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E.P.No.40 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2024

DELIVERED ON:13.12.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

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K.C.Palanisamy

.... Petitioner/Decree Holder

Versus

M/s Kasturi Sons Limited,
Rep. Herein by its Managing Director,
Nos.859 and 860, Anna Salai,
Chennai-600 002.

... Respondent/Judgment Debtor

Execution Petition filed seeking to pass an order of attachment and sale of the shares held by the respondent/judgment debtor as described in the Schedule to the Petition and satisfy the decree amount as per Order 21, Rules 47, 64 and 66 of Civil Procedure Code.

For Petitioner : Mr.B.Kumar
Senior Counsel
M/s Waraon and Sairams

For Respondent : Mr.AR.L.Sundaresan
Senior Counsel
for Mrs.Meera Moganasundaram
for Mr.Rohan K.George



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ORDER

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The above Execution Petition has been filed by the petitioner/decreed holder, claiming interest, allegedly due and payable by the respondent/judgment debtor in terms of the Award dated 16.12.2009.

2. I have heard Mr.B.Kumar, learned Senior Counsel for M/s Waraon and Sairams for the petitioner/decreed holder and Mr.AR.L.Sundaresan, learned Senior Counsel Mrs.Meera Moganassundaram and Mr.Rohan K.George, counsel for the respondent/judgment debtor.

3. For the sake of convenience, the operative portion of the Arbitral Award dated 16.12.2009 is reproduced hereunder:-

“28.0 AWARD

28.01 In the result this Arbitral Tribunal passes the final Award in the arbitration matter between M/s Kasturi & Sons Limited M/s Hindcorp Resorts Private Limited, the claimants and Mr.K.C.Palaniswami and M/s Sporting Pastime India Limited, the respondents:-



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(iii) Directing the respondents to bear the costs of the proceedings in a sum of Rs.60,15,000/- the claimants being entitled to the same in para 23.09 herein above and the same having been set-off in the manner stated in para 26.01 herein above.

(iv) Directing the respondents to bear their own costs in both the claim and the counter-claim.”

4. Learned Senior counsel Mr.B.Kumar would submit that there has been no satisfaction of the Award by the respondent, especially the interest component which has been awarded in favour of the decree holder. Learned Senior Counsel would further submit that the respondent has not satisfied the requirement of Order 21 of Code of Civil Procedure. Further contending that the Award is to be executed as if it is a decree, the learned Senior Counsel would submit that the provisions of Order 21 would apply and Order 21 (2)(1) clearly mandates that any deposit in the Court shall carry interest, unless a notice of deposit is given to the decree holder.

5. However, referring to the facts of the present case, learned Senior



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Counsel would further submit that no deposit has been made in the court and further even according to the respondent, they had only sent a letter on 18.12.2009, that too, enclosing only a photostat copy of a banker's cheque. According to the Learned Senior Counsel, unless actual payment of deposit is made, it would not satisfy the requirements of Order 21 of Code of Civil Procedure and consequently, sending across a photostat copy of the banker's cheque, without actually handing over the original banker's cheque, would not amount to payment, as contemplated under the provisions of the Code of Civil Procedure.

6. Learned Senior Counsel would also refer to the decision of the Kerala High Court in the case of ***State of Kerala vs Mahadeva Iyer Vnkita Subramania Iyer*** reported in ***AIR 1969 Kerala 8***, where, the learned Single Judge of the Kerala High Court held that when interest is awarded by the decree on the decretal amount, the decree-holder is entitled to such interest until he receives notice of the payment into Court as provided in Clause (2) of Rule 1 of Order 21 of the Code of Civil Procedure.

7. Learned Senior Counsel also placed reliance on the decision of the



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Hon'ble Supreme Court in the case of ***P.S.L.Ramanathan Chettiar and Ors***

vs O.Rm.P.Rm.Ramanathan Chettiar reported in ***AIR 1968 SC 1047***, where, the Hon'ble Supreme Court has held that the decree-holder cannot claim any amount by way of interest after the deposit of the money was made in the court. However, when the deposit was not in terms of Order 21 Rule 1 of Code of Civil Procedure, then, there is no question of stoppage of interest even after deposit.

8. Relying on the said decisions, learned Senior Counsel, Mr.B.Kumar would contend that in the present case, admittedly, there has been no deposit in the court and when an Award is to be executed as if it were a decree, the provisions of Order 21 of Code of Civil Procedure would come into play and consequently, the interest would continue to run as long as the payment was not made by the respondent in terms of Order 21 of Code of Civil Procedure.

