Bharat Heavy Electricals Ltd vs R.S.Avtar Singh & Co on 5 October, 2012

Equivalent citations: AIR 2013 SUPREME COURT 252, 2012 AIR SCW 5639, (2012) 6 ALLMR 459 (SC), (2012) 2 CLR 1098 (SC), 2012 (6) ALLMR 459, 2012 (10) SCALE 61, 2012 (2) CLR 1098, 2013 (2) MAH LJ 542, 2013 (1) SCC 243, 2013 (3) CIV LJ 75, (2012) 4 CIVILCOURTC 777, (2012) 4 BANKCAS 299, (2013) 119 REVDEC 751, (2013) 1 ANDHLD 44, (2012) 4 ICC 750, (2012) 2 WLC(SC)CVL 737, (2013) 1 ALL WC 232, (2012) 10 SCALE 61, (2013) 4 MAD LW 470, (2013) 2 MPLJ 8, (2013) 1 RECCIVR 252, (2013) 99 ALL LR 716, (2013) 1 CAL HN 140, (2013) 115 CALLT 494, (2012) 4 CURCC 144

Bench: Fakkir Mohamed Ibrahim Kalifulla, B.S. Chauhan

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7239 OF 2012
(@ SLP (C) NO.3272 OF 2009)

Bharat Heavy Electricals Ltd. ….Appellant

VERSUS

R.S. Avtar Singh & Co. .…Respondent

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. Leave granted.

2. The judgment debtor is the appellant before us. This appeal is directed against the judgment of the Division Bench of the Delhi High Court dated 03.11.2008 in EFA (OS) No.9 of 2002. The respondent undertook some contract work with the appellant in respect of which the dispute arose as regards the payment to be made by the appellant. The dispute went before the sole Arbitrator who passed an award on 15.03.1982 which was made the Rule of Court after protracted litigation. Thus after the award became final and conclusive, the respondent herein filed Execution Petition No.208/2000 contending that the appellant did not furnish the award amount in its entirety. The appellant while resisting the Execution Petition, also filed EA No.522 of 2000 under Section 47 of the Code of Civil Procedure by taking the stand that entire award amount has been fully paid and, therefore, there was nothing to be granted in the Execution Petition. The learned Single Judge dismissed the objections by order dated 12.07.2002 which was the subject matter of appeal in which the impugned judgment came to be passed by the Division Bench of the High Court of Delhi.

3. The issue centres around the interpretation of Order XXI Rules (1), (4) and (5) of CPC read with Section 34 CPC and Section 3 (3) (c) of Interest Act. Though the legal issue falls within the narrow compass, to appreciate the respective contentions of the parties, certain details about award dated 15.03.1982, the order of the Court which granted the seal of approval to the award dated 31.05.1985 in suit No.594-A/1982, the order of the Division Bench dated 18.07.2000 by which the challenge to the award and the order dated 31.05.1985 came to be rejected and the subsequent order dated 31.07.2000 declining to recall the earlier order dated 18.07.2000, thereafter the order of the learned Single Judge came to be passed on 12.07.2000 in EA No.522 of 2000 in Execution case No.208 of 2000 which was subject matter of challenge in the impugned order of the Division Bench dated 03.11.2008 in EFA (OS) No.9 of 2002, have to be stated. When we refer to the award of the Arbitrator dated 15.03.1982, we find the following relief which was granted in favour of the respondent:

> The Award Claimants claims No. 1,2,3,4,5,6,7,8,10,12,13,14 & 15 I hold that the claimants M/s R.S. Avtar Singh & Co. are entitled to a sum of Rs.1,42,24,894/- (Rupees one crore forty two lacs twenty four thousand eight hundred and ninety four only) against all their claims and I also hold that the claimants are entitled for interest and, I, therefore, award a sum of Rs.1,42,24,894/- (Rupees one crore forty two lacs twenty four thousand eight hundred and ninety four only) in favour of the claimants with interest @ 12 % per annum on the said amount of the award from 6-1-1981 till the date of payment or decree whichever is earlier.
>
> Claimants claim No.9 As this claim was withdrawn by the Claimants in the hearing held on 12/9 and 13/9/81, no award is made against this claim.
>
> Respondents counter-claims Nos. 1,2 & 3:-
>
> I hold that the Respondents M/s. Bharat Heavy Electricals Ltd. are entitled to a sum of Rs.56,420/- (Rupees Fifty Six thousand four hundred & twenty only) against all their counter-claims and I, therefore, award sum of Rs.56,420/- (Rupees fifty six thousand four hundred & twenty only) in favour of the respondents.
>
> The parties are left to bear their own costs. This disposes of claimants claim No.16 regarding costs.
>
> The above award is made and published by me on this day of 15th Marcy, 1982 at Gandhinagar."

