

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE UMAR ATA BANDIAL**

CIVIL PETITIONS NO. 816-L AND 817-L OF 2009

(On appeal from the judgment dated 31.03.2009 of the Lahore High Court, Lahore passed in FAO No. 143 of 2007&C.R.1058/07).

Najm Koreshi

Petitioner

Versus

Chase Manhattan Bank now Muslim Commercial
Limited, Lahore and others

Respondents

For the petitioner

Rai Ahmed Nawaz Kharal, ASC
a/w petitioner

For the respondent 1

Mr. Munawar-us-Salam, ASC

Date of hearing:

28.04.2015

JUDGMENT

UMAR ATA BANDIAL, J.— The petitioner is the decree-holder under a judgment and decree dated 17.01.1995 passed by the learned Civil Court for the recovery of £152,542.97 from the respondent No.1 judgment-debtor bank with costs and “periodically prevalent interest as prayed for till the realization of the decretal amount” (“**Decree**”). The Decree further allows the judgment debtor bank to “hold” in Pounds Sterling the equivalent of Rs.3,709,505.50 till decision of its claim in respect of a finance facility allegedly provided by the judgment debtor bank to the petitioner decree holder’s business company, respondent No.2. The present dispute between the parties arising from execution proceedings of the Decree is about the method of calculating interest under the Decree:

Whether it is charged on the principal amount decreed or is charged on the aggregate of the said amount and the amount of interest accrued thereon.

2. By RFA No. 290 of 1992 the judgment-debtor bank appealed the said judgment and decree before the learned High Court. It furnished a bank guarantee equivalent to the principal amount under the Decree, that is, £152,542.97 as security for interim relief restraining execution of the Decree taken out by the petitioner vide his application filed on 12.09.1995. The RFA No.290 of 1992 was dismissed by the High Court on 10.11.1998 whereupon the available bank guarantee was encashed and credited in full to the account of the petitioner on 23.12.1998. Thereafter the pending execution application was activated by the petitioner for realization of the remaining amount due under the Decree from the judgment debtor bank.

3. By judgment dated 31.03.2009 (**"Impugned Judgment"**) the learned High Court disposed of the petitioner's Civil Revision No.1058 of 2007 and FAO No.143 of 2007 and the judgment debtor bank's Civil Revision No.812/2007 each filed against the order dated 21.04.2007 passed by the learned Executing Court. The Impugned Judgment affirmed the order under challenge and held that the petitioner decree holder was entitled to receive interest on the principal decretal amount of £152,542.97 from the date of filing of suit on 26.02.1992 up to the date of encashment of the bank guarantee on 23.12.1998. The outstanding amount of interest for the said period was calculated to be £138,644.06 vide order dated 16.07.2001 by the learned Executing Court. This figure was endorsed by the Executing Court's aforesaid order dated 21.04.2007 that is affirmed by the learned High Court. Nevertheless,

the Impugned Judgment has remanded re-calculation of the accrued interest amount under the Decree to the learned Executing Court.

4. The petitioner is aggrieved by the Impugned Judgment of the learned High Court because it denies him payment of interest on the aggregate of the principal amount decreed together with interest accrued on the that amount till realization of the said aggregate as allegedly ordered in the Decree. It is also objected that both the Impugned Judgment and the order of the learned Executing Court dated 21.04.2007 upheld by the said judgment, disregard the fresh calculation of the accrued interest made by a second local commission appointed by a consent order dated 13.03.2007 passed by the learned Executing Court. That calculation is made on compound basis with effect from the date of alleged default by the judgment debtor bank and opines that default by the judgment debtor bank under the Decree is still continuing.

5. To explain his contentions, the learned counsel for the petitioner has read from the decree dated 17.01.1995 wherein the following relief is granted:

"It is ordered that suit of the plaintiff succeeds and therefore a decree for recovery of £152,542.97 (£75,000/- plus £77,542.97) is hereby granted, in terms of foreign currency keeping in view the dictum laid down in case Terni SPA Vs. PECO cited in 1992 SCMR 2238, in favour of the plaintiff and against the defendant No.1 Chase Manhattan Bank (now Muslim Commercial Bank Limited) with costs and periodically prevalent interest as prayed for till realization of the decretal amount. However, the defendant No.1 Bank shall hold an amount in Pounds Sterling equivalent to Rs.3,709,505.50 alleged finance facility given to defendant No.2 company till the decision thereabout by the proper forum."