9. Per contra, learned Senior Counsel, Mr.AR.L.Sundaresan, appearing for the respondent would submit that the Award is not a simple money decree. The Award cast mutual obligations on both the parties. Referring to the Award, the learned Senior Counsel would contend that certain



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contemporaneous acts were required to be done by the decree-holder before being entitled to payment and without complying the same, the petitioner/decreed-holder cannot claim interest for any alleged belated payment. Further, the learned Senior Counsel would also refer to the letter dated 18.12.2009 and contend that within two days of the passing of the Award, the respondent, towards compliance of the Award, has taken a Banker's cheque and directly intimated the petitioner that banker's cheque was ready and could be collected upon fulfilment of the obligations that were required to be complied with at the end of the petitioner. Learned Senior Counsel would therefore submit that there is no default committed by the respondent and the delay was occasioned only because of the petitioner in not discharging the obligations that were required to be met by him as contemplated under the Award. Learned Senior Counsel would submit that only in the year 2021, the petitioner was in a position to comply with his obligations and in the year 2021, the amount was also paid to the petitioner/decreed-holder.

10. Learned Senior Counsel AR.L.Sundaresan would refer to the re-joinder filed to the counter affidavit filed by the respondent, wherein, reasons have been assigned by the petitioner for not accepting the banker's



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cheque offered by the respondent. Learned Senior Counsel would submit that though the petitioner/deGREE holder contends that the petitioner was wrongly described in the banker's cheque, referring to the communications emanating from the petitioner himself viz., “ K.C.Palaniswamy” and various other documents, learned Senior Counsel would contend that there is no discrepancy in the name of the petitioner in the banker's cheque since it was as described by the petitioner himself in various documents. Learned Senior Counsel would therefore contend that the liability of the respondent would end on 18.12.2009 itself and the respondent cannot be called upon to pay any interest on the amount deposited by the respondent in compliance with the Award amount.

11. I have carefully considered the submissions advanced by the learned Senior Counsel on either side.

12. Admittedly, the Award came to be passed on 16.12.2009 and as already extracted above, from the operative portion of the Award, it is seen that the payment/tender of Rs.3,58,11,000/-(Rupees Three Crores Fifty Eight Lakhs Eleven thousand only) together with interest at 12% p.a on Rs.2,55,00,000/- from 17.01.2010 and at 18% on Rs.2,55,00,000/- till date of



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the payment/tendering of the amount of Rs.3,58,11,000/- was contemporaneous to the documents of title pertaining to the first claimant and share certificates pertaining to Rs.2,43,00,000/- of the second respondent viz., “Sporting Pastime India Limited” in the arbitral proceedings being handed over to the first respondent before the Arbitral Tribunal, who is the respondent herein. Therefore, from a mere reading of the Award, it is clear that the Award was not a simple decree for payment of money. To show its bonafide, the respondent, on the second day of the passing of Award, issued a letter to the petitioner, enclosing a photostat copy of a banker's cheque for Rs.3,58,11,000/-, making it clear that the original of the said banker's cheque was with Mr.S.Kuppuswamy, Company Secretary, Kasturi & Sons Limited and the petitioner herein could contact the said Company Secretary and collect the banker's cheque after handing over the title deeds and share certificates.

13. It is relevant to note that the said letter was addressed by the Advocate for the respondent, to the petitioner himself and also to the second respondent in the arbitral proceedings viz., Sporting Pastime India Limited, marking a copy to the counsel for the petitioner herein. It is also an admitted fact that handing over of the documents of title and share certificates were



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complied with by the petitioner only in the year 2021 and the respondent has also deposited the principal amount which was covered by the banker's cheque before this Court. It is also an admitted position that the respondent was permitted to withdraw the said sum in Application No.1170 of 2022 dated 15.09.2022 and the right of the petitioner with regard to the interest claimed was reserved.

14. The sum and substance of the argument of the learned Senior Counsel, Mr.B.Kumar is that the mandate of Order 21 of Code of Civil Procedure has not been satisfied by making deposit into Court and therefore, the liability to pay interest would not stop and consequently, the respondent is liable to pay interest, as directed in the Award and therefore, the Execution Petition would have to be allowed. However, it is the contention of the respondent that the liability ceased even as early as on 18.12.2009, when the petitioner was put on notice about the payment being ready besides also being called upon to hand over the documents of title and share certificates.

15. No doubt, an Award is to be executed as if it were a decree in terms of 36(1) of the Arbitration and Conciliation Act, 1996. The phraseology in



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Section 36(1) does not equate an award of an Arbitral Tribunal to a decree of the Civil Court. It only sets out that an Award can be executed as if it is a decree. However, there is no second opinion as to the application of Order 21 of the Code of Civil Procedure to execute an Award, since an award can only be enforced in accordance with the provisions of the Code of Civil Procedure.

16. At this juncture, the short question that needs to be adjudicated is as to whether the respondent would be liable to pay interest in terms of the Award for having made deposit only in November 2021 and whether the payment made in satisfaction of the decree was in terms of Order 21 of the Code of Civil Procedure.