4. In the judgment dated 31.05.1985 passed in Suit No.594A/1982 the award was taken on record and made a Rule of the Court and the said order passed in the said suit reads as under:

> "This suit coming on this day for final disposal before this Court in the presence of counsel for the parties as aforesaid, it is ordered that the objections (I.A. No. 2830/1982) filed by respondents to the award dated 15.3.1982 given by Sh. M.S.

> Iyengar Arbitrator be and the same are hereby dismissed and the said award appended hereto as Annexure 'A' be and the same is hereby taken on record and made a rule of the Court with the modification that the claimant shall be entitled to interest at the rate of 12 % per annum from March 12,1981 till the date of the decree and a decree is hereby passed in terms thereof which shall form part of the decree.
>
> It is further ordered that the claimant shall be entitled to future interest at the rate of 12 % per annum from the date of the decree till realization, in case the award amount is not paid within two months from today the 31st May, 1985.
>
> It is lastly ordered that suit No.409-A/1982 is hereby disposed of. Given under my hand and the seal of the Court this the 31st day of May, 1985."

5. When the appellant challenged the said decision of the learned Single Judge dated 31.05.1985 in FAO (OS) 188 of 1985, the same came to be dismissed by the order dated 18.07.2000. During the pendency of the suit FAO (OS) No.188 of 1985 by way of an interim order dated 13.09.1985 the recovery under the award was stayed subject to the condition that the respondent paid the sum of Rs.1 crore into the Court which was directed to be withdrawn by the respondent on furnishing Bank guarantee for the purpose of restitution in case the award was set aside. It is not in dispute that in compliance of the said order necessary deposit was made. The respondent also realized the said amount of Rs.1 crore on 13.10.1985. The appellant moved an application for recalling order dated 18.07.2000 of the Division Bench and the same was also dismissed by the Division Bench on 31.07.2000. Thereafter, when the Execution Petition No.208 of 2000 was moved, the appellant took notice and filed application under Section 47 of the CPC in EA 522 of 2000 and another application under Order XXI Rule 26 in application EA 523 of 2000. The leaned Single Judge of the Execution Court while granting time for final reply, in the EA 522 and 523 of 2000 and rejoinder, if any, before the next date of hearing by order dated 30.01.2001 directed the appellant to deposit in Court a cheque for Rs.1,94,91,077/- being the admitted amount in favour of the respondent subject to deduction of tax at source along with TDS certificate. The execution of the warrant of payment issued on 18.10.2000 was directed to be kept in abeyance. The sum of Rs.1,74,93,835/- after deduction of tax at source in a sum of Rs.19,97,192/- in all a sum of Rs.1,94,91,077/- was realized by the respondent with an undertaking of the respondent that in case the Execution Petition found to be not maintainable, he would refund the amount of Rs.1,74,93,835/- within a period of four weeks from the date of the order passed under the Execution Petition. The said order was passed on 30.01.2001 by the learned Single Judge. By filing an undertaking dated 05.02.2001, the respondent also withdrew the sum of Rs.1,74,93,885/-. Ultimately the execution was ordered by the learned Single Judge by an order dated 12.07.2002 by calculating subsequent interest only in the remaining principal amount and dismissed the objection petition.

6. When the appellant preferred this appeal against the said order dated 12.07.2002, in EFA (OS) No.9/2002, an interim order came to be passed on 23.08.2002 directing the appellant to deposit whatever balance amount due after deduction of TDS as per the final order passed by the learned Single Judge with a further order to realize the said sum subject to restitution and on furnishing security to the satisfaction of the Registrar.

7. According to the learned counsel for the appellant in the light of last order dated 23.08.2002 whatever amount which was ultimately directed to be paid by learned Single Judge in the order dated 12.07.2002 was also paid to the respondent. Keeping the above factors in mind, counsel for the appellant, Mr. Chandhiok, learned Additional Solicitor General appearing for the appellant raised the following contentions.

