Mathunni Mathai vs M/S. Hindustan Organic Chemicals Ltd. ... on 25 April, 1995

Equivalent citations: AIR 1995 SUPREME COURT 1572, 1995 (4) SCC 26, 1995 AIR SCW 2421, (1995) 1 SCJ 551, (1996) 1 LJR 415, (1996) 1 BANKCAS 134, (1996) 1 CIVILCOURTC 56, (1995) 2 GUJ LH 73, (1995) 1 KER LJ 695, (1995) 1 KER LT 784, (1995) 1 LS 45, (1995) 2 MAD LJ 59, (1995) 2 MAHLR 855, (1995) 3 PUN LR 596, (1995) 2 RENTLR 172, (1995) 3 SCR 765 (SC), (1995) 2 ANDHWR 39, (1995) 2 CIVLJ 906, (1995) 2 CURLJ(CCR) 438, (1995) 4 JT 233 (SC)

Author: R.M. Sahai

Bench: R.M. Sahai, N.P. Singh

```
           CASE NO.:
Appeal (civil)  5117 of 1995

PETITIONER:
MATHUNNI MATHAI

RESPONDENT:
M/S. HINDUSTAN ORGANIC CHEMICALS LTD. AND ANR.

DATE OF JUDGMENT: 25/04/1995

BENCH:
R.M. SAHAI & N.P. SINGH

JUDGMENT:
```

JUDGMENT 1995 (3) SCR 765 The Judgment of the Court was delivered by R.M. SAHAI, J. The question of law that arises for consideration in these appeals directed against the judgment and order of the High Court of Kerala is whether the decretal amount deposited by the judgment-debtor in pursuance of an order passed by this Court is to be adjusted towards the principal amount due first or against interest and other charges.

The amounts due under the Land Acquisition Award passed by the Court in 1985 comprised of enhanced market value, solatium at 15% and interest at 4% on the additional amount. In cross appeal filed by the appellant, the State and the company the enhancement of market value was affirmed but the appellant was further granted solatium at 30% of the entire market value, additional compensation under Section 23(1-A) of the Land Acquisition (Amendment) Act, 1984 and interest under the amended Section 28 at 9% for the first year and 15% for the subsequent years. The company challenged the order of the High Court by way of Special Leave Petition in this Court in which an order was passed to the following effect:

> "Issue notice confined to the question of admissibility of enhanced compensation with reference to the provisions of the Amended Act, 1984. The learned Attorney General assured us that the compensation as made in the award has either been paid or will be paid and to consider the tenability of adoption of uniform rate of compensation notwithstanding the extent of land acquired."

Later on, the Court granted the stay order which read as under :-

> "The collections of the enhanced compensation, solatium and interest payable by the Petitioner herein pursuant to the judgment and order dated the 1st August, 1986, of the High Court of Kerala at Ernakulam in L.A.A. Nos. referred to above be and is hereby stayed".

As a result of the stay order granted by this Court, the respondent did not deposit any amount. Therefore, the appellant filed an application for clarification of the order which was disposed of on 7th December, 1987 with following observations:

> "Heard learned counsel for the parties. Our order does not grant any stay of claims of compensation as awarded by the Land Acquisition Officer and as enhanced by the reference Court under Section 20 of the Kerala Land Acquisition Act. What has been actually stayed is disbursement of the compensation to the extent it has been escalated by referring to the Amending Act, 1984 by the High Court. The entire compensation not covered by our present clarification shall be paid within six weeks without demanding any security. C.M.P. is disposed of".

After the Order was clarified on 7th December, 1987, the respondent deposited the amount on 9th January, 1988. The appeal was dismissed on 12th September 1989. After the dismissal of appeal, the appellant put the decree in execution in October, 1989 and claimed that after deducting the amount deposited by the respondent towards amount due, they were liable to be paid the balance with interest as directed by the court. It was objected as the respondent having deposited the decretal amount it was liable to pay only the amount which was stayed by this Court, namely, the escalation by the Amending Act of 1984 and the interest thereon. Both the appellant and respondent filed statement showing calculations of the figure arrived at by them. The executing court allowed the application on the ratio laid down by this Court in Meghraj & Ors. v. Mst. Bayabal & Ors., AIR (1970) SC 161. In revision filed by the respondent the order was set aside. The High Court held that even though Order XXI Rule 1 of the Civil Procedure Code was amended in 1976, yet the principle laid down by this Court on the unamended provisions still applied where the judgment-debtor did not specify as to how the amount deposited was to be appropriated. But that principle was held not to be available, in this case, as this Court having directed the respondent to deposit the amount as awarded by the reference court and what was stayed was the enhancement made by the High Court, the deposit made by the respondent on 9th January, 1988 was in satisfaction of both the principal and interest along with cost as granted by the reference court. The court held that where deposit is made in pursuance of an order passed by the court, it was not necessary for the judgment-debtor to specify the manner in which the amount should be appropriated. Reliance was placed on The

Central Warehousing Corporation, Berhampur v. M/s. Govinda Choudhury and Sons, AIR (1989) Orissa 90 and Improve-ment Trust, Jind v. Narinder Kumar, AIR (1990) P&H 326.