17. As rightly contended by the learned Senior Counsel Mr.AR.L.Sundaresan, the Award did not enable the petitioner simplicitor to recover the money from the respondent. The Award contemplated mutual obligations, that too, to be performed contemporaneously/simultaneously. The payment of the amount of Rs.3,58,11,000/- was to be made only upon the petitioner handing over the documents of title and share certificates. It is not in dispute that the petitioner handed over the share certificates and the



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documents of title only in 2021. In fact, as already discussed, even as early as on 18.12.2009, even before the ink in the Award could become dry, the respondent had taken out a banker's cheque for the amount payable by it and sent a communication through its Advocate, enclosing a photostat copy of the said banker's cheque and calling upon the petitioner to hand over the documents of title and share certificates and collect the original of the banker's cheque. Despite such communication, the petitioner has not even sent a reply to the same. Only in the present proceedings, by way of re-joinder, the petitioner has attempted to explain as to why the said banker's cheque could not be accepted by the respondent for the reason that the name of the petitioner was "K.C.Palanisamy", however, in the banker's cheque, the name of the petitioner was reflected as "K.C.Palaniswamy". If really this was bothering the petitioner in encashing the banker's cheque, the petitioner ought to have immediately replied to the respondent and asked them to issue a corrected banker's cheque, which was never done. Further, as pointed out by the learned Senior Counsel, AR.L.Sundaresan in the re-joinder, the petitioner, for the first time, has raised an objection that the banker's cheque contained different and erroneous spelling of the petitioner. In this regard, he would take me through the letter dated 17.08.2004, wherein, the petitioner has addressed



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a letter to the second respondent, Sporting Pastime India Limited and had signed the said letter only as “K.C.Palaniswamy”. Similarly, in the letter dated 17.08.2004, addressed to the respondent/Managing Director, Kasturi & Sons Limited, he has signed as “K.C.Palaniswamy”. Therefore, the objection now taken for the first time in the re-joinder clearly is an after thought and in any event, in view of the petitioner's own letters dated 17.08.2004, (2 in nos.), it is not open to the petitioner to now contend that his name was mis-spelt in the bankers cheque.

18. The petitioner has therefore not been able to establish before this Court that despite the respondent being ready with the amount as awarded, even as early as on 18.11.2009, the petitioner was at the same time, simultaneously ready to hand over the documents of title and the share certificates. In fact, it is seen from the records that disputes were pending before NCLT as well and the matter was also taken up to the Hon'ble Supreme Court as well. In any event, it is not the case of the petitioner himself that the obligations that were to be met by the petitioner has been duly complied with before calling upon the respondent for payment.



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19. In view of the Award requiring both the petitioner and the respondent to carry out certain positive acts viz., handing over documents of title and share certificates by the petitioner and simultaneous contemporaneous payment by the respondent, I do not see Order 21 Rule 1 (2) of the Code of Civil Procedure coming into play in the present case. Unless the petitioner has discharged his obligation by coming forward to hand over the original documents of title and share certificates, as directed in the Award, the petitioner cannot claim the amount payable by the respondent in the light of the letter dated 18.12.2009 sent by the respondent, that too, enclosing a photostat copy of the banker's cheque for the entire amount payable. The respondent cannot be mulcted or saddled with liability to pay interest for the delay. The decisions relied on by the learned Senior Counsel, Mr.B.Kumar would not apply to the facts of the present case in view of the mutual obligations cast on both the decree holder as well as the judgment debtor herein.

20. The very fact that the respondent had directly addressed the communication to the petitioner, within two days from the date of passing of the Award and intimating him about the amount being ready, it would also



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amount to the decree holder being put on notice that the respondent had fulfilled the obligation on his part viz., payment to be made for a sum of Rs.3,58,11,000/-. Thereafter, it was only incumbent on the petitioner to hand over the original documents of title as well as the share certificates and collect the said banker's cheque and encash the same.

21. Without doing so, the petitioner cannot blame the respondent and contend that the amount has not been deposited as mandated under Order 21 of Code of Civil Procedure and therefore the respondent would have to pay interest for the delayed payment. I am unable to accept the said contentions advanced by the learned Senior Counsel for the petitioner.

22. For all the aforesaid reasons, the petitioner is not entitled to claim any interest as the liability of the respondent to pay interest ended with their act of taking out the banker's cheque for the entire Award amount and also informing the petitioner about the same. The petitioner has already succeeded in getting the entire principal award amount paid out. However, for the above reasons, I find that the petitioner cannot be entitled to any interest, as claimed in the Execution Petition.



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23. Consequently, I do not find any merits in the Execution Petition.

The Execution Petition is dismissed. The parties shall bear their own costs.

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sr

Index:yes/no

Internet:yes/no

Speaking Order/Non-speaking order



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P.B.BALAJI,J.

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Pre-Delivery Order in
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