

ORDER SHEET

OC-1

APDT/1/2022
WITH
CS/221/2021
IA NO.GA/1/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

IDEAL UNIQUE REALTORS PVT. LTD.
VS.
PADMA LOGISTICS AND KHANIJ PVT. LTD.

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 2nd February, 2022
(Via Video Conference)

Appearance:

Mr. S.N.Mookherjee, Ld. Advocate General
Mr. Tilak K. Bose, Sr. Advocate
Mr. Paritosh Sinha, Adv.
Mr. Shaunak Mitra, Adv.
Mr. Dripto Majumdar, Adv.
Ms. Ayusmita Sinha, Adv.
For appellant
Mr. Anuj Singh, Adv.
Miss M. Barman, Adv.
Mr. Aman Agarwal, Adv.
Miss Trinisha De, Adv.
Mr. A.K.Singh, Adv.
For respondent

The Court : We propose to hear out this appeal dispensing with all formalities.

This is an appeal from a judgment upon admission. It was made by a learned single judge on 11th January, 2022 in the above suit. The suit was for recovery of sums lent and advanced by the respondent to the appellant. In aid of the said suit an application for judgment upon admission was made by the respondent where a judgment and decree for Rs. 6,27,72,055/- was claimed as pleaded in paragraph 24 of the application.

Now, in paragraph 24 of that application, the principal sum was stated to be Rs.4 crores and the interest claimed thereon at the rate of 15% per annum till 10th September, 2021 was Rs.2,27,72,055/-, aggregating to Rs.6,27,72,055.

The learned single judge in a detailed judgment with very tenable reasons, inter alia, came to the conclusion that Rs.4 crores was the admitted amount.

Thereafter, a little error that his lordship made was that in the ordering part he directed the entire claim of Rs.6,27,72,055/-, which was inclusive of the above interest to be paid as “decree on admission”.

No doubt, the principal sum is the admitted amount but it cannot be said that the interest part is also admitted. In fact it is disputed by the appellant.

Mr. Singh, learned advocate appearing for the respondent very strenuously contended that the rate of interest was agreed between the parties and that this decree necessarily followed.

We are unable to accept this submission.

When in an application for judgment upon admission, the admitted amount is under consideration by the court, if the decree, based on such admission includes the interest component, the interest part should also have been admitted. Otherwise interest has to be awarded separately.

Mr. S.N.Mookherjee, learned Advocate General assisted by Mr. T.K. Bose, learned senior Advocate for the appellant very fairly submitted to the decree for Rs.4 crores and prayed for ten equal monthly instalments to pay off this amount.

We have also considered section 34 of the Civil Procedure Code.

We hold that the respondent plaintiff is entitled to Rs. 4 crores on admission together with 6% simple interest on the said sum from the date of the decree i.e. 11th January, 2022.

The appellant shall pay this sum of Rs. 4 crores together with simple interest at the rate of 6% per annum from 11th January, 2022 in ten equal

monthly instalments of Rs.40 lakhs each starting from 14th February, 2022 and payable by the 14th of each month, together with interest calculated on the reducing balance principle.

Till 31st December 2022 there shall be stay of execution of the decree. In default of payment of any one instalment, the respondent plaintiff will be free to execute the decree for the outstanding amount. The impugned decree is modified to the above extent.

The balance claim of the respondent plaintiff is relegated to trial. We make it clear that it will be open to the respondent plaintiff to take out any summary proceedings for such adjudication.

The appeal (APDT/1/2022) and the stay application (IA NO. GA/1/2022 |) are disposed of.

(I. P. MUKERJI, J)

(ANIRUDDHA ROY , J)

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