**SUPREME COURT OF INDIA**

Rajasthan Financial Corporation

Vs.

M. I. Corpn. Ltd.

C.A.No.16814 of 1996

(S. N. Variava and H. K. Sema, JJ.)

26.08.2003

**JUDGEMENT**

**S. N. VARIAVA, J.:-**

1. This appeal is against an order dated 13th September, 1996 passed by the High Court of Rajasthan.

2. Briefly stated the facts are as follows:

The appellants had sanctioned a loan to the respondents against security of a mortgage. As the respondents failed to repay the loan the appellants filed an application under Sections 31(1)(a) and (c) and 32 of the State Financial Corporation Act for recovery of a sum of Rs. 10,89,265.88. Parties compromised the dispute and signed a deed of compromise. The relevant terms of the compromise deed read as follows:

"1. xxx xxx xxx

2. That the Company hereby confirm the balance dues of the Corporation (after deduction of Rs. 1,00,000/- (Rupees one lakh only) received on 1-4-1976) as on 5-9-1977 at Rs. 12,08,806.83 Ps. (Rupees Twelve lakhs eight thousand eight hundred six and paisa eighty three only) as per the statement of account enclosed herewith and agree to pay the said dues as follows along with future interest @ 5% above the bank rate prevailing from time to time subject to a minimum of 13-1/2% per annum or at such other rate of interest as may be decided by the Corporation for similar advances from time to time, with half yearly rests on product basis and expenses and cost of litigation. The increased rate of interest shall apply from the 1st January, 1977.

(Emphasis supplied)

xxx xxx xxx

7. That the company and the Corporation further specifically agree that on non-payment of consenting two instalments of the repayment of the loan for the loan or interest or expenses hereinabove mentioned or on breach of any of the terms and conditions of this compromise, the Corporation shall have the right to receive the whole dues in one lump sum and to get the compromise decree executed by sale of mortgaged and attached properties and to ask the lessee to pay the rent directly to the Corporation."

3. On 22nd September 1977 an Order came to be passed wherein it was recorded that the parties had compromised and that they had filed the compromise deed in Court. The Order then reproduces the entire compromise deed. Clause 5 of the Order, which is relevant, reads as under :

"5. Therefore, the application is allowed and the suit is decreed in terms of compromise in favour of plaintiff-Corporation and against the defendant of Rs. 12,08,806 and 83 paise only. The defendant shall pay the interest on this amount at the rate of 5% more than the current Bank interest rate which shall not be less than 13½% and the cost of the suit shall be paid by the defendant. The increased rate of interest shall be effective w.e.f. 1-1-1978. The above amount be paid in the instalments as per the terms of the compromise. The compromise shall form part of the decree and the corporation shall be entitled to realize the amount of compromise decree from the property of the defendant which is mortgaged with the Corporation and the same has been attached." (emphasis supplied).

4. Payments were not made, as contemplated by the compromise deed. The appellants thus initiated execution proceedings on 5th February, 1987. As has become common now-a-days, the respondents filed an application under Section 22 of the Sick Industrial Companies Act, 1985. They thus managed to effectively delay execution. Unfortunately for the respondents the Board directed winding up of the respondent-Company. The respondents filed an appeal before A.A.I.F.R. The respondents submitted a rehabilitation scheme wherein it was shown that a sum of Rs. 62.72 lakhs was to be paid to the appellants. On 18th August, 1994 A.A.I.F.R. passed an order directing that a sum of Rs. 62.72 lakhs be paid to the appellants so that the properties could be released from mortgage. The respondents do not pay the amount. They now cannot also delay execution any longer.

5. On 27th September, 1995 i.e. more than 9 years after the execution proceedings were filed, the respondents filed an application, under Section 151 of the Civil Procedure Code objecting to the calculation of interest with half yearly rests. The executing Court overruled the objections and directed execution. The respondents filed a Revision Petition before the High Court. This has been allowed by the impugned Judgment. The High Court has held that the appellants are not entitled to charge interest on half yearly rests basis. Hence this appeal.

6. On behalf of the Appellants Mr. Jain submitted that the decree was in terms of the compromise deed. It was submitted that the compromise deed, which had been signed by both the parties, clearly provided that interests could be charged on half yearly rests basis. It was submitted that under Order 23, Rule 3, Civil Procedure Code the Court has to pass the decree in terms of the compromise. It was submitted that the words "the defendant shall pay the interest on this amount at the rate of 5% more than the current Bank interest rate which are not be less than 13½%" do not alter the main provision in the compromise deed whereunder interest is payable with half yearly rests. It is submitted that through inadvertence the Court has omitted to mention that interests is payable with half yearly rests. It was submitted that the High Court has exceeded its jurisdiction under Section 115, Civil Procedure Code, by revising/modifying the decree. It was submitted that the High Court overlooked the fact that the decree had been passed in pursuance of a compromise deed against by the parties.

