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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7618 OF 2019

Ichalkaranji Municipal Council,
through Chief Officer

... Petitioner

V/s.

Ramesh Marutirao Jadhav & Ors.

... Respondents

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Mr. Vinod P. Sangvikar for the petitioner.

Ms. D.S. Deshmukh, AGP for respondent No.2 – State.

Mr. Ashutosh Kulkarni i/by Mr. Sarthak Diwan for the
respondent Nos.1 and 3.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 9, 2024

PC.:

1. The Executing Court by the impugned order disposed of application filed by the judgment debtor seeking clarification as to the amount deposited by the judgment debtor without specifying that the deposit was either towards principal or towards interest.

2. The Executing Court in paragraph 8 has assigned following reasons:

“8. In this connection, it is necessary to see Order 21 Rule 1 of the Code, which makes it clear that, if the amount deposited in the court or sent to the court by Postal Money Order or through Bank or out of Court or otherwise, the judgment debtor shall give the notice thereto to the decree holder either through Court or directly to him by Registered

Post Acknowledgment Due. If the money is paid by Postal Money Order or the Bank whether in the court or directly to the D.H. then the J.D. shall accurately state the number of original suit, name of the parties, how amount is to be adjusted, it means towards the principal, interest or cost, he shall also mention the number of execution case of Court, where such case is pending, name, address and payer. If the amount is paid by way of above mode and notice is given then the interest ceased to run from the date of service of notice referred in sub clause 2 Rule 1 of the Order XXI of the Code. If the amount is paid directly to the D.H. by way of Postal Money Order or Bank or any other mode then the interest ceases to run from the date of such payment.”

3. Based on aforesaid reasons, the Executing Court held that the judgment debtor has not specified as to whether he was depositing the amount towards principal or towards interest, and in absence of such notice, the Trial Court was justified in appropriating the deposited amount towards interest first.

4. Learned advocate for the petitioner, however, invited my attention to the application dated 26 March 2012 whereby the judgment debtor deposited an amount of Rs.1 lakh in the Executing Court. According to him, on the same date petitioner filed his reply and, therefore, he had knowledge of the deposit of amount of Rs.1 lakh.

5. Per contra, learned advocate for the respondents invited my attention to the Constitution Bench judgment of the Apex Court in *Gurpreet Singh v. Union of India*, (2006) 8 SCC 457. The Apex Court in paragraph 53 has held as under:

“43. Thus, on the whole, we are satisfied that the essential ratio in the Prem Nath Kapur (*supra*) on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee decree holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment debtor while making the deposit intimating the decree-holder of his intention. We, thus, approve the ratio of Prem Nath Kapur (*supra*) on the aspect of appropriation.”

6. In view of the observations made by the Apex Court in *Gurpreet Singh* (*supra*), it was obligatory on the judgment debtor to specify in his application that he was depositing such amount towards principal or towards interest. In absence of such indication, the Executing Court had discretion to appropriate the deposited amount towards interest first and then the towards principal. Therefore, the impugned order does not suffer from any legal infirmity.

7. The writ petition accordingly stands disposed of. No costs.

(AMIT BORKAR, J.)