The learned counsel for the petitioner has argued that the order to pay "periodically prevalent interest as prayed for till the realization of the decretal amount" contemplates two parts of the decretal amount. Firstly, the principal amount adjudged and secondly, the amount of accrued interest chargeable till realization of the decretal amount. The obligation to pay interest under the Decree continues until the aggregate of the said two parts of the decretal amount are discharged fully by the judgment debtor bank. By this treatment interest under the Decree accrues on a compound basis and not at a simple rate. The accumulation of interest on compound basis is allegedly consistent with the term contained in the Decree that interest should accrue "as prayed for in the suit". The prayer in the plaint seeks payment of interest at the agreed rate. According to the conditions of the term deposit slips issued to the petitioner by the judgment debtor bank, the agreed rate of interest is the average of the rates given on the petitioner's two deposits made respectively at 13.125% and 14.125% per annum calculated quarterly on a compound basis. Accordingly, the learned High Court and the learned Executing Court have fallen into error and thereby denied lawful fruits of the Decree to the petitioner.

6. The learned counsel for the respondent judgment debtor-bank has defended the Impugned Judgment. He opposed the claimed entitlement of the petitioner to receive interest payments for the period after payment of the principal amount adjudged, that is, £152,542.97 on 23.12.1998. He argues that the principal amount adjudged under the Decree is the decretal amount. Payment of interest under the Decree is directed until realization of the decretal amount and not on the unpaid interest that has accrued on the said amount during the intervening period. The petitioner's entitlement

to receive interest is for the period commencing the date of filing of the suit on 26.02.1992 until the payment of the decretal amount on 23.12.1998. The interest amount accruing for that period was determined by the learned Executing Court on 16.07.2001 at £138,644.60. After deducting there-from £39,463/- being the foreign currency equivalent of the sum to be withheld under the Decree, the learned Executing Court concluded in the said order dated 16.07.2001 that the interest amount payable to the petitioner for the afore-noted period is £99,181.06. This determination was challenged by the petitioner before the learned High Court through Civil Revision No. 1925 of 2001. However, on 22.03.2006 that petition was withdrawn whereupon the said determination of outstanding interest liability made in Executing Court's order dated 16.07.2001 attained finality. The adjudicated interest amount of £99,181.06 was ultimately paid under order of the Executing Court to the petitioner on 16.02.2010 out of attached funds of the judgment debtor bank lying with the State Bank of Pakistan. Therefore, the judgment debtor bank has fully discharged the principal amount adjudged and the accrued interest amount payable under the Decree. The Decree has accordingly been fully satisfied by the judgment debtor bank. The petitioner is actually claiming interest upon interest to be paid on a compound rate by the judgment debtor bank which claim has no warrant under the Decree.

7. After hearing the submissions by the learned counsel for the parties, the controversy in relation to the satisfaction of the decree dated 17.01.1995 simplifies to the issue whether the obligation of the judgment debtor bank to pay further interest under the Decree accrues upon the outstanding principal amount

adjudged or upon the aggregate of the said amount with the amount of unpaid interest accumulated on the said principal amount. The corollary of the said issue is whether further interest payable under the Decree is to be calculated at a compound rate of interest or a simple rate of interest.

