, as indicated above, is not paid, the decree holder will have liberty to revive the execution petition for taking appropriate steps for satisfaction of the subject decree in accordance with the law.

44. The captioned petition and pending application are disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

JULY 17, 2019

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