

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8859 OF 2018

Amit S/o Omprakash Dusad & Ors. ..Petitioners

Versus

Mrs. Rani Thomas & Anr. ..Respondents

Mr. Anoop U. Patil, for the Petitioners.

Mr. Pavan S. Patil, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th FEBRUARY, 2022

P.C.

1. The challenge in the petition is to the order dated 16th January, 2018 passed below Exh.13 an application dated 28th December, 2017, order dated 3rd July, 2018 passed on Misc. Civil Application No.206 of 2018. Vide order passed below Exh.13 on 16th January, 2018, the said application was partly allowed and directions were issued to pay an amount of Rs.25,50,000/- to the judgment-debtors. A further direction is issued on application dated 28th December, 2017, whereby Nazar was directed to pay an amount of Rs.10,69,058/- along with accrued interest, if any, to the decree-holder. Vide order impugned dated 3rd July, 2018, the learned Civil Judge, Senior Division, Pune rejected the prayer of the present applicants moved vide application under Section

114 r/w Order XLVII Rule 1 r/w Section 157 of the CPC, whereby the review of the aforesaid order and permission to release the amount was allowed on 16th January, 2018.

2. The facts necessary for deciding the present petition are as under :-

The petitioners are defendants to Special Civil Suit No.1505 of 2008 in which on 16th April, 2013 following decree for specific performance came to be passed :-

- “1. Plaintiff’s suit is decreed with cost.
2. Defendants are directed to handover the necessary NOC’s of society/builder and other relevant documents to plaintiff within a month.
3. Plaintiff shall deposit Rs.25,50,000/- in Court within two months.
4. Thereafter, the defendants shall execute the sale deed of the suit property i.e. one row house in five Garden Phse 2 scheme admeasuring 1490 sq.ft. i.e. 138.42 sq.mtrs. built up area + garden and parking area 1446 sq.ft. i.e. 138.33 sq.mtrs. + terrace 158 sq.ft. having row house no.C-1208 situated in building at Gaon Mouje Rahatani survey o.12/2, 13/2, 12/1, 13/1, 12/3, 13/3 more particularly described in para no.1 of the plaint in favour of plaintiff within one month after depositing an amount.
5. If the defendants failed to execute the sale deed of suit property, then the plaintiff is at liberty to obtain the sale deed through the process of Court by appointing Commissioner.
6. Thereafter, defendants shall handover the vacant and peaceful possession of suit property to

plaintiff.

7. Further defendants are permanently restrained from alienating, creating third party interest or transferring the suit property in any manner and parting with possession of the suit property in any manner and further from carrying out any construction or changing the nature of the suit property.

8. Decree be drawn up accordingly.”

3. The petitioners feeling aggrieved preferred Regular Civil Appeal under Section 96 of the CPC before this Court, which was later transferred to the District Judge, Pune which appeal being Regular Civil Appeal No.532 of 2015 came to be dismissed on 10th March, 2017.

4. The respondent/plaintiff/decreed-holder pursuant to the directions in the decree deposited an amount of Rs.25,50,000/- on 14th June 2013. After depositing the aforesaid amount in the First Appeal of the petitioners, this Court granted stay on 3rd July, 2013.

5. In pending appeal, High Court, before ordering its transfer to the District Judge, Pune (on the ground of change in pecuniary jurisdiction), vide order dated 17th June, 2014, directed the Registry to transfer the amount in fixed deposit with any nationalized bank.

6. After the appeal was dismissed on 10th March, 2017 by the District Judge, Special Darkhast No.73 of 2017

was initiated for execution by the respondent/decreed-holder. During pendency of which the judgment debtors executed registered sale-deed in compliance of the decree in favour of the respondent, so also the possession was delivered on 3rd November, 2017.

7. In the aforesaid background, the judgment-debtors/petitioners moved an application for withdrawal of the amount with accrued interest thereon on 22nd November, 2017, in which no objection was extended by the respondent so as to permit the petitioners to withdraw the amount.

8. In response to the order of the Court calling for a report from Nazar in the matter of further processing prayer for withdrawal of the amount moved vide Exh.13, the respondent filed pursis Exh.12 stating that the decree is satisfied. It is claimed that nothing is due to be paid to the respondent and as such, on 30th November, 2017 a joint request is made for disposal of the execution proceedings on 22nd November, 2013. Accordingly, Special Darkhast No.73 of 2017 filed by the respondent/decreed-holder came to be dismissed as unconditionally withdrawn.

9. The respondent/decreed-holder filed an application with a prayer for direction to the Nazar to pay

accrued interest in his favour on the principal amount of Rs.25,50,000/- as referred to in the decree. The said prayer was resisted by the petitioners through its reply. In the meantime, Nazar reported to the Executing Court that as on 6th January, 2018 that on principal amount of Rs.25,50,000/- after adding accrued interest, total amount inclusive of interest comes to Rs.36,19,058/-.

10. In this background, the order impugned dated 16th January, 2018 came to be passed below Exh.13. An application preferred by the petitioners/judgment-debtors, so also the application dated 28th December, 2017 filed by the respondent/decreed-holder vide order dated 16th January, 2018, Exh.13 came to be partly allowed, whereby directions were issued to the Nazar to pay an amount of Rs.25,50,000/- to the petitioners/ judgment-debtors and amount of Rs.10,69,058/- along with accrued interest, if any, to the respondent/decreed-holder. The review sought by the petitioners of the aforesaid order was rejected vide order 3rd July, 2018.

11. In the aforesaid background, the question which needs to be addressed by this Court is, what should be the apportionment of the accrued interest on the principal amount deposited towards satisfaction of decree for specific performance. The suit property consists of a

duplex situated in Pune of which possession was received by the respondent from the petitioners/judgment-debtors during pendency of execution i.e. Special Darkhast No.73 of 2017 on 3rd November, 2017. It appears that there was recital executed in relation to the transfer of the title in favour of respondent in compliance with the decree in the clause 8, which reads thus:-

“8. The Vendors shall be entitled to withdraw the said amount of Rs.25,50,000/- (Rupees Twenty Five Lac Fifty Thousand Only) of Consideration from the said Court with interest standing thereon and the Purchaser has no objection to withdraw the same. The Purchaser shall co-operate the Vendors for withdrawal of the said consideration as and when required by the Court and the Vendors.”

12. As such, from the said recital, it can be inferred that it was agreed between the parties hereto that the petitioners will be entitled to withdraw not only principal amount of Rs.25,50,000/- but also the accrued interest thereon. As a consequence of above, it appears that the execution proceedings stood disposed of as respondent has withdrawn the execution proceedings unconditionally on 30th November, 2017.

13. The said disposal of the Darkhast is based on the pursis dated 22nd November, 2017 moved by the respondent and also no objection extended by the present

petitioners/judgment-debtors. Said pursis reads thus :-

“PURSIS

The Pursis on behalf of the Decree Holder is as under :

1. The Judgment Debtors have executed and registered the Sale Deed of the suit property on 03/11/2017 in favour of the Decree Holder. The copy of the said Sale Deed is enclosed here with.
2. The Decree Holder submits that as Judgment Debtor have complied with the order, judgment and Decree passed in Spl. R.C.S. No.1505/2008.
3. The Decree Holder submits that, the present Decree is satisfied and nothing is due to be paid to Decree Holder from the Judgment Debtors. Hence, the present Execution Petition may be disposed off as satisfied. Hence, this pursis.”

14. The Executing Court accordingly on 30th November, 2017, while dismissing the Darkhast Proceedings as unconditionally withdrawn has recorded thus :-

“ORDER BELOW EXH.1

On 22.11.2017 decree holder has filed precipe vide Exh.12 contending that judgment debtors have executed an registered sale deed on 03.11.2017 in his favour. The decree is satisfied and nothing is due to paid to decree holder from judgment debtors. Hence, decree holder wants to withdraw the execution proceeding. The decree holder was personally present and he had reiterated the contents of the precipe. Hence, I am inclined to pass the following order.

ORDER

- 1 - The darkhast is dismissed as unconditionally

withdrawn.”

