SUPREME COURT OF INDIA

Citibank N.A

Vs.

Hiten P.Dalal & Ors.

C.A.No.3580 of 2005

(Vikramajit Sen and Shiva Kirti Singh,JJ.,)

21.08.2015

JUDGMENT

Shiva Kirti Singh,J.,

1. The simple grievance of the appellant is that by impugned judgment and order dated 12.04.2005 passed by a Hon'ble Judge presiding over the Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay has erred in determining an excessive amount payable by the appellant Citibank to the respondent applicant – Canbank Financial Services Limited (hereinafter referred to as 'Canfina') by way of restitution. There is no dispute that on account of reversal of a money decree in favour of Citibank in Suit No. 1 of 1995 filed by it against Canfina, by a common order dated 7.7.2004 passed by this Court in Civil Appeal nos. 7426, 9063 and 9138 of 1996, the Citibank is required to restore back the monetary benefits it received under the decree against Canfina. The operative part of the said decree dated 22/23/26.04.1996 in Suit no. 1 of 1995 is as follows:

> "121. xxxx Accordingly, the defendants are directed to deliver to the plaintiffs, 9% IRFC Bonds of the face value of Rs. 50 crore within a period of 16 weeks xxx" "122. the question then arises as to the interest the defendants must therefore pay to the plaintiffs, the interest @ 9% on these Bonds for the period starting from 15th July, 1991 till they deliver the Bonds. If the Defendants do not deliver the Bonds but choose to return the monies they must still pay interest. However, in my view the Plaintiffs would still be entitled to interest at 9% only. This, however, will be from the date the consideration amount was received by the Defendants till the date of repayment. xxx"

Since the decree gave an option to Canfina, it opted to deliver to the Citibank the 9% IRFC Bonds of the face value of Rs. 50 crores on 13.8.1996. It also paid the awarded interest at the rate of 9%. The aggregate interest amounted to Rs.22,34,58,904/- calculated for the period 15.7.1991 to 30.6.1996. There is no controversy so far as the restitution of interest amount is concerned but there is a strong disagreement between the parties as to how the market value of the bonds be calculated for the purpose of effective and satisfactory restitution.

Admittedly the bonds delivered to Citibank on 13.8.1996, were being traded in the market and there is no serious dispute that on that date the market value of a bond was Rs. 81/- and the aggregate value of the bonds on that basis would be Rs 40.50 crores. According to learned senior counsel, Mr. Kapil Sibal the Canfina suffered only the loss of Rs 40.50 crores and Rs. 22.34 crores and on decree being set aside it is entitled only to such loss along with 9% interest, by way of restitution.

2. There would have been no difficulty in working out the loss of Canfina if it had opted to pay the money value of the bonds instead of delivering the bonds. It is also not in dispute that after receiving the bonds, Citibank in its wisdom disposed of the bonds in the market during March/April 1997 when the prevailing average market rate was Rs. 85/- per bond although its face value was Rs. 100/- redeemable on 15.7.2001. The bonds delivered to City Bank carried with them coupons for half yearly interest at the rate of 9% on the face value of the bonds and for one set of coupons for half yearly interest, Rs. 2.25 crores in aggregate was also received by Citibank in January 1997. Thereafter between April/March 1997 the Citibank sold the bonds at average price of Rs. 85/- receiving in aggregate Rs. 42.56 crores. By the very nature, the bonds, on 15.7.2001 at their face value would be worth Rs. 50 crores. This along with half yearly interest through coupons redeemed after April 1997 has presumably gone to third parties who might have purchased the bonds in the market.

3. The appellant Citibank in compliance of the judgment of this Court dated 7.7.2004 had to offer restitution of "total amount paid" by Canfina to Citibank (principal and interest) along with interest at the rate of 9% per annum from the date of payment. But in case the full amount was not paid by 1.9.2004, the liability would increase to interest at the rate of 12% per annum till repayment by Citibank. Obviously, the total amount of principal paid by Canfina to Citibank through delivery of Bonds on 13.8.1996 had to be worked out in a reasonable and just manner. This problem has arisen because Canfina had opted to deliver the bonds and not the money which it had received for those bonds. Admittedly the total consideration paid by Citibank to Canfina for the 9% IRFC bonds of face value of Rs. 50 crores was Rs. 49 crores at market value of Rs. 98/- on 30.12.1991 along with an interest component of approximately Rs. 2 crores, bringing the total consideration to Rs. 51,07,12,328.77.

4. The issue is, when the bonds are no longer in currency and not available for return by way of total amount paid by Canfina to the Citibank, then for restitution what method of calculation shall serve the purpose best in arriving at the total amount paid to Citibank "by way of principal" which it must return to Canfina.

5. After the Supreme Court judgment on 12.7.2004 Canfina by a letter to Citibank demanded Rs. 135,18,28,053/- by way of restitution. The Citibank made its own calculations and through its advocate's letter, on 19.7.2004 tendered the aggregate amount of 107,75,40,141/- to Canfina. When Canfina declined to accept this offer the Citibank filed a praecipe in the Special Court for depositing the aforesaid sum in Court with notice to Canfina. The Special Court vide its order dated 20.7.2004 recorded the statement of Canfina that it will accept the amount without prejudice to their rights and contentions in view of their stand that the

amount is not correct and Canfina is entitled to claim more. Thereafter Citibank unsuccessfully attempted to get a recording in this Court that it had complied with the order of restitution. This Court on 26.10.2004 disposed of Citibank's I.A. no. 5 of 2004 in Civil Appeal No. 9063 of 1996 and granted liberty to Citibank to approach the Special Court. On 24.12.2004 Citibank filed miscellaneous application no. 24 of 2005 in the Special Court for recording satisfaction of this Court's judgment. On 2.3.2005 Canfina also filed miscellaneous application no. 118 of 2005 claiming that it was entitled to further amount of approximately Rs. 51.83 crores after deducting Rs. 107.76 crores approximately already paid by Citibank. By the impugned order dated 12.4.2005 the Special Court disposed of both the above applications and allowed an additional sum of Rs. 30,13,55,175/-. This amount has been paid by the appellant without prejudice to its rights sought through the present appeals arising out of common judgment dismissing appellant's miscellaneous application and allowing that preferred by Canfina. Learned senior counsel for the appellant, Mr. Kapil Sibal as well as learned senior counsel for the respondent Canfina have relied upon various judgments, many of them being common, to highlight the true meaning of restitution in the light of Section 144 of the Code of Civil Procedure. It goes without saying that they highlighted different words and sentences to support their respective case. Simply put, the contention on behalf of the Citibank is that for restitution the correct amount is required to be calculated on the basis of "market value" of the bonds when they were delivered by Canfina to the Citibank i.e, at the rate of Rs.81/-, aggregating Rs. 40.50 crores. This amount and also approximately Rs. 22.34 crores paid by Canfina as interest at the rate of 9% per annum for the period 15.7.1991 to 30.6.1996 is the "total amount paid" by Canfina to Citibank as principal and interest and therefore the sum of these two amounts alone is required to be repaid by way of restitution along with interest at the rate of 9% per annum because the Citibank chose to comply with the order of Supreme Court for the purpose of restitution before 1.9.2004 by tendering the aggregate sum of Rs. 107,75,40,141/- to Canfina. However, in order to appear more fair and accommodative, Citibank has placed three more set of calculations/charts. The first chart claims that in the light of various judgments on the issue of restitution, it may be proper to calculate the market value of the bonds on the basis of NSE letter showing the rate as Rs. 82.80 per bond. So calculated, the total amount along with interest payable to Canfina has been shown as Rs.109,31,28,500/-. The second chart shows the total amount payable as Rs.111,30,97,602/-. This has been calculated by accepting the market value of the bonds on the basis of average sale price during March/April 1997 as Rs.85.129 per bond aggregating Rs. 42,56,45,000/-. From the figures in the two charts noted above, it is evident that while seeking to justify its earlier calculation of approximately Rs. 107 crores as the total value of restitution, as an alternative submission Citibank appears to have suggested two other figures by way of possible restitution which are Rs. 109 crores and Rs. 111.30 crores approximately. But the last chart (third in this series) filed on behalf of Citibank acknowledges a further receipt of Rs. 2.25 crores as coupon interest for half yearly coupons dated 1.1.1997 on which interest has been calculated till 20.7.2004. That brings the aggregate total amount payable to Canfina as Rs. 115,08,98,835/-. Since Citibank paid the sum of Rs. 30,13,55,175/- on April 25, 2005 in terms of the impugned order hence as per the last chart of calculations noted above, it has claimed that on adjustment, it is entitled to refund by Canfina as on April 25, 2005 of a total sum of Rs. 22,14,36,756/- along with interest either at the rate of 12% per annum or as may be awarded by this Court on the aforesaid amount from 25th April 2005 till

the date of actual refund. On the other hand the stand of the Canfina is that after the Supreme Court judgment setting aside the decree against Canfina on 7.7.2004 the only safe method for calculating the value of the bonds delivered to Citibank on 13.8.1996 would be to accept and act upon its face value, i.e, Rs. 100/- per bond on the maturity date, 15.7.2001 and add to it the half yearly interest received after 13.8.1996 and then calculate interest on and from 15.7.2001 at the rate indicated in the order of this Court dated 7.7.2004. The aforesaid claim, according to Canfina has rightly been accepted by the Special Court in the impugned order so that status quo ante is restored by way of restitution by ignoring the intervening circumstance of sale of the bonds by Citibank to third parties in March/April 1997. In reply learned senior counsel for the appellant has criticized the impugned order by highlighting that in paragraph 7 the Special Court has erred in going beyond the three items delivered by Canfina to Citibank i.e, the bonds, the amount of interest and interest coupons by indulging in speculation that "had the Canfina not been required to deliver the bonds to Citibank, the bonds would have remained with it so also the amount of interest till the date of redemption." Same criticism was also made against another observation/opinion of the Special Court in the same paragraph recorded in the following words:

> "……. in so far as the restitution is concerned the fact that the bonds were sold by Citibank during the pendency of the appeal is not relevant." The contention of appellant is that the Special Court came to an unjust and erroneous conclusion that Canfina would be entitled to the redemption value of the bonds i.e, Rs. 50 Crores, mainly on account of aforesaid erroneous presumption and opinion.

6. Learned senior counsel, Mr. Kapil Sibal has advanced a contention that as per settled principles of law governing restitution, the respondent Canfina can be given back only what it lost on the date it satisfied the decree which was ultimately reversed and not what it could have gained on certain presumptions made in the impugned order. In support of this contention he placed reliance upon two judgments of Madras High Court in the case of *Lakshmi Amma vs. Thazhathitathil Krishna Kurup*[1] and in the case of *S. Chokalingam Asari vs. N.S. Krishna Iyer and Ors*[2].. He also placed reliance on Calcutta High Court judgment in the case of *Surendra Lal Chowdhury and Ors. vs. Sultan Ahmed and Ors*[3]. and the following four Supreme Court judgments:

> "1. *Lal Bhagwant Singh vs. Rai Sahib Lala Sri Kishen Das*[4],
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> 2. *Kartar Singh & Ors. vs. State of Punjab*[5],
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> 3. *Kerala State Electricity Board and Anr. vs. M.R.F. Limited*[6],
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> 4. *South Eastern Coalfields Ltd. vs. State of M.P. & Ors.*[7], In the case of Lakshmi Amma (Supra), the Madras High Court noticed certain privy council judgments and also the contention that Section 144 of the CPC providing for restitution would apply only to cases where in execution of a decree passed by one court a benefit is received by the decree holder and thereafter that decree is reversed or set aside subsequently by a competent court then in such cases the court should place the parties in the position

which they would have occupied but for such a decree which was varied or set aside. However, on the facts of that case the claim of the plaintiff appellant for restitution was turned down. In the other Madras High Court judgment in the case of S. Chokalingam (Supra) the right of a bona fide purchaser for value was upheld in paragraph 30 of the judgment and thereafter in paragraph 31 reliance was placed upon judgment of this Court in the case of Bhagwant Singh (Supra) by extracting the following passage:

" The doctrine of restitution is that on the reversal of a judgment the law raises an obligation on the party to the record, who received the benefit of the erroneous judgment to make restitution to the other party for what he had lost and it is the duty of the Court to enforce that obligation unless it is shown that restitution would be clearly contrary to the interests of justice."

7. In the case of Surendra Lal (Supra), the Calcutta High Court explained that it is the duty of the Court under Section 144 CPC to place the parties in the earlier position after a decree executed in favour of one be varied or reversed. But it was clarified that "in assessing what a party may have lost or of what he may have been deprived during his dispossession the law takes into account not what he could have made but what his opponent did in fact make or could with reasonable diligence have made." This conclusion was predicated on the reasoning that in vast majority of cases it would be hypothetical, remote and uncertain to find out what the party subjected to dispossession could have made if it was left in possession. The relevant part of judgment in the case of Bhagwant Singh (Supra) has been extracted in the Madras High Court judgment and already noticed earlier. This Court in the penultimate paragraph has reiterated the salutary and well established principle of restitution that on the reversal of a judgment the party who received the benefit of an erroneous judgment is obliged to make restitution to the other party for what he had lost. The Court is also duty bound to enforce such obligation unless it finds that restitution would be clearly contrary to the real justice of the case. Similar words have been used by this Court in the case of Kartar Singh (Supra) by holding that the party which had received the benefit of the erroneous decree is required to make the restitution to other party for what he had lost.

8. In the case of Kerala State Electricity Board (Supra) also the view taken by this Court was similar. But it was further clarified that the Court has a duty that in the matter of restitution justice be done as per facts of the case. In granting relief of restitution the Court "should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken." This Court favoured a pragmatic view and grant of relief in a manner as may be reasonable, fair and practicable without causing unmerited hardships to either of the parties. In the case of South Eastern Coalfields Limited (Supra), this Court re-emphasized that restitution is for meeting the ends of justice and depends upon the peculiar facts and circumstances of the case. This Court further clarified in para 27 that as held by Privy Council in the case of *Jai Berham vs. Kedar Nath Marwari,*[8] , Section 144 CPC is rather a statutory recognition of an already existing rule of justice, equity and fair play and therefore even apart from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. This Court approved the view of the Privy

Council that the Court has to act rightly and fairly according to the circumstances, towards all parties involved.

9. Learned senior counsel for the respondent Canfina, as was indicated earlier also placed reliance upon the aforesaid judgments in support of his plea that restitution requires that the parties be placed in the position which they could have occupied but for the wrong order or decree which is ultimately varied or reversed. He amplified his submissions by highlighting certain other paragraphs in the earlier noted judgments that suggest that the status quo as obtaining on the date of wrongful deprivation should be restored and only if same is not possible due to intervening circumstances like the sale of the property, price and mesne profits may have to be ordered. According to him the actual sale is of no consequence for calculating what the wronged party had actually lost. However, according to him also, for proper restitution the Court must rely upon verifiable value of the goods lost due to sale etc. and not indulge in speculation or hypothetical presumptions. He placed reliance also upon judgment of this Court in the case of *Indian Council for Enviro-Legal Action vs. Union of India & Ors*[9]. This judgment was in the context of constitutional provisions such as Article 21 and compensation for loss suffered by citizenry due to pollution. Advancing the principle that the polluter pays for the sufferings, the Court propounded the principle of disgorgement of gains of wrongdoers and that the Court could even think of imposing compound interest in place of simple interest provided by statute. Exercise of such inherent powers was contemplated only in interest of principles of justice and equity as warranted by the facts in cases of pollution causing sufferings to citizenry. All these principles were justified on the basis of power to order for restitution under inherent powers of the Court. But this Court did not over-rule any of the earlier judgments of this Court laying down classic principles of restitution under Section 144 of the CPC on which the appellant has placed reliance and which require a just and fair approach so that no unmerited hardship is caused to either of the parties.

10. In the ultimate analysis we find that the law on restitution under Section 144 of the CPC is quite well settled. It vests expansive power in the Court but such power has to be exercised to ensure equity, fairness and justice for both the parties. It also flows from more or less common stand of parties on the principle of law that for ascertaining the value of the property which is no longer available for restitution on account of sale etc., the Court should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive value. It is also one of the established propositions that in the context of restitution the Court should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain, if any, made by other party who is obliged to make restitution. No unmerited injustice should be caused to any of the parties.

11. Keeping the aforesaid principles in view it has to be seen whether the order under appeal suffers from any illegality requiring interference and correction by this Court. In our considered view in the course of finding out the value of the bonds which are no longer available for restitution, the learned Special Court committed a clear error of law in ignoring a relevant fact that the bonds in question were a tradable commodity on the stock market and its value could be easily ascertained either on the date when the bonds were handed over to

the Citibank or at the time when the Citibank sold the bonds to third parties. Such relevant facts should not have been lost sight of and no presumption should have been made that Canfina would have retained the bonds with it till the maturity period. There are sufficient materials available to lend credence to the view that in all eventuality Canfina would have sold the bonds because it was in such business and also because earlier when it had the option, it chose to hand over the bonds to Citibank instead of preferring the other option of paying its monetary value. Sale of the bonds by Citibank to third parties at a verifiable rate not being under dispute, it is evidently unjust to saddle Citibank with liability to repay the possible gains made by the third party or subsequent purchasers of the bonds. For these reasons we come to the conclusion that the amount determined by the Special Court for restitution and payment by Citibank is unjust and is a result of error in not keeping under view the relevant facts as well as in applying the settled legal propositions for the purpose of compensating Canfina by way of restitution. In view of above the impugned order is set aside. In order to bring the dispute to a just, logical and early conclusion, instead of remanding the matter to the Special Court we accept the last chart submitted on behalf of appellant to be correct calculation of the amount payable by way of restitution by Citibank to Canfina. As noted earlier as per such chart the total amount payable to Canfina on 20.7.2004 is Rs. 115,08,98,835/- and after adjusting the further amount paid by Citibank to Canfina under protest on 25.4.2005 the Citibank is entitled to a refund by Canfina as on 25.4.2005 to an amount of Rs. 22,14,36,756/-. In line with earlier orders, we allow interest on this amount at the rate of 9% per annum from 25.4.2005 till the date of actual refund. Canfina should make a refund of aforesaid due amount along with interest awarded by us within four weeks. Both the appeals are allowed to the extent indicated above. In the facts of the case there shall be no order as to costs.

Judgment Referred.

[1]AIR 1931 Mad 0081
[2]AIR 1964 Mad 00404
[3]AIR 1935 Cal 0206
[4](1953) SCR 559=AIR 1953 SC 136
[5](1995) 4 SCC 0101
[6](1996) 1 SCC 0597
[7]AIR 2003 SC 4482
8AIR 1922 PC 0269
9 (2011) 8 SCC 0161