8. Mr. Chandhiok, learned ASG for the appellant by referring to Order XXI Rule 1 sub-clauses (1), (4) and (5) submitted that after the passing of the award by the Arbitrator on 15.3.1982 and it was made as a Rule of the Court by the learned Single Judge in the order dated 31.05.1985 substantial payment towards the decretal amount was made by 18.10.1985 and what remained to be paid in satisfaction of the decretal amount was only Rs.41,68,474/- apart from interest which was due and payable in a sum of Rs.1,53,22,603/- in all a sum of Rs.1,94,91,077/-. The learned ASG submitted that after the filing of the Execution Petition and the orders passed thereon when the appellant moved the learned Single Judge pursuant to interim orders dated 01.12.2000, the entire balance amount was also deposited by way of two cheques representing Rs.1,74,93,885/- and T.D.S. amount of Rs.19,97,192/- in all a sum of Rs.1,94,91,077/-. The learned ASG, therefore, contended that by virtue of the payments made, as above, dated 18.10.1985 and subsequently on 13.12.2000 the payment of entire decretal amount was fully satisfied and nothing more remained payable. According to learned ASG when once the balance principal amount was paid, according to appellant's calculation, as on 13.12.2000, along with the interest payable on that amount up to that date on the principal amount by virtue of operation of sub-clauses (4) and (5) of Order XXI Rule 1 interest, if any, mandatorily cease to run i.e. on and after 13.12.2000 and the conclusion to the contrary made by the learned Single Judge in the order dated 12.07.2002 and the confirmation of the same by the Division Bench in the impugned order dated 03.11.2008 are liable to be set aside. The learned ASG also submitted that in this context, by virtue of Section 3(3)(c) of the Interest Act and Section 34 of CPC, the Court has no power to award interest upon interest. According to him a cumulative consideration of the above provisions show that with the payment of Rs.1,94,91,077/- by 13.12.2000 the entire decretal amount was fully paid and the award of further interest based on the claim of the respondent by the learned Single Judge as well as by the Division Bench was not justified. The learned ASG relied upon the decisions of this Court in the cases of Gurpreet Singh Vs. Union of India - reported in (2006) 8 SCC 457 and Central Bank of India Vs. Ravindra and others - reported in (2002) 1 SCC 367.

9. As against the above submissions, Mr. Ranjeet Kumar, learned Senior Counsel appearing for the respondent by relying upon sub-rule 1 of Order XXI CPC submitted that all money payable under decree referred to sub-rule would include principal and the interest payable prior to suit as well as interest pendente-lite, post decretal interest and cost. The learned Senior Counsel by relying upon the decision of this Court in the case of Ravindra (supra), in this respect, contended that so long as the decretal amount which was due as on 18.10.1985 which included the award amount along with interest calculated at the rate of 12 per cent per annum was due and payable until the entire amount is wiped out, the amount so calculated in the Execution Petition as on that date, remained unpaid. The learned Senior Counsel contended that the payment of decretal amount was not satisfied as stipulated under Order XXI Rule 1 (1) and consequently the operation of sub-clauses (4) and (5) of Order XXI Rule 1 cannot be held to have operated upon until such satisfaction of payment of

decretal amount was not made by the appellant. The learned Senior Counsel, therefore, contended that after the award was made as a Rule of the Court after 31.05.1985 and when the first payment of Rs.1 crore was made by the appellant on 18.10.1985, the decretal amount which was due and payable by the appellant as on that date was in a sum of Rs.2,19,61,134/- and after giving credit to the payment of Rs.1 crore a balance amount of Rs.1,19,61,134/- was due and payable as from 19.10.1985. The learned Senior Counsel, therefore, contended that when the next payment was made by the appellant only on 13.12.2000 in a sum of Rs.1,94,93,885/-, based on the calculation of the respondent, a further sum of Rs.1,42,96,318/- was due and payable which remained unpaid. The learned Senior Counsel, however, fairly admitted that even as per the stand of the respondent a miscalculation was made while working out the interest on principal amount which was not accepted by the learned Single Judge while granting relief in the order dated 12.07.2002 and that in any event whatever calculation ultimately worked out by the learned Single Judge in the order dated 12.07.2002 was just and proper and the confirmation of the same by the Division Bench, therefore, does not call for interference.