8. It may also be noted at the outset that the charging and payment of interest, *inter alia*, under decrees passed by the Courts of law was declared contrary to the injunctions of Islam and therefore illegal and void by the judgment dated 23.12.1999 passed by the learned Shariat Appellate Bench of this Court in **M. Aslam Khaki vs. Muhammad Hashim** (PLD 2000 SC 225) affirming the judgment dated 14.11.1991 given by the learned Federal Shariat Court in **Mahmood-ur-Rahman Faisal vs. Secretary Ministry of Law** (PLD 1992 FSC 1). Both judgments were set aside by the learned Shariat Review Bench of this Court in **United Bank Ltd. vs. Farooq Brothers** (PLD 2002 SC 800). The matters in issue in the proceedings include, *inter alia*, the identification of the characteristics of financial transactions that bear the taint of Riba. This controversy has by the said review judgment of this Court been remitted to the learned Federal Shariat Court for decision afresh. No decision has yet been rendered in the remanded matter by the learned Federal Shariat Court. Consequently, judicial decrees ordering payment of interest are presently enforceable.

9. It is settled law under the provisions of the Code of Civil Procedure, 1908 ("**CPC**") that an Executing Court has jurisdiction to implement a decree under execution strictly in accordance with its terms. Reference is made to **Naseem Akhtar vs. Shalimar General Insurance Company** (1994 SCMR 22) and **Ahmed Yar Khan Jogezai vs. Province of Balochistan** (2002 SCMR 122). In

the present case, the Decree under execution dated 17.01.1995 neither grants interest for the period prior to filing of the suit nor awards interest on the aggregate of the principal amount of the Decree and interest *pendente lite*. Interest is awarded by the Decree till realization of the “decretal amount”. It is an appealing argument by the petitioner that the payment of further interest until “realization” of the “decretal amount” is an obligation under the Decree; therefore the amount of accumulated further interest forms a part of the decretal amount. Consequently, payment made on 23.12.1998 by the judgment debtor bank in an amount equal to the principal adjudged amount satisfies only a part of the Decree. The bank’s liability to pay interest under the Decree continues and further interest adds up on the unpaid amount of interest that was outstanding when the principal adjudged amount was discharged on 23.12.1998. The rival argument on behalf of the judgment debtor bank is that the petitioner’s contention is entirely presumptuous and finds no support from the terms of the Decree.

10. To evaluate the respective contentions of the learned counsel for the parties set out above it would be useful to first consider the provisions of Section 34 CPC that are relevant to the present dispute. These are reproduced below:

“34. **Interest**—(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

11. It is clear from the foregoing provisions of Section 34 CPC that the Court passing a decree has discretion to order interest at such rates as it deems reasonable accruing for different periods either on principal or aggregate amounts. The said legal provision expressly contemplates the award of interest *pendente lite* on the principal sum adjudged and also post decretal further interest on the aggregate of the said principal sum together with interest accrued thereon till the date of payment of the aggregate amount. As the award of interest on a decree is discretionary therefore, the terms on which it is ordered must be spelled out clearly in the contents of the decree. Otherwise, silence of the decree in the matter of further interest is to be deemed as refusal under Section 34(2) CPC. The rate at which interest is ordered to accrue and whether such interest is to be calculated at a simple rate or a compound rate are also discretionary elements that ought to be specified in a decree.

12. It is a matter of record that the petitioner decree holder withdrew his challenge filed before the learned High Court against the order of the learned Executing Court dated 16.07.2001. This order fixes the outstanding interest amount accruing under the Decree as on 23.12.1998 when an amount of £152,542.97 equivalent to the principal sum adjudged was paid to the petitioner. Accordingly, the said determination of interest attained finality against the decree holder. The judgment debtor bank, however, filed

a review application under Section 114 read with Order XLVII of the CPC against the said order dated 16.07.2001 before the learned Executing Court. This application was a non-starter on both its maintainability and merits and shall be dealt with later.

13. The order dated 16.07.2001 of the learned Executing Court treats the principal amount adjudged by the Decree to be the decretal amount. It determines £99,181.06 as the amount of interest that is outstanding under the decree having been calculated from the date of filing of the suit until the date of realization of the principal amount adjudged. The equivalent of £99,181.06 was ultimately paid to the petitioner through the process of the learned Executing Court on 16.02.2010. Whether the interest amount of £99,181.06 calculated until the date of payment of the principal amount adjudged on 23.12.1998, is also subject to accrual of further interest until its payment on 16.02.2010 depends on the terms of the Decree. The Decree is silent about the accