ORISSA HIGH COURT

Central Warehousing Corpn

Vs

G. Choudhury

Civil Revn. Nos. 394 and 395 of 1987

(L. Rath, J.)

24.12.1987

ORDER

L. Rath, J.

1. Both these revisions between the same parties have similar facts and raise identical questions and are disposed of by this common judgment. In Civil Revision No. 394/87, an Arbitrator passed an award on 15-03-82 against the petitioner for Rs. 9,08,736/- with a direction that if the amount is not paid within 15-04-82, it would carry interest at the rate of 12% per annum till it is made rule of the Court. The award was made rule of the court on 26-08-82 with future interest at the rate of 12% per annum granted from the date of the decree till realisation and costs of Rs. 308.35. The amount having not been paid, Execution Case No. 50/83 was filed on 16-12-83 for the principal amount of Rs. 9,08,736/- and interest of Rs. 1,81,747.20 up to 15-12-83. On 27-01-84, a petition was filed by the petitioner of depositing by cheque, through Challan, Rs. 9,08,736/- as the 'decretal dues so mentioned in the column 'particulars of receipt'. On 06-02-84 the opposite party filed a petition for withdrawal of the amount stating that the same was due to him and should be allowed to be withdrawn since the amount being in court would not carry any further interest, and on agreement of both parties the court ordered release of the amount on 09-03-84. Long after, on 02-01-87 the office of the executing court made a calculation showing a balance of Rs. 2,62,792/- payable by the petitioner as consisting of two sums, i.e. interest at the rate of 12% per annum on the principal amount of Rs. 9,08,736/- from 15-04-82 to 27-01-84 being a sum of Rs. 1,94,469/- and interest at the rate of 12% per annum on the said sum of Rs. 1,94,469/- from 28-01-84 to 01-01-87 being Rs. 68,323/-. The objection of the petitioner regarding payability of interest of Rs. 68,323/- on the interest sum of Rs. 1,94,469/- having been rejected, the Civil Revision No. 394/87 has been filed. In Civil Revision No. 395/87, identically the award was made on 15-03-82 for Rs. 7,90,605/- with similar directions regarding payment of interest and the award was made rule of the court on 26-08-82 with identical directions and costs. Execution Case No. 51/83 was levied claiming Rs. 7,90,605/- interest of Rs. 1,58,121/- and costs of Rs. 308.35. On 27-01-84 the petitioner deposited a sum of Rs. 7,90,605/- similarly by a challan describing the payment as decretal dues and the amount was identically withdrawn as in the other case. The office of the executing court made calculation on 02-01-87 showing the amount of interest payable on Rs. 7,90,605/- from 15-04-82 to 27-01-84 as Rs. 1,69,189/- and

interest on that sum from 28-01-84 to 01-01-87 as Rs. 59,442/-. An objection was taken by the petitioner against the sum of Rs. 59,442/- as no interest should be calculated on interest and that having been rejected, the revision has been filed.

2. The learned Subordinate Judge has dismissed the objections in both the cases being of the view that there was no direction by the petitioner for appropriation of the amounts paid towards the principal amounts and that in the absence of such direction there was no mistake in calculation by the office in adjusting the amounts paid first towards interests, and then towards the principals, and calculating interest, on the balance of the principals. Thus in effect, there was no interest calculated on interest, but only interest on the balance of principals due.

3. It has been urged by Mr. S.K. Patnaik, the learned counsel for the petitioner, that there was a clear indication in the manner of payments made that the amounts were only in satisfaction of the principal amounts and hence the payments made could not have been adjusted first towards interest leaving balance of the principal as unpaid so as to earn interest and hence the calculation made by the office was wrong. On the other hand, it has been contended by Mr. R.K. Rath, the learned counsel for the opposite party, that the payments having been made through bank, it was incumbent on the part of the petitioner to intimate accurately as required under Order 21, Rule 1(3), Civil Procedure Code indicating, among other things, as to how the money remitted was to be adjusted, i.e. either towards the principal, or interest or costs and that having not been done, no exception could be taken to the order passed by the executing court. It is his further contention that even if the general principles of law regarding appropriation of payments where both principal and interest are due are applied, yet there having been no express intimation by the petitioner indicating his mode of appropriation of the payments, no wrong can be found by showing the appropriation first towards interest and then towards the principal.

4. Controverting the submission made by Mr. Rath regarding applicability of Order 21, Rule 1(3) CPC, it is submitted by Mr. Patnaik that such provision would have no application since the Orissa Amendment to Order 21, Rule 1 substituting the original Rule 1 did not have anything like sub-rule (3) as at present and that such Orissa Amendment continued to be in force and was repealed only on 25th May, 1984 and as such even if sub-rule (3) would have been elsewhere applicable, yet would have no application in Orissa. The submission is not correct since Section 97 of the Civil Procedure Code (Amendment) Act, 1976 (Act 104 of 1976) provided that any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of the Amendment Act except in so far as such amendment of provision is consistent with the provisions of the principal Act as amended by the Amendment Act, stands repealed. The purpose of the amendment to the Civil Procedure Code was to bring about a uniformity in the provisions of the Code throughout India and hence a contrary provision as per the Orissa Amendment could not be intended to remain in the statute book. The repealing the provision of the Orissa Amendment was only to bring consistency with the main provision of the statute. This position has also been affirmed by the Supreme Court in *Ganpat Giri v.*

IInd. Addl. Dist. Judge, Balia[1].

5. The objection of Mr. Rath is however otherwise not sound. I do not think that payment made by cheque is a payment through bank as stipulated under the provisions of Order 21, Rule 1(1)(a) which speaks of the money being either deposited in the executing court or sent to the court

either by postal money order or through a bank. Deposit of a cheque by a challan in the court cannot be said to be sending money to court through bank. The position is more clear on reference to Order 21, Rule 1(3), Civil Procedure Code which provides that when money is paid either by postal money order or through bank as in Clause (a) or Clause (b) of sub-rule (1), the money order or payment through bank shall accurately state the particulars as to the number of the original suit, the names of the parties, how the money is to be adjusted, the number of the execution case and the name of the court as also the name and address of the payer. These particulars become necessary when money is sent to the court through an outside agency so as to enable the court to ascertain the particulars of payment including the identification of the case in which the payment is made and of the payer who makes the payment. But where the payment is made in court by cheque through challan, obviously furnishing of such particulars separately is not necessary and the provisions of sub-rule (3) of Rule 1 are not required to be complied with in such case (underlining is mine). A payment by cheque is in effect a payment by cash provided it is honoured and on being encashed, the payment always relates back to the date of delivery of the cheque. The matter was *Maurice Mayahas v. W. Morley*[2] and was conclusively set at rest in *AIR Commr. of Income Tax v. M/s. Ogale Glass Works Ltd*[3]. and *Jiwanlal Achariya v. Rameshwarlal Agarwalla*[4]. In the first case of the Supreme Court, a remark in Byles on Bills, 20th Edition, p.23 that 'a cheque, unless dishonoured, is payment' was accepted and it was said that the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques. In the latter case it was observed :

> "A creditor may receive a bill or a cheque as a conditional payment of a pre- existing debt, i.e. as a payment conditional on the instrument being duly honored on presentation. If the cheque is honored, the date of the payment of the debt is the date when the cheque was delivered and not the date when it was honored."

That being so, it could never be said that payment by cheque in court is not a discharge of the debt in court itself and is an amount sent through bank. Hence, the objection of Mr. Rath on the basis of the provisions of Order 21, Rule 1(3) must stand rejected as not sound.

6. On the submissions made by the learned counsel for the petitioner, the questions that fall for decision are two fold :

> (1) Whether the principles of Sections 59 and 60 of the Contract Act can be made applicable in respect of payments made in execution case in respect of a single debt with interest to accrue, in the absence of any express intimation by the judgment-debtor as to the particular mode of appropriations; and
> (2) Whether in fact there were circumstances in the instant case of justifiably draw a conclusion that in fact the payments were intended only towards the principal amounts.

7. So far as the first question is concerned, there was a confused submission by Mr. Patnaik, relying on *Jia Ram v. Sulakhan Mal*[5], that the provisions of Sections 59 to 61 of the Contract Act do not apply to single debts with interests and that the principles thereof can only be made applicable only where there are several distinct debts. It is not known in what way either the citation or the submission supports the case of the petitioner. However, I do not think, on the

strength of the authorities to be presently referred to, that though in terms Sections 59 to 61 apply to cases where there are several debts, yet there is any doubt that the principles thereof have been made applicable also where there is only one principal debt with interest as being part of the common law. Broadly stated, the principle is that where a debtor makes payment with out making any indication as to how the payment is to be adjusted, it is the option of the creditor to make adjustment first of the interest and then of the principal, but if the debtor has indicated the manner in which the appropriation is to be made, then the creditor has no choice to apply the payment in a different manner. But however he may not agree to the mode of the payment, in which case he must not accept the payment and refund the amount to the debtor, vide *Rai Bahadur Seth Nemichand v. Seth Radha Kishan*[6]. This decision was relied on in AIR 1937 Allahabad 1 (FB) wherein it was observed as follows : -

> "......The second question is not so simple. In terms Sections 59 to 61, Contract Act, cannot apply to a single loan taken by the manager of a joint Hindu family, part of which may be for legal necessity and part not for such necessity. To start with, the debt is one debt and strictly speaking not distinct debts. But the principle underlying these sections has been applied to the cases of interest accruing on principal, although the two really form part of one single debt and not distinct debts....."

Support for the principle is also available in *Malik Mokhtar Ahmed v. Mt. Bibi Rahimunnissa*[7] and *Chaganlal Shrilal v. Gopilal Choturam*[8] and I have no hesitation to hold that the provisions of Sections 59 to 61 of the Contract Act are to be applied as a general rule in determining the mode of discharge of the loan when payments are made only in respect of one loan with interest due.

8. Sections 59 to 61 of the Contract Act are a group of sections relating to appropriation of payments. We are not concerned in the present case with Section 61. The underlying principles of Sections 59 and 60 are that where there are several debts to one person any payments is made by the debtor either with an express intimation or under circumstances from which an intimation may be implied, then the payment must be applied to the discharge of the debts in the manner in which either the
intimation has been given or the manner which can be implied from the circumstances; and secondly, when there is no express intimation or any other circumstance to indicate the implication as to how the payment is to be applied, then the creditor in his discretion may apply the same for discharge of any lawful debt that is actually due and not barred either by any law in force or by the law of limitation. It is thus clear that the indication of the manner of appropriation by the debtor can either be express or can be gathered from the circumstances and it is only in the absence of both that the provision of Section 60 leaving the option to the creditor to make appropriation according to his discretion comes into operation. In *Jogendra Mohan Sen v. Uma Nath Guha* [9]where the revenue for the January Kist of a Mahal was not paid on the last day of payment and the Collector had issued a notification that if arrears of revenue be not paid on or before the 28th of March, i.e. the next latest day for payment of revenue, the Mahals in question would be sold, and the defaulting proprietor remitted the amount which was very much less than the revenue for the March Kist but somewhat in excess of the arrear in question, it was held, applying the provisions of Sections 59 and 60 of the Contract Act, that the circumstances implied that the proprietor intended payment to be treated as in respect of the January Kist. In AIR 1937

Allahabad 1 (FB) (supra) similarly the principle that only in the absence of any express intimation or circumstances implying the payment of a particular debt, the creditor has a discretion under Section 60 to apply the payment to any debt was referred to with approval. Again in *M. Raghava Reddiar v. Odur Devarajulu Reddiar*[10] it was held, relying on the observations made in *Rama Shah v. Lal Chand*[11] as follows : -

> "....Now what is an appropriation? It is the indication of an intention that money should be applied in a particular way. How can that intention be proved? The most ordinary way of proving it is by proof of a statement made either orally or in writing, and such proof is certainly lacking in this case. But that is not the only kind of proof possible. It may be proved by circumstantial evidence as is recognised in Section 60, Contract Act, and in a very important decision of the Privy Council, ILR (1940) 21 Lah 470 , which has played a predominant part in the hearing of this appeal. That decision is concerned primarily with the interpretation of Section 20, Limitation Act, but it was necessary for their Lordships to consider the nature of an appropriation. That they endorse the view that an appropriation may be made in other ways than by explicit statement is clearly indicated by the following passage :
> xx xx xx xx
> On page 481 :
> Referring to a previous case decided by the Privy Council, *Hetram Bodhraj v. Ayaram Tolaram*[12] the case also shows however that the intention of the debtor may be proved not only by statement made by him at the time of payment but in any other manner and may clearly appear from the circumstances of the case."

To the same effect is the decision reported in AIR 1954 Madhya Bharat 151 (supra).

9. Reliance has however been placed by Mr. Rath on *(Meghraj v. Mst. Bayabai*[13]*)* to submit that unless any information is given to the creditor that payment was towards principal and that the creditor agreed to it, the appropriation towards interest first and towards the principal next is the normal rule. I do not see as to how this decision is of any help to the opposite party in the context of the present case. Their Lordships were not, in that case, dealing with the question whether the manner of appropriation by a debtor could also be adjudged from other circumstances, and were on the contrary only discussing the normal rule of appropriation. The facts of the case were quite different where, as against a preliminary decree obtained by the mortgagees, the mortgagors made deposits from time to time in court and in respect of some of the deposits stated that the payment were towards the principal, but there was no evidence on record that the mortgagees were informed that the amounts were deposited towards principal and there was no evidence also that the mortgagees accepted the payments towards principal and it was under such circumstances the court held that unless the mortgagees were informed that the amounts had been deposited only towards principal, the normal rule of the payments first to reduce or liquidate the interest would apply.

10. Having come to such conclusion, it is next to be considered whether in fact there were any

circumstances in the present cases to indicate that the payments were made only towards the principal amounts. The circumstances, for the purpose relied on by Mr. Patnaik are : -

> (i) In each of the cases the amounts deposited are the exact amounts of the principal sum under the decree;
> (ii) In the challans making the deposits, the amounts were described as decretal dues;
> (iii) No objections were filed by the opposite party to the challans and the petitions making the deposits; and
> (iv) The petitions filed by the opposite party for withdrawal of the amounts acknowledged that the amounts were due to it and that once deposits were in court they would earn no further interest.

11. So far as the submission that the deposit of the amounts as decretal dues and the statement made by the opposite party in the first petitions for withdrawal that the same were due to it, and again in the second petitions of 03-04-84 as the amount being towards the decretal dues, would show an intention of appropriation by the petitioner of the amounts towards the principal is concerned, the same can be summarily rejected since the decree amount or decretal dues would consist both of the principal as also the interest due on it. But so far as the first of the circumstances relied upon by Mr. Patnaik is concerned, it is entitled to great weight. Deposit of the exact amount as that of the principal amount in each case would, as it appears, unhesitatingly point to the deposit of the principal amount and not of the interest. Though the decretal dues would include both the principal and interest, yet deposit of a specific amount corresponding to a particular amount of debt would show an intention that such specific amount is being deposited. Even though principal and
interest do not constitute different debts, the principles of Section 59 of the Contract Act being applicable, aid for reaching the conclusion as above can be obtained from illustration (b) to Section 59 though in terms the illustration has no application. That illustration says that where several sums are due and the creditor demands a particular sum, in answer to which such sum is sent by the debtor, then the payment is to be applied for the discharge of that particular debt only. The opposite party in this case filed the execution cases specifying in Col.7 of the application for execution the principal amounts and the amounts of interest from 15-04-82 to 15-12-83 separately and also claimed costs separately in Col.8. These were thus distinct specifications in the execution cases and the amounts being deposited in pursuance of such specifications in the respective execution cases, it can be said that a clear indication was made by the petitioner in each of the cases that the amounts were being deposited towards the claims in Col.7 of the execution applications. Such intention of the petitioner has never been objected to by the opposite party and instead the amounts have been withdrawn. It does not appear also, and no evidence has been led to that effect, that in fact the opposite party has appropriated the amounts towards interest first and applied the balance for satisfaction of the principal. It is only a little less than three years after that the impugned appropriation was shown by the office calculation of the Court. In *Life Insurance Corpn. of India v. Samarendra Nath Roy*[14] where circumstances of the payments were taken into consideration to arrive at the conclusion that the amounts were deposited towards principal only, it was observed, giving some scope even to an ambiguity that might have persisted, as follows :

"Even assuming that there was some ambiguity in the said Bengali expression or its meaning "decretal amount", the petitioner was not justified in withdrawing the same without having sought for clarification either from the Court or from the opposite party. It has been sited already, that in the Court below no contention was raised on behalf of the petitioner that "decretal amount" did not refer to the principal amount of the decree....."

12. It has been submitted on behalf of the opposite party that if debtors are permitted to deposit sums first towards principal and the interest remains unpaid, then the decree-holder would be put to the disadvantageous position of not realizing the fruits of the decree since interest would not carry interest and the interest decreed would still remain beyond his reach. The submission is not apposite since nothing prevents a creditor not to accept such deposits on the terms of the judgment-debtor and to demand appropriation to be made only as per his desire. The opposite party has accepted the payments when the circumstances indicted that the payments were for the specific amounts of principal and having done so cannot take the objection.

13. In the result, the revisions are allowed with costs and the im

Cases Referred.

[1] AIR 1986 SC 589
[2] decided in 29 C.W.N. 496
[3]1954 SC 429
[4] AIR 1967 SC 1118
[5] AIR 1941 Lah 386 (FB)
[6] AIR 1922 PC 26
[7] AIR 1922 Pat 369
[8] AIR 1954 Mad Bha 151
[9](1908) ILR 35 Cal 636
[10] AIR 1943 Mad 236
[11] AIR 1940 PC 63
[12](1938) 42 Cal WN 509
[13] AIR 1970 SC 161
[14] AIR 1979 Cal 243