The right of the decree-holder to appropriate the amount deposited by the judgment-debtor, either in court or paid outside, towards interest and other expenses is founded both on fairness and necessity. The courts and the law have not looked upon favourably where the judgment-debtor does not pay or deposit the decretal amount within the time granted as one cannot be permitted to take advantage of his own default. Therefore, the normal rule that is followed is to allow the deposit or payment if it is in part to be adjusted towards the interest due etc. In Meka Venkatadri Appa Rao Bahadur Zamindar Garu & Ors. v. Raja Parthsarathy Appa Rao Bahadur Zamindar Garu, AIR (1922) PC 233 the rationale was explained thus:-

> "There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well-established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital".

But the law or even the agreement entered between the parties may provide for adjustment of payment in a particular manner. Section 60 of the Contract Act provides that, "where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it, at his discretion to any lawful debt, actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits".

The words of the Section are clear. It has been construed broadly by the courts. The right of the creditor was further explained judicially in Rai Bahadur Seth Nemichand v. Seth Radha Kishan & Ors., AIR (1922) PC 76 and it was held that the creditor was not bound to accept a payment on condition of the judgment-debtor. For the decrees passed by courts, the provision was made in unamended Order XXI Rule 1 prior to 1976 and it was provided that the amount be deposited in the court whose duty it was to execute the decree. It was further provided by sub-rule 2 that where any payment was made under clause (a) of sub-rule (1) notice of such payment was to be given to the decree-holder. It was this rule which was construed in Meghraj's case (supra). The court held that even though the judgment-debtor while depositing decretal amount from time to time stated that payments were being made towards the principal due but in absence e of any evidence that the decree-holder was informed about the nature of deposit or the decree-holder appropriated it towards the principal, the ordinary rule applied and the payments by the judgment-debtor could be appropriated towards interest and cost as held in Meka Venkatadri case (supra). It may now be seen if the principle laid down in this decision stands diluted by amendment of Rule 1. The relevant portion of the amended Rule reads as under:-

> "O.XXI. R.1.- Modes of paying money under decree:-
>
> (1) All money, payable under a decree shall be paid as follows, namely:-

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs. (2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3).....

(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)."

The amended sub-rule (2) removes the doubt if there was any that the judgment-debtor is not absolved of the obligation of informing the decree- holder by written notice even in respect of deposit in court either directly or by registered post. The purpose of addition of the expression, 'either through court directly or by registered post acknowledgment due' is that the judgment-debtor should not only give notice of payment but he must ensure that the decree holder has been served with the notice. The ratio laid down in Meghraj case (supra) applies now with greater rigour. The reason for the rule both in the unamended and amended provision appears to be that if the judgment debtor intends that the running of interest should cease then he must intimate in writing and ensure that it is served on the decree-holder. Sub-rules (4) and (5) added in 1976 to protect the judgment- debtor provide for ceasure of interest from the date of deposit or payment. But the cessation of interest under sub-rule (4) takes place not by payment alone but from the date of service of the notice referred to in sub-rule (2). It is not necessary for purposes of this case to decide whether the creditor was bound to appropriate the amount towards principal once it was deposited in court and intimation of the deposit was served on the decree-holder as it does not appear that the respondent ever served any notice on the appellant about the deposit. It is true that the amount was deposited in January, 1988. But in absence of any intimation as required by sub-rule (2) and indication of manner of appropriation, the payment could not be deemed to have been appropriated towards principal unless the decree-holder admits it to be so. The reasoning of the High Court that since the deposit was made in pursuance of order of this Court it would be deemed that the deposit was towards principal does not appear to be correct. Factually, there was no direction to deposit. The court only granted an interim order in respect of escalation. Therefore, the judgment- debtor was bound to deposit the decretal amount in accordance with law. And that is provided for by Order XXI, Rule I of the Civil Procedure Code. But mere deposit in absence of any notice and intimation that it was being deposited towards principal it was for the decree holder to appropriate it towards the dues. That is what was laid down in Meghraj case (supra).

There is yet another reason for setting aside the order of the High Court. Once the appeal was decided and it was held that the amount awarded under the amended Act, 1984 did not suffer from

any error of law except the amount under Section 23 (1-A), the parties were relegated to the same position as they were on the date when the interim order was granted. In other words, the amount due was to be paid on the principal amount and it cannot be urged that since the respondent had deposited the amount the principal stood paid and, therefore, no interest or solatium could be calculated on the principal amount.

In the result, these appeals succeed and are allowed. The Order passed by the High Court is set aside and that of the Executing Court is restored. The appellant shall be entitled to his cost.

Appeal allowed.