15. Perusal of the aforesaid order passed below Exh.1 in Darkhast No.73 of 2017 on 30th November, 2017 in categorical terms speaks of nothing due to be paid to the decree-holder from the judgment-debtors. If the aforesaid order is read with the recitals in the registered sale-deed executed by the petitioners in favour of the respondent, particularly, clause 8 reproduced (*supra*), it is *ex-facie* clear that on facts the respondent has consented for not only withdrawal of the principal amount of consideration of Rs.25,50,000/- but also interest standing thereon. The order dated 30th November, 2017, then speaks of nothing due to be paid to the decree-holder i.e. respondent herein by the judgment-debtors. In spite of above, the respondent moved application for issuance of directions to the Nazir to release the accrued interest on principal amount of Rs.25,50,000/- to the respondent vide application dated 28th December, 2017, which was duly objected on the aforesaid grounds by the petitioners.

16. While deciding application for withdrawal of the amount which was moved by the petitioners being Exh.13, the Executing Court has directed the Nazir to release principal amount of Rs.25,50,000/- in favour of the petitioners/judgment-debtors, whereas accrued interest of

Rs.10,69,058/- in favour of the respondent/decree-holder.

17. The basis for not permitting the petitioners/judgment-debtors to withdraw the accrued amount of interest as could be gathered from the reasoning employed in the judgment impugned is, after the amount of consideration of Rs.25,50,000/- was deposited, if the petitioners would have executed sale-deed immediately, then the petitioners were entitled only for a valid consideration of Rs.25,50,000/-. The Executing Court then noted that even if no objection was extended by the respondent, in the facts of the case, the interest must go to the respondent/decree-holder. In review proceedings, while dealing with clause 8 of the recitals in the sale-deed, the Executing Court while rejecting the prayer for review has recorded that the respondent was not aware of the exact amount of accrued interest. As such her no objection for withdrawal would have been otherwise. As far as the aforesaid observations of the Executing Court are concerned, the same, in my opinion, go completely to the agreement *inter se* between the judgment-debtors and decree-holder, the recitals in the conveyance-deed dated 3rd November, 2017, the terms of the conveyance dated 3rd November, 2017, so also the no objection extended by the respondent for withdrawal of the execution proceedings. The fact remains that before the decree could be executed

i.e. during pendency of the Darkhast Proceedings, it appears that the petitioners have executed conveyance in relation to the suit property in favour of the respondent which contains a clause of extending no objection by the decree-holder in favour of the petitioners/judgment-debtors for withdrawal of the amount with accrued interest. It cannot be said that the said consent extended by the respondent was conditional viz. was not aware about quantum of the interest accrued. Rather the consent extended by the respondent is reflected in the conveyance, particularly, clause 8 thereof and as such, the execution proceedings were disposed of unconditionally as withdrawn by the respondent. As such, it has to be inferred that the respondent not only consented for withdrawal of the principal amount of Rs.25,50,000/- but also extended consent for withdrawal of the amount of the accrued interest thereon. Thus, the Court below, in my opinion, while rejecting the prayer of the petitioners is in error in appreciating the intentions of the parties.

18. Fact remains that the decree under execution is for specific performance. It is not the case of the respondent that the petitioners have enriched themselves by not passing the property in favour of the respondent in compliance with the decree. The decree in favour of the respondent makes the decree-holder entitled to the suit

premises and does not specify as to whether the decree-holder is entitled for interest, compensation, damages. In view of above, issue as regards entitlement of the respondent cannot be considered and granted under Section 47 of the CPC or under the provisions of Order XXI of the CPC. The Andhra Pradesh High Court in the matter of **Chivukula Ranjithkumar & Ors. Vs. Santhilal Nemichand & Ors.** reported in **AIR 2000 AP 113** has observed that in such an eventuality the course open is, to pass an order in exercise of inherent powers. Once the decree under execution does not specify that the accrued interest should go to the decree-holder and it is expressly provided that the petitioners are entitled for receipt of the consideration which is deposited by the decree-holder, the consequences to follow in the facts and circumstances of the case is, to permit the petitioners to withdraw the entire amount of accrued interest along with the principal. The principle that the decree-holder is entitled to the amount which is payable under decree and not beyond it is required to be taken into account. The above principle will not depend on the fact that the amount of interest is enormous or meager. The fact remains that the money paid into Court should belong to a party who is eventually found to entitled to it. As such, it has to be held that by conduct of the respondent as reflected herein-above, she has incapacitated herself for claiming the accrued interest

on the principal amount. That being so, the order impugned are quashed and set aside.

19. The petition stands allowed in above terms.

20. It is held that the petitioners are entitled for withdrawal of the accrued interest with principal amount.

[NITIN W. SAMBRE, J.]