

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 8TH DAY OF SEPTEMBER 2021

THE MASTER

A.No.2266 of 2021

in

E.P.No.45 of 2019

in

O.P.No.548 of 1995 & O.P.No.157 of 1996

Against

(O.P.No.685 of 1994

(C.S.No.298 of 1982)

Thiru.K.Raju
Sole Proprietor,
M/s.R.K.Construction Company,
No.A1, R.K.Flats, Jeevanandam Street,
Virugambakkam,
Chennai 600 092.
Now Chennai 600 078.

Petitioner/Decree Holder

Versus

Tamilnadu Housing Board,
Rep. by the Executive Engineer,
K.K.Nagar Division,
Ashok Nagar Shopping Complex,
Chennai-600 083
Presently at No.671, TNHB Complex
Anna Nagar West Extension,
Thirumangalam, Chennai-101.

..Respondent/Judgement Debtor

A.No.2266 of 2021:

Mr.Raju,
Sole Proprietor,
M/s.R.K.Construction Company,
No.A1, R.K.Flats, Jeevanandam Street,

Virugambakkam,
Chennai 600 092.
Now Chennai 600 078.

..Applicant/Decree Holder

Versus

Tamilnadu Housing Board,
Rep. by the Executive Engineer,
K.K.Nagar Division,
Ashok Nagar Shopping Complex,
Chennai-600 083
Presently at No.671, TNHB Complex
Anna Nagar West Extension,
Thirumangalam, Chennai-600 101.

..Respondent/Judgement Debtor

Application praying that this Hon'ble Court be pleased to modify its orders dated 03.03.2020 by directing the Judgment Debtor to pay interest on the Principal amount till the date of its ultimate payment.

This Application coming on this day before this court for hearing the court made the following order:-

1. This is the application filed by the applicant/decree holder to modify the earlier order passed by this court in the execution application on 03.03.2020 to pay interest on principal amount till the date of its ultimate payment.

2. The execution application is filed to enforce or execute the award to recover the award amount from the respondent/judgment debtor. After filing of this execution petition, the respondent/judgment debtor contested the execution petition that the decree holder is not entitled to

claim interest for the award claim as per the final order of Hon'ble High Court.

3. After due inquiry this Court passed the order in this execution petition on 03.03.2020 and decided that the decree holder is entitled for subsequent interest. This court calculated the amount as on the date of the order and passed an order to pay Rs.7,33,161/- within two weeks.

4. Against the order of this court, this respondent preferred A.Nos.1768 and 1769 of 2020 in which the Hon'ble Judge passed an order dismissing the application confirming the order of this Court. In that order the Hon'ble Judge condemned the attitude of this respondent. The extracted portion of order of Hon'ble Judge runs as follows.

“It is very unfortunate that even after the award reached finality in the year 2007, the judgment debtor is still dragging the matter without complying the Order of this Court and they are not honouring the award which is binding on them. For more than a decade, they have failed to deposit the amount despite the award has reached its finality in the year 2007 itself. If at all any expenditure accrued through the interest, to which the judgment debtor has to be blamed for themselves for such expenditure. If the award amount has been deposited immediately in the year 2007, they would have avoided further interest till the date of realisation. But nobody has taken any steps in this regard to protect the interest of the Housing Board. In such view of the fact, the decree holder is entitled to the amount claimed as per the award. The applicant/judgment debtor is directed to deposit the amount within a reasonable time”.

5. The Hon'ble Judge in the appeal has specifically ordered that

the decree holder is entitled to the amount claimed as per the award and ordered to deposit the amount within a reasonable time. The order was passed on 03.11.2020. Till date the respondent/judgment debtor has not deposited the amount. Now the respondent/judgment debtor is ready with the cheque to pay the decretal amount. But the Decree holder/applicant wants the interest till date and for that purpose, he has filed this application to modify the order dated 03.03.2020.

6. At this juncture, this court brings its attention to the relevant portion from the award passed by the Hon'ble Arbitrator on 03.02.1994.

“Hence, in addition to the sum mentioned in para 49 supra, the respondent has to pay the claimant interest at the rate of 18 % on Rs.1,18,051/- from 22.12.82 to 03.02.94 i.e. a sum of Rs.2,36,269/-. Further the respondent has to pay the same rate of interest for the principal sum till the date of payment or decree whichever is earlier”

7. The decree is specific that interest for the principal amount has to be paid till the date of payment. The respondent/judgment debtor is bound by the decree. This court can only execute the decree. There is no need for any separate order again and again. Further the respondent/judgment debtor has preferred appeal against the order passed in this execution petition. The same was dismissed by the Hon'ble Judge. The order passed by this Court on 03.03.2020 is merged with the order passed by the Hon'ble Judge by way of appeal. So this court cannot modify the same.

8. This court being an execution court is only to execute the decree. This Court has no right to modify its earlier order. Once an order is passed, it can be amended by way of appeal or revision only and the court which passed an order cannot modify or rewrite its own order. After pronouncing of the order, the Court has become functus officio and the court cannot modify its earlier order. This court reiterates the words pronounced by the Hon'ble Judge that

“if at all any further expenditure or interest is accrued, the Judgment debtor/Respondent has to to blamed himself for his delay. If the amount has been deposited immediately, they would have avoided further interest till realization”.

10. It is made clear that as per award, the Judgment debtor is bound to pay interest at the rate of 18% till realization of entire decree amount. There is no need for any separate order and the order dated 03.03.2020 cannot be modified and there is no need to modify the same. The application is unnecessary one. Therefore this application is dismissed. No costs.

Sd./-MASTER
08/09/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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JJ 16/09/2021