10. Learned Senior Counsel further submitted that after the award of the Arbitrator in March 1982 and after it was passed as a Rule of the Court in May 1985, the payments were made by the appellant only pursuant to orders of the Court and the respondent had to seek for the redressal of its grievances only through Court and that the appellant, therefore, does not deserve any indulgence in the payment of interest. Learned Senior Counsel by referring to the decision of this Court in the case of Gurpreet Singh (supra) contended that it was well within the rights of the appellant to appropriate the payments made by the appellant in the first instance to the interest part of it which was due and payable on the date of the first payment while adjusting whatever balance remained towards principal and calculating the interest payable on the remaining principal amount till the next date of payment. The learned Senior Counsel, would contend that the same was in accordance with what has been authoritatively pronounced by this Court in the cases of Gurpreet Singh (supra) and Leela Hotels Limited Vs. Housing and Urban Development Corporation Limited - reported in (2012) 1 SCC 302 and, therefore, the calculation which was ultimately found as due and payable by the learned Single Judge in the order dated 12.07.2002 was perfectly in order and, therefore, the confirmation of the said order by the Division Bench does not call for interference.

11. We have considered the submissions of the respective counsel and also bestowed our serious consideration to the relevant provisions of law, the orders impugned and the various other materials placed before this Court as well as the decisions relied upon by the respective counsel. At the outset in order to appreciate the question of law that arise for consideration, one needs to understand the specific provision contained in sub-rule (1) of Order XXI before going into the details of the facts involved in this case. The opening words of sub-rule (1) of Order XXI reads as under:

> "All money, payable under a decree shall be paid as follows, namely:-
>
> ....." Sub-rule (4) is to the following effect:
>
> "(4). On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule

> (2)." A plain reading of the above clauses in the sub-rule of Order XXI is to the effect that on payment of the amounts payable under a decree, as provided under sub-rule (1), the calculation of interest on such amount payable under the decree would cease to operate from the date of service of notice as stipulated under sub-rule (2) of Order XXI.

12. Leaving aside the intimation by way of service, as regards the payment as provided under sub-rule (2), inasmuch as in the case on hand on different dates the payments were made, such payments were all made after due notice to the respondent. Therefore, there was no controversy relating to the date when the respective payments were made. We are, therefore, only concerned with the implication and application of sub-rule (1) of Order XXI and the consequent effect on whatever payments made, as claimed by the appellant by operation of sub-rule (4). Therefore, in the forefront, we wish to examine as to what extent the prescription contained in sub-rule (1) of Order XXI was followed by the appellant in making the payments once on 18.10.1985 and subsequently on 13.12.2000. The words used in sub-rule (1) in different expressions means whatever money that is due and payable under a decree, which could be paid in the manner stipulated in sub-clauses (a), (b) and (c) of the said sub-rule (1). The prime words, which needs deeper scrutiny are "payable under a decree". To understand the said set of expressions what is required to be scrutinized is as to how the decree has been made while granting the relief as regards the payment. We, therefore, have to refer to that part of the award of the Arbitrator to understand the nature of relief granted under the said award. The operative part of the award, as extracted earlier, disclose that the respondent was entitled to a sum of Rs.1,42,24,894/- along with interest at the rate of 12 per cent per annum on the said amount from 06.01.1981 till the date of payment or decree whichever was earlier. The Arbitrator after giving credit to the counterclaim made by the appellant ultimately worked out the actual amount payable to the respondent which worked out to Rs.1,41,68,474/-. The said award of the Arbitrator was accepted by the respondent. When the award was made as the Rule of the Court in the order dated 31.05.1985, the only alteration made was the date of calculation of interest rendered by the Arbitrator. While the Arbitrator directed such calculation of interest to be made from 06.01.1981, the learned Single Judge directed such calculation to be made from 12.03.1981. In the said order of the Court dated 31.05.1985 which forms the basis for the respondent to make the claim, inasmuch as the award became the Rule of the Court only pursuant to the said order, it is important to make reference to what the Rule of the Court stated in the said order. In the penultimate paragraph, it has been specifically stated as under:

> "It is further ordered that the claimant shall be entitled to future interest at the rate of 12% per annum from the date of the decree till realization, in case the award amount is not paid within two months from today the 31st May, 1985."

13. Noting the nature of relief granted under the award and the ultimate Rule of the Court together, we find that learned Arbitrator directed that the calculation of payment of interest "on the said amount of the award" which should run from 06.01.1981 should now run from 12.03.1981 by virtue of Rule of the Court dated 31.05.1985. As per the direction of the learned Arbitrator, such payment of interest would be payable till the appellant make the payment or the decree whichever is

earlier. The decree, having regard to the applicable provision, would be the date of the Rule of the Court, namely, 31.05.1985. Therefore, a strict construction of the said direction of the learned Arbitrator as regards the manner of calculation of interest would mean either the date of payment or the date of decree whichever is earlier. Since, the first date of payment in the case on hand was subsequent to the date of the Rule of the Court, namely, 31.05.1985, going by the direction of the learned Arbitrator, the calculation of interest should be made up to 31.05.1985. Since, the award received the seal of approval only after the same was made as the Rule of the Court, it is the stipulation contained in the said Rule would ultimately cover the relief really granted in the award as made operative by virtue of the Rule ordered by the Court. Therefore, in the stricto sensu, it is the decree dated 31.05.1985 which has to be applied in letter and spirit in order to find out whether the stipulations contained therein were duly fulfilled by the appellant.

14. The Rule of the Court while approving the award of the Arbitrator did not make any substantive alteration as regards the entitlement of the respondent on the payment to be made, namely, the sum of Rs.1,41,68,474/-. Even the rate of interest granted by learned Arbitrator was not touched by the Court, which was maintained at the rate of 12 per cent per annum. The Court only directed the calculation of the said interest payable as from 12.03.1981 instead of 06.01.1981.

The only other substantive direction contained in the Rule of the Court dated 31.05.1985 was that the respondent was entitled to future interest at the rate of 12 per cent per annum from the date of the decree till realization in case the award amount was not paid within two months from 31.05.1985. Therefore, the said part of the decree requires to be deeply examined by applying the provision contained in Order XXI Rule 1 of CPC read with Section 3 (3)(c) of the Interest Act as well as Section 34 of CPC.

15. With that view when we examine the said part of the Rule of the Court, we wish to specifically note that the Court made a conscious direction to the specific effect that the entitlement of the respondent for future interest at the rate of 12 per cent per annum from the date of decree, namely, 31.05.1985 till the date of realization would be on the award amount if it was not paid within two months from 31.05.1985. Therefore, the calculation of interest payable up to the date of the decree as well as the time granted therein, namely, two months from 31.05.1985 and what is interest payable subsequent thereto has been clearly set out in the said part of the Rule. If the said Rule is to be understood in the manner in which the Court had directed the calculation of interest to be made it can be only in the following manner, namely, that the interest from 12.03.1981 up to 31.07.1985 at the rate of 12 per cent per annum would be on the award amount, namely, Rs.1,41,68,474/-. If the award amount was not paid, namely, the sum of Rs.1,41,68,474/- on or before 31.07.1985, the future interest again at the rate of 12 per cent per annum can be claimed. In our considered opinion, it should be on the award amount which was in a sum of Rs.1,41,68,474/-. We say so because both the award of the learned Arbitrator as well as the Rule of the Court makes a clear distinction between the award amount and the interest payable. The award having become the Rule of the Court and while making the said Rule it was clearly made known that the award contained an amount which

was payable to the respondent quantifying the said amount in a sum of Rs.1,41,68,474/-. After quantification of the said amount, the learned Arbitrator dealt with the grant of interest independent of the said payment and fixed the rate of such interest at 12 per cent per annum. When such a clear distinction was consciously made by the learned Arbitrator while passing the award no one can even attempt to state that the award amount and the interest mentioned in the award dated 15.03.1982 should be merged together and state that the award amount would comprise of a sum of Rs.1,41,68,474/- and the interest worked out thereon became payable when once it was made the Rule of the Court and thereby became the decretal amount. Such a construction of the said award cannot be made having regard to the specific terms of the decree dated 31.05.1985.

16. Once we steer clear of the said position as regards the decree passed by the learned Single Judge, we are posed with the next question as to while applying Order XXI Rule 1 when payments were made towards the satisfaction of the said decree as provided under Order XXI Rule 1

(a), (b) and (c) what would be the implication of sub-rules 4 and 5 of Order XXI. In order to understand the said legal implication of Order XXI Rule 1 read along with sub-rules 4 and 5, in the foremost it will be necessary to understand what is contemplated under Order XXI Rule 1, in particular, the opening set of expressions, namely, "all money, payable under a decree shall be paid as follows, namely:-..." It will be necessary to keep in mind that the said provision does not state the decretal amount. The expression used is all money payable under a decree. TERSELY stated, as pointed out by us in the earlier paragraph, the decree dated 31.05.1985 affirm the award amount, the interest payable at the rate of 12 per cent per annum from 12.03.1981 till the date of its realization if not paid within two months from the date of the decree, namely, 31.05.1985. Therefore, the said decree dated 31.05.1985 consisted of the award amount plus interest payable thereon from 12.03.1981 up to the date of the decree, namely, 31.05.1985 to be payable within two months from that date and in the event of non- payment of the said amount within two months from 31.05.1985 to calculate future interest at the very same rate of 12 per cent per annum from the date of the decree till the realization of the award amount. In our considered opinion, a reading of the opening set of expressions of Order XXI Rule 1 is clear to the above effect. In the case on hand the payment effected by the appellant after 31.05.1985 was once on 18.10.1985 and thereafter on 13.12.2000 when the issue was dealt with by the Court in the order dated 12.07.2002. It is not in dispute that the award amount of Rs.1,41,68,474/- earned interest at the rate of 12 per cent per annum up to the date of first payment, namely, 18.10.1985 which worked out to a sum of Rs.78,30,314/- i.e. for the period from 12.03.1981 to 18.10.1985. The total amount payable as on that date under the decree, both the award amount along with the interest, worked out to Rs.2,19,61,134/-. The said figure, as calculated by the appellant, was not disputed by the respondent. On 18.10.1985, the appellant paid a sum of Rs.1 crore by way of deposit pursuant to the order of the Division Bench dated 13.09.1985 when the appellant challenged the decree dated 31.05.1985. The respondent was also permitted to withdraw the said sum of Rs.1 crore in the said order dated 13.09.1985.

17. Keeping the above factual position in mind when we examine Order XXI Rule 4 CPC, the said sub-rule states that on any amount paid under Clause (a) or Clause (c) of sub-rule 1, interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule

2. In the case on hand since the deposit of the amount pursuant to the order of the Division Bench dated 13.09.1985 came to be made and was also withdrawn by the respondent from the date of service of notice as contemplated in sub-rule 2 the same was deemed to have been effected. Therefore, applying sub-rule 4 to the case on hand in so far as the cessation of interest is concerned, the same should operate upon the sum of Rs.1 crore deposited by the appellant and withdrawn by the respondent. There can be no dispute and in fact it is not disputed by the parties that on and after the deposit of Rs.1 crore, no interest was payable on the said sum. The only other consideration to be made is in which component the said sum of Rs.1 crore is to be taken. In other words, whether the said sum of Rs.1 crore paid by the appellant should be accounted towards the award amount of Rs.1,41,68,474/- or to the total figure of Rs.2,19,61,134/- as was sought to be applied by the respondent.

18. Before venturing to find out the answer to the said question having regard to the Constitution Bench judgment of this Court in Gurpreet Singh (supra), wherein the implication of Order XXI Rule 1 has been elaborately dealt with we deem it appropriate to note the rationale laid therein on this aspect. Though, the question posed for consideration before the Constitution Bench was whether the rule called “different stages of appropriation” set out in Prem Nath Kapur and another Vs. National Fertilizers Corporation of India Ltd. and others - (1996) 2 SCC 71, is correct or whether the rule requires to be restated on the scheme of the Land Acquisition Act understood in the context of the general rules relating to appropriation and the rules relating to appropriation in execution of money decrees and mortgage decrees as a concomitant to the said exercise, the Constitution Bench specifically dealt with Order XXI Rules 1, 2, 4 and 5 and has rendered a definite conclusion on the application of the abovesaid provision after a detailed discussion in its elaborate judgment. Since, the issue has been dealt with in extenso in the said decision and the issue has been succinctly clarified by the Constitution Bench, we wish to refer to those relevant portions of the said decision in order to apply the ratio laid down therein to the facts of this case and test the correctness of the judgment impugned in this appeal.

19. In Gurpreet Singh (supra) at paragraph 14, the implication of Order XXI Rule 1 vis-à-vis the related provisions under Order XXIV and Order XXXIV have been set out which is to the following effect:

> “14. Now, we may consider the provisions in the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) that have relevance to the issue. The rule of appropriation in respect of amounts deposited in court or in respect of payment into court, is contained in Order 24 of the Code at the pre-decretal stage and in Order 21 Rule 1 at the post-decretal stage. Though, we are not directly concerned with it, we may notice that special provisions relating to mortgages are found in Order 34 of the Code. Under Order 24 Rule 1, a defendant in a suit for recovery of a debt may at any stage of the suit deposit in court such sum of money as he considers a satisfaction in full of the claim in the plaint. Rule 2 thereof provides for issue of notice of deposit to the plaintiff through the court and for payment out of the amounts to the plaintiff if he applies for the same. Rule 3 specifically states that no interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of such deposit,

> whether the sum deposited is in full discharge of the claim or it falls short thereof. Rule 4 enables the plaintiff to accept the deposit as satisfaction in part and allows him to pursue his suit for what he claims to be the balance due, subject to the consequences provided for therein regarding costs.

It also deals with the procedure when the plaintiff accepts the payment in full satisfaction of his claim."

20. In paragraph 20, the general rule of appropriation towards a decretal amount has been stated as under:

> "20.....It was also held that the general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount, subject of course, to any agreement between the parties."

21. After referring to the general rule of appropriation in cases where there is shortfall in paying the decree amount what will be the mode of appropriation has been explained in paragraph 26 and in the last part of paragraph 27 in the following words:

> "26. Thus, in cases of execution of money decrees or award-decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree-holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree-holder and there is no question of the decree-holder claiming a reappropriation when it is found that more amounts are due to him and the same is also deposited by the judgment-debtor. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.
>
> 27.....The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment-debtor to pay interest on that part of the principal which he has already paid or deposited."

22. The said legal position has been reiterated in paragraph 36 with a little more clarity, which is to the following effect:

> "36.....But if there is any shortfall at any stage, the claimant or decree-holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and costs and then towards the principal, unless the decree otherwise directs." (Emphasis added)

23. Ultimately, in paragraph 49, the Constitution Bench decision has summed up the legal position as under:

> "49. Though, a decree-holder may have the right to appropriate the payments made by the judgment-debtor, it could only be as provided in the decree if there is provision in that behalf in the decree or, as contemplated by Order 21 Rule 1 of the Code as explained by us above. The Code or the general rules do not contemplate payment of further interest by a judgment-debtor on the portion of the principal he has already paid. His obligation is only to pay interest on the balance principal remaining unpaid as adjudged either by the court of first instance or in the court of appeal. On the pretext that the amount adjudged by the appellate court is the real amount due, the decree- holder cannot claim interest on that part of the principal already paid to him. Of course, as indicated, out of what is paid he can adjust the interest and costs first and the balance towards the principal, if there is a shortfall in deposit. But, beyond that, the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole amount and seek a reappropriation as a whole in the light of the appellate decree." (Emphasis added)

24. From what has been stated in the said decision, the following principles emerge:

> a) The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and cost and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.
>
> b) The legislative intent in enacting sub-rules 4 and 5 is clear to the pointer that interest should cease to run on the deposit made by the judgment debtor and notice given or on the amount being tendered outside the Court in the manner provided in Order XXI Rule 1 sub-clause (b).
>
> c) If the payment made by the judgment debtor falls short of the decreed amount, the decree holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards cost and finally towards the principal amount due under the decree.
>
> d) Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that

part of the principal sum will cease to run thereafter.

e) In cases where there is a shortfall in deposit of the principal amount, the decree holder would be entitled to adjust interest and cost first and the balance towards the principal and beyond that the decree holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for re-appropriation.

25. Keeping the above principles in mind, when we examine the case on hand, we find from the judgment of the learned Single Judge, which has been affirmed by the Division Bench, that the principal amount due along with the interest thereon on the date of the first payment, namely, 18.10.1985 as well as based on the subsequent payments on the remaining principal amount and the interest due thereon which has been set out in the last part of judgment dated 12.07.2002 of the learned Single Judge, the following summing up:

> "To sum up on 03.01.2001 Rs.1,19,61,134/- was due towards principal amount and Rs.23,35,134/- was due towards interest. The judgment debtor has further to pay the principal sum of Rs.1,19,61,134/- with 12% interest calculated from 04.01.2002 to the date of final payment minus Rs.23,35,184/- + Rs.19,97,192/- allowed to be deducted as TDS. The contention of the judgment debtor that only a sum of Rs.1,94,93,885/- was due as on 03.01.2001 under the decree is wrong and is rejected. As such the contention of the judgment debtor that the decree holder is charging interest on the amount of interest and contravening section 3(3)(c) of Interest Act is incorrect and is rejected.
>
> Having regard to the above discussion the objections filed by the judgment debtor have no merit the objection application is dismissed."

26. In fact in the calculation which was sought to be made by the respondent in its statement filed before the learned Single Judge, interest was calculated for the period subsequent to 06.03.2001 that was the date when the last payment was made by the appellant wherein the calculation of interest for the period from 04.01.2001 to 04.03.2002 was claimed on the entire sum of Rs.1,42,96,318/- instead of calculating the same on the balance principal of Rs.1,19,61,134/-. In the penultimate paragraph of the order dated 12.07.2002, the learned Single Judge rightly rejected such a wrong claim made on behalf of the respondent while dismissing the objections filed by the appellant.

27. The Division Bench having examined the order of the learned Single Judge by applying the principles culled out from the Constitution Bench decision of this Court ultimately held as under in paragraph 26:

> "26. In the present case, it is not in dispute that there was neither any notice under Rule 1 of Order XXI nor any specific direction contained in the decree or given by the Division Bench, while directing making payment of Rs.1 crore as a condition for grant

of stay of the execution. In these circumstances, the ld. Single Judge rightly held that the action of the decree holder in adjusting the said amount first against the interest of Rs.78,30,314/-, which had become due as on that date was perfectly in order and only balance amount of Rs.22,07,340/- could be adjusted against principal, thereby, leaving balance amount payable towards principal as on 19.10.1985 at Rs.1,19,61,134/- on which the decree holder was entitled to interest @ 12% p.a. from 19.10.1985 till 6.3.01, when a sum of Rs.1,94,91,077/- was paid in this manner accepted the calculation made by the decree holder, wherein, no arithmetic error or otherwise found. No doubt, in the process the appellant is made to pay substantial amount towards interest. However, that is its own making. The award is of the year 1982, which means it was rendered more than 26 years ago. Even the decree is of the year 1985. After the passing of the decree, the appellant chose to challenge the same by filing appeal and in the meantime, made only part payment of Rs.1 crore. Even when the appeal was dismissed in the year 2000, the appellant did not make any payment, which inaction on the part of the appellant, compelled the respondent to file the execution petition. In the execution petition, also the appellant made payment of Rs.1,94,91,077/- on 10.10.2000 and wanted to contest the execution petition, particularly with regard to the manner in which the amounts paid are to be appropriated. Because of these part payments, which had to be appropriated first against the interest, which kept on mounting, part principal amount always remain payable as a consequence whereof further interest on the balance principal amount also became payable by the appellant. For this, it is the appellant only which is to be blamed."

28. Inasmuch as, we find that the learned Single Judge as well as the Division Bench has applied the rule of construction on Order XXI Rule 1 based on the Constitution Bench decision of this Court wherein the earlier decision of this Court in Prem Nath Kapur (supra), in regard to the rule of appropriation, as set out in paragraph 48, was also approved, we do not find any illegality in the said judgment of the Division Bench while affirming the order of the learned Single Judge dated 12.07.2002.

29. As far as the contention based on Section 34 of CPC having regard to the general rule of appropriation in cases of this nature where there is a short payment made pursuant to the decree, we do not find any conflict with the said provision in so far as it related to payment of interest to be payable by the appellant. As far as the submission made, based on Section 3(3)(c) of the Interest Act is concerned, the said provision only states de hors the substantive part of said Section 3, Courts are not empowered to award interest upon interest. We do not find any scope to apply the said section to the case on hand where the controversy is subsequent to the decree where direction for payment of interest on the award amount has been spelt out. The issue related to the correctness of the interest calculated as per the decree of the Court which made the award its rule. The challenge is not to the decree on the footing that it was in violation of Section 3(3)(c) of the Interest Act. We, therefore, do not find any support in the submission based upon the said Section 3(3)(c) of the Interest Act. The main contention of Mr. Chandhiok, learned ASG for the appellant having been already dealt with by the Constitution Bench decision of this Court referred to above which is

binding and applying the ratio laid down therein, we do not find any scope to countenance such a submission made before us while impugning the judgment of the Division Bench dated 03.11.2008 as well as that of learned Single Judge dated 12.07.2002. We do not find any merit in this appeal, the appeal fails and the same is dismissed.

.....J. [B.S. Chauhan] .....J. [Fakkir Mohamed Ibrahim Kalifulla] New Delhi;

October 05, 2012