7. As against this Mr. Diwan, on behalf of the respondents, submitted that the High Court had correctly held that the decree did not provide for interests on half yearly rests basis. Mr. Diwan submitted that, even though the respondents signed the compromise deed, they were not agreeable to payment of interest from 1st January, 1977 as in the compromise deed the sum of Rs. 12,08,806.83 was the figure payable along with interest on 5th September, 1977. It was submitted that the respondent was also not willing to pay interest with half yearly rests. It was submitted that the respondent was also not willing to pay expenses. It was pointed out that on 12th September, 1977 when the compromise deed was filed in Court time was taken for arguments. It was submitted that on 21st September, 1977 the Court heard arguments. It was submitted that the final order was dictated on 22nd September, 1977. It was pointed out that the order dated 22nd September, 1977 read as follows:

"Order dictated and pronounced. Amount compromised at Rs. 12,08,806.83 be decreed in favour of the applicant and against the defendant. Compromise be attached to decree. Instalments be paid as mentioned in the compromise order issued on the matter of interest also. Decree be prepared as per order passed today. Compromise be attached to the Decree".

(emphasis supplied)

8. It was submitted that after hearing arguments the Court whilst passing the decree in terms of the compromise modified the compromise deed in three aspects viz. (a) the increased rate of interest was to be payable with effect from 1st January, 1978 instead of 1st January, 1977; (b) the Court did not allow charging of interest on half yearly rests basis; (c) expenses were not permitted. It was submitted that the final decree which had been drawn up contained the abovementioned three differences. It was also submitted, rather faintly, that the appellants themselves understood that in the final decree interest had not been granted on half yearly basis. The application for execution of decree was shown to Court. It was submitted that paragraph 7 clearly indicates that the appellants themselves understood that they had not been granted interest with half yearly rests. Paragraph 7, which has been relied upon reads as under:

?7. Amount with interest due upon the decree or other relief granted thereby together with particulars or any cross decree On the decreetal amount of Rs. 12,08,806/- the rate of interest will be @ 5% more than the pre valent bank rate and not less than 13-½% from 1-1-77 to 2-2-87 = Rs. 46,59, 920.83. Cost of litigation Rs. 12,50/- cost of execution Rs. 10/-?

At this stage itself it must be mentioned that along with the application for execution a statement showing interest due has also been annexed. The statement clearly indicates that interests has been calculated on half yearly basis. There is thus no substance in the submission that paragraph 7 indicates that the appellants themselves understood that interest on half yearly basis was not granted under the decree.

9. It was submitted that if the Court were to hold that the decree was in terms of the compromise deed then the decree would be uncertain and incapable of being executed as it would be unclear whether the future interest was to be at the rate of 5% above the prevailing bank rate subject to a minimum of 13½% per annum or whether the future interest was to be at such other rate of interest as may be decided by the Corporation for similar advances from time to time. It was submitted that it would be unclear and uncertain as to what was meant by the words "with half yearly rests on product basis". It was submitted that it would be unclear whether the half yearly rests on product basis was to be only applied if the rate of interest was to be decided by the Corporation and not if the rate of interests was to be 5% above the prevailing bank rate subject to a minimum of 13½%. It was submitted that the final decree which had been passed removed these uncertainties by providing for simple interest at the rate of 5% above the prevailing bank rate subject to a minimum of 13½%.

10. It was submitted that the decree being clear the executing Court could not go behind the decree. It was submitted that the executing Court erred in rejecting the objections raised by the respondents. It was submitted that the respondents could have led evidence to show that it was pursuant to the arguments made before the decree was passed that the trial Court made the aforementioned three changes whilst passing the decree.

11. Reliance was placed on the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, reported in 1970 (1) SCC 670. In this case it had been held that the executing Court cannot go beyond the decree. It has been held that the executing Court must take the decree according to its tenor. It was held that the executing Court cannot entertain any objection that the decree was incorrect in law or in fact. It was held that the decree, even if erroneous, is binding between the parties. AIR 1970 SC 1975

