

\$~6

\*

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

***Date of Decision : 10.03.2021***

+ CM(M) 490/2020 & CM APPL. 25010/2020 & 30050/2020  
ICICI BANK ..... Petitioner

Through: Ms. Renuka Iyer, Adv. with Mr.  
Sanjay Sharma, Chief Legal  
Manager for ICICI/Petitioner.

versus

KANTA MALHOTRA & ANR. .... Respondents

Through: Ms. Richa Kapoor, Adv. for  
R-1.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed by the petitioner challenging the order dated 12.03.2020 passed by the learned Additional District Judge-07, South-East District, in Execution No. 408/2019, proceeding further against the petitioner in the Execution Petition.

2. The grievance of the petitioner is that the Execution Petition itself is not maintainable as it in fact prays for an amendment of the Decree.

3. To appreciate the submission made, certain facts would need to be highlighted.

Signature Not Verified

Signed By: SHALOO BATRA

Location:

Signing Date: 12.03.2021

18:43

CM(M) 490/2020

Page 1

4. The respondent no. 1 herein had filed suit, being CS No. 7398/2016, against the respondent no. 2 and the petitioner herein with respect to a Fixed Deposit opened by M/s. Grace Towers and Properties with M/s. ITC Classic Finance Ltd., predecessor in interest of the petitioner herein. By an order dated 11.12.2017, the learned Trial Court in the said suit passed *inter alia* the following directions:-

*“Now coming to the interest part. Though, it is mentioned in the order dated 10.12.2013 that senior advocate for plaintiff had stated that he had no objection to the payment of interest by bank, however, in the own written statement filed by defendant no.2, the averments given in the reply to the present application are not mentioned. There is no whisper about the said amount lying in abeyance or not being invested anywhere. It is nowhere stated in the entire written statement that no interest would be payable on the said FDR or in the said deposit/amount 'stop payment' has been marked. It is an admitted fact that amount was deposited in the form of FDR in the year 1994 by defendant no. 1 and same was lying with the bank till the time it was deposited in the name of Registrar General in the year 2013. Though the bank have changed their names but interest which is legally payable by defendant no. 2 cannot be said to be waived by a statement of an Advocate. The payment legally payable amount due cannot be escaped by a consent or waiver of anyone. The amount which has been taken by bank in the form of fixed deposit has an effect of an automatic renewal and bank interest for prevailing period has to be accrued on that amount, may be the simple saving account bank rate. The written statement filed by ITC Classic Finance Ltd in the year 1996, itself clarifies the position. Therefore, this court directs the defendant no. 2 to pay interest at prevailing bank rate on*

the amount of Rs. 70,00,000/- from the date of deposit of said amount with ITC Classic Finance Ltd till the date on which amount of Rs. 70,00,000/- was deposited in the form of FDR in the name of Registrar General of High Court of Delhi. Bank is directed to deposit the same in the form of FDR in the name of court within a month from the date of order. Application moved by plaintiff is allowed.”

(Emphasis supplied)

5. The petitioner challenged the said order by way of a petition under Article 227 of the Constitution of India, being CM(M) 410/2018, before this Court. The said petition was, however, withdrawn by the petitioner on 21.08.2019.

6. In the meantime, the suit was decreed by the judgment and order dated 18.03.2019 in the following terms:-

“18. Therefore, plaintiff is entitled to get amount of Rs. 79 Lacs back from the defendant no. 1. It is clarified that amount of Rs. 70 Lacs in the form of FDR is lying with the Registry of Hon'ble High Court. Plaintiff may withdraw the same from the said Registry. The issue of interest is pending before Hon'ble High Court and same shall be provided subject to outcome/decision of Hon'ble High Court in CM (M) preferred by defendant no. 2.

19. It is pertinent to mention here that vide order dated 10.04.2018 passed by Hon'ble Delhi High Court, the direction of this court to deposit amount of interest beyond the period of maturity which was one year, passed vide its order dated 11.12.2012 is stayed by

Hon'ble High Court so this court has not passed any orders on interest on FDR.”

