



C.R.P.[NPD].No.783 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.783 of 2024

K.Sandhya

. . . Petitioner

Versus

Devasena

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal Order dated 12.12.2023 made in I.A.no.5 of 2022 in O.S.No.5925 of 2019 on the file of the I Assistant City Civil Court, Chennai.

For petitioner : Mr.S.Mukunth, Senior Counsel
for Mr.Sarvabhauman Associates

For respondent : Mr.K.Jayaraman



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C.R.P.[NPD].No.783 of 2024

ORDER

Challenging the dismissal of the application filed by the revision petitioner under section 152 of Code of Civil Procedure filed in I.A.No.05 of 2022 in O.S.No.5925 of 2019 on the file of the I Assistant Judge, City Civil Court, Chennai for awarding future interest in the judgment and decree in O.S.No.4925 of 2019, this Civil Revision Petition has been filed .

2. Brief background of the case is as follows :

The revision petitioner has filed a suit for recovery of a sum of Rs.5 lakhs with interest at the rate of 18% per annum from the date of the promissory note dated 12.09.2018. The suit has been decreed for a sum of Rs.5,00,000/- towards principal and Rs.75,000/- towards interest from 12.09.2010 till the date of judgment. While decreeing the suit, the future interest has not been awarded. Therefore, an application in I.A.No.5 of 2022 has been filed under section 152 of Code of Procedure for grant of future



C.R.P.[NPD].No.783 of 2024

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interest. The said application has been dismissed on the ground that there is no typographical or arithmetical error to amend the decree. Challenging the same, the present Civil Revision Petition has been filed.

3. The learned Senior Counsel appearing for the petitioner contended that grant of future interest on the principal in a suit for recovery of money is a rule. Hence, prayed for awarding future interest. He further contended that no appeal has been filed as against the decree and judgment that will not preclude the Court to exercise its discretion to award interest under section 34 of Code of Civil Procedure.

4. Whereas, it is the contention of the learned counsel appearing for the respondent that when the Court has not awarded future interest and the decree is silent with regard to the payment of future interest particularly from the date of decree till the date of payment, it has to be held that the Court has refused to grant such interest as per Sub Clause 2 of Section 34 of Code of Civil Procedure. Hence, according to him, the Order impugned does not



C.R.P.[NPD].No.783 of 2024

require any interference.

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5. I have perused entire materials. The point that arises for consideration is that in the absence of any appeal as against the decree and judgment, whether the Court can grant future interest by amending the decree?

6. It is relevant to note that as far as the decree for payment of money, the contractual interest till the date of decree will be normally awarded by the Court. As far as the future interest is concerned, the rule is that the Court will normally award interest not exceeding 6% per annum. Though Section 34[1] of Code of Civil Procedure provides that when the decree is silent about future interest, the Court shall be deemed to have refused such an interest. As far as [a] of Section 3 of the Interest Act, the Court can award interest to person entitled to debt and the interest shall not exceed the current rate of interest as per the Interest Act. However, the fact remains that the Interest Act will not affect the provisions of Section 34 of Code of Civil Procedure.



C.R.P.[NPD].No.783 of 2024

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7. In this regard, this Court in **The Chairman, Tamil Nadu Electricity Board and another Vs. R.Bakkiavathy and others** reported in **2009-5-L.W. 647** has held that the principle applicable to future interest under section 34 [2] of Code of Procedure cannot be applied with full vigour to the payment of interest between the date of suit to the date of decree and has held as follows :

“34. In *Jagdish Rai & Bros. v. Union of India*, (1999) 3 SCC 257, the issue before the Supreme Court was regarding the payment of interest in the absence of an appeal against non-grant of interest by the aggrieved party. The Supreme Court observed that award of interest under [Section 34](#) is a matter of procedure and ought to be granted in all cases when there is a decree for money unless there are strong reasons to decline the same. Ultimately, the Supreme Court granted interest. In the said factual context, the Supreme Court made the following observation :-



C.R.P.[NPD].No.783 of 2024

WEB COPY

"4.We are conscious of the fact that the appellant had not preferred any appeal against the order made by the Court of the Sub-Judge which made the award the decree of the court but did not grant any interest. Even so, the grant of interest being a matter of procedure and the appellant having made an application before the High Court in that regard, we do not think there is any impediment to grant the same by bringing the decree of the subordinate court in conformity with law, namely, by awarding appropriate interest."

8. In the above judgment, this Court relied upon the judgment of the Apex Court in **Thazhathe Purayil Sarabi and others Vs. Union of India** reported in **2009 [7] SCC 372** wherein the Apex Court has held that

"25.It is, therefore, clear that the Court, while making a decree for payment of money is entitled to grant interest at the current rate of interest or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and/or



C.R.P.[NPD].No.783 of 2024

WEB COPY

awarded, from the date of claim or from the date of the Order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claimants.

Considering the above position of law laid down by the Apex Court, this Court is of the view that the trial Court ought to have granted future interest on the principal. Though the plaintiff has not sought interest on the principal till the the date of payment, prayer has also been made for such further or other Orders as this Court may deem fit and proper in the circumstances of the case. Despite such prayer is very much available, the trial Court has not awarded future interest. It is to be noted that the decree and judgment passed in O.S.No.5925 of 2019 has reached finality and the same has not been challenged by the judgment debtor. Hence, this Court is of the view that the Order impugned require interference.



C.R.P.[NPD].No.783 of 2024

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9. Accordingly, this Civil Revision Petition is allowed and the impugned Order passed in I.A.No.05 of 2022 in O.S.No.5925 of 2019 is set aside and the suit in O.S.No.5925 of 2019 is decreed to the effect that apart from the decree drawn by the trial Court, the revision petitioner/deGREE holder is entitled to 6% interest on the principal from the date of decree till the date of realization. No costs.

18.11.2024

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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C.R.P.[NPD].No.783 of 2024

N. SATHISH KUMAR, J.

vrc

C.R.P.[NPD].No.783 of 2024

18.11.2024