12. Reliance is also placed on the case of AIR 2002 SC 952 : 2002 AIR SCW 650 Greater Cochin Development Authority v. Leelamma Valson, reported in 2002 (2) SCC 573. In this case a decree was passed in terms of the award given by the arbitrators. The decree provided for interest only up to the date of the decree. Thereafter an application, under Section 114, Civil Procedure Code, was made for modification of the decree on the ground that "by an accidental slip, omission or oversight" future interest from the date of the decree to payment had not been provided for. This application was rejected. It was held that there was no omission or slip. It was held that the Court had not granted any future interest. No appeal was filed against this order. In the execution proceedings future interest was also claimed. The executing Court refused future interest but the High Court, in appeal, construed the decree and held that the decree was in terms of the award and the arbitrators had granted interest till payment. The High Court held that therefore future interest was payable and allowed execution even for future interest. This Court held that reasoning of the High Court would normally have been faultless. In other words this Court held that when a decree is in terms of award (or some other document like a compromise deed) the terms of that award/document have to be looked that to see what is provided in the decree. However on facts of that case this Court held that in the earlier application, under Section 114, Civil Procedure Code, it had already been held that the Court had refused future interest. This Court held that once future interest had been refused and no appeal had been filed against that order, subsequently future interest could not have been granted.

13. Reliance was also placed on the case of Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises, reported in 1999 (1) SCC 558. In this case the judgment-debtor challenged the decree, when it was before the executing Court, on the ground that the award on which the decree was based was a nullity. It was submitted that the award had been filed in Court by the arbitrator 4 years after it was passed. This Court held that the executing Court could not go beyond the decree. It was held that the executing Court had to take the decree according to its tenor and that the executing Court could not entertain any objection that the decree was incorrect in law or on facts. AIR 1999 SC 246 : 1998 AIR SCW 3761

14. Reliance was next placed on the case of Rameshwar Dass Gupta v. State of U. P., reported in 1996 (5) SCC 728. In this case it was held that the executing Court cannot travel beyond the decree. It was held that the executing Court only got jurisdiction to execute the decree. It was held that the executing Court could not granted interest, on the money decree, when interest was not granted in the decree. AIR 1997 SC 410 : 1996 AIR SCW 3790

15. Reliance was next placed on the case of C. V. Rajendran v. N. M. Muhammed Kunhi, reported in 2002 (7) SCC 447 wherein it has been held that principles of res judicata applied even to different stages of the same proceeding. It has been held that if an issue has been decided at an earlier stage it cannot be allowed to be re-agitated at a subsequent stage. AIR 2003 SC 649 : 2002 AIR SCW 5315

16. Based on the above authorities Mr. Divan submitted that the decree being clear the executing Court could not go beyond the decree on the basis that there was a mistake in the decree. He submitted that the decree had been passed after hearing arguments on behalf of both the parties on what the final decree should be as per the compromise deed. He submitted that even on principles of res judicata the appellants are precluded from now contending that they were entitled to interest on half yearly basis.

17. Finally Mr. Divan made a With Prejudice Offer. He stated that the respondents are willing to pay to the appellants a sum of Rs. 75 lakhs in full and final settlement of all the claims of the appellants.

18. We have considered the rival submissions. There can be no dispute to the proposition that the executing Court cannot go beyond the decree. There can be no dispute that the executing Court must take the decree according to its tenor. Also as has been set out in the Greater Cochin Development Authority's case (supra) when a decree is in terms of an award/document then the terms of that document have to be looked at. In this case the decree is in terms of the compromise deed. The decree does not provide that the compromise deed or any of its terms have been varied. To be remembered that the decree is passed under Order 23, Rule 3, Civil Procedure Code. Under this provision normally the Court passes the decree in terms of the compromise. Of course the Court can make a change. However if the Court was making a change it would have had to record why it was making the change and what change it was making. It could not then provide that the decree was in terms of the compromise. If the Court was not passing the decree in terms of the compromise then this opening portion of the decree could not have been there. The subsequent portion is mere classificatory in nature as to which of the options was to be exercised. This does not govern or detract from the main terms of the decree which is a decree in terms of the compromise. Clauses 2 and 7 of the compromise deed make it very clear that the appellants were entitled to charge interest on half yearly basis. We see no substance in the submission that the "half yearly rests" was to apply only if the rate of interest was to be decided by the appellants. These words clearly applied to both the options. In the classificatory portion the words "on half yearly basis" have not been mentioned

because the portion is only clarifying how interest was to be calculated. This portion thus does not detract from the fact that the decree is in terms of the compromise deed. Merely because some other minor changes, which appear to be inadvertent changes, have crept in do not also detract from the fact that the decree is in terms of the compromise deed. We also do not find any uncertainty in the decree.    AIR 2002 SC 952 : 2002 AIR SCW 650

19. In this view of the matter we are unable to sustain the impugned judgment. It is accordingly set aside and the order of the executing Court is restored.

20. The appeal is allowed accordingly. There will be no order as to cost.

Appeal allowed.