

51 **20.08.**
2024
Ct. No. 08

RVW 225 of 2023
IA No. CAN 1 of 2023
IA No. CAN 2 of 2024

Ab

Bhagabati Prasad Jhunjunwala and others
Vs.
UCO Bank and another.

Mr. Sabyasachi Sen,
Mr. Rachit Lakhmani.

... for the applicants.

Mr. Sailesh Mishra.

... for the bank/respondents.

The review application is filed on the limited point, which, in our opinion, is basically seeking to modify the operative portion of the judgment and order where this Court awarded the interest to reckon from the date of the decree till its actual payment.

It is sought to be contended that it was a suit for recovery of possession on expiry of lease by efflux of time and the possession was given during the currency of the said suit and, therefore, the profit, which the decree-holder obtained for such wrongful possession, is liable to be compensated in the form of mesne profit. It is further submitted that the decree for mesne profit is akin to a money decree and, therefore, the interest being an integral part of the same, must also reckon from the date of possession and not from the date of the decree.

While delivering the judgment, we took note of the Law declared by the Supreme Court that while determining the mesne profit defined under Section 2(12) of the Code of Civil Procedure, the interest being an integral part thereof and, therefore, there is no

impediment on the part of the Court to award interest on the said mesne profit.

Obviously, the Court awards interest having vested with the powers under Section 34 of the Code in absence of any contract to the contrary. The Court took into account the provisions contained under Section 34 of the Code and arrived at the decision that the interest should start from the date of the decree till the date of payment on the determined amount of mesne profit.

The language employed in Section 34 of the Code is exposit of the legislative intent that the discretion is vested to the Court while granting the interest to start from a particular point. It postulates that the Court may award an interest from a date of the decree to the date of the payment or to such earlier date, as the Court thinks fit. Ordinarily the word 'may' connotes the discretion vested upon the Court, obviously dependent upon the nature of the legislation, as sometimes 'may' may be construed as mandatory and conversely 'shall' may be interpreted as directory.

Since the discretion is exercised by the Court, it is not open for the litigant to seek a review against a discretionary order as there cannot be any error apparent on the face of the record. Once the discretion is exercised judicially, as opposed to exercise of such discretion capriciously, it is not open for the litigant to seek the review of the said order.

As indicated above, once the discretion is exercised indicating the starting point of the interest to be paid by the judgment debtor, such discretionary order does not come within the purview of the error apparent on the face of the record.

The review application is, thus, dismissed.

In view of the dismissal of the review application itself, the connected applications have become infructuous and the same are also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)