7. A reading of the above would show that the learned Trial Court has observed that the liability of the petitioner to pay interest on the Fixed Deposit having already been decided vide order dated 11.12.2017, which as on that date was pending adjudication in the petition filed by the petitioner herein before this Court, would abide further orders of the High Court.

8. The learned counsel for the petitioner submits that this Court in the course of hearing held on 29.07.2019 in the petition filed by the petitioner has expressed a *prima facie* view that the suit having been decreed on 18.03.2019, the issues raised in the said petition no longer survived for consideration and the parties had to be relegated to their remedy against the decree. Based on such *prima facie* view expressed by this Court, the petitioner withdrew its petition. She further submits that it was the case of the respondent no. 1 in the said petition that the respondent no. 1 is also aggrieved of the decree and is considering filing of a cross-appeal in the appeal filed by the respondent no. 2 on the said issue. In this regard, she has drawn my attention to paragraphs 3 to 5 of the order dated 29.07.2019 of this Court which are reproduced hereinunder:-

*“3. It transpires that, during the pendency of the present petition, the Trial Court has in fact decreed the suit itself on 18.03.2019. While doing so, however, learned counsel for the*

Signature Not Verified

Signed By: SHALOO BATRA

Location:

Signing Date: 12.03.2021

18:43

CM(M) 490/2020

Page 4

*plaintiff submits that the Trial Court has not decided the question of interest beyond the period of one year on account of pendency of the present petition in this Court. It is further submitted by learned counsel for the plaintiff that the defendant No.1 in the suit has filed an appeal against the decree, in which the plaintiff is on caveat. However, the appeal has not yet been listed before the Court.*

*4. Further, as far as the issue of liability of both the defendants towards interest is concerned, learned counsel states that the plaintiff is also aggrieved by the decree finally passed and is considering filing of a cross appeal in the appeal filed by the respondent No.2.*

*5. The present petition concerns the question of the amount to be deposited by the defendant No.2 [petitioner herein] during the pendency of the suit. I am prima facie of the view that after the passing of the decree in the suit on 17.03.2019, the issues raised in this petition no longer survive for consideration and the parties have to be relegated to their remedies against the decree. Only in the event of a remand to the Trial Court for any reason, the question of interlocutory arrangement may arise once again.”*

9. I have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same. As is apparent from the reading of the order dated 11.12.2017 passed by the learned Trial Court, the liability of the petitioner herein to pay interest on the

Fixed Deposit had already been determined by the learned Trial Court. The petitioner being aggrieved of the same, challenged the same before this Court in form of a petition, being CM(M) 410/2018. It may be correct that on 29.07.2019 certain submissions were recorded to be made on behalf of the respondent no. 1/plaintiff in the suit as also the Court expressed a *prima facie* opinion, however, the fact remains that the petitioner withdrew the said petition on 21.08.2019, in fact without praying for any leave. Though the learned counsel for the petitioner submits that leave was sought and was granted and the order is incorrect in that respect, this Court need not detain itself with the said submission. In any event, the petitioner did not challenge the final decree of the learned Trial Court and thereafter, the order dated 11.12.2017 became final. The Decree clearly records that the liability of the petitioner to deposit interest beyond the period of one year of the Fixed Deposit shall abide by further orders of this court in CM(M) 410/2018. The same having been dismissed, the order dated 11.12.2017 stood confirmed and the petitioner became liable to deposit the interest for the remaining period as well.

10. In view of the above, I find no infirmity in the order passed by the learned Trial Court in the Execution Petition. The petition is accordingly dismissed. There shall be no order as to costs.

11. The learned counsel for the petitioner at this stage submits that the petitioner would like to bring about an amicable settlement to the dispute. It would be open to the petitioner to explore the possibility of

an amicable settlement with the respondent no. 1 and in this regard,  
make an appropriate prayer before the learned Executing Court.

**NAVIN CHAWLA, J**

**MARCH 10, 2021/rv**



Signature Not Verified

Signed By: SHALOO BATRA

Location:

Signing Date: 12.03.2021

18:43

CM(M) 490/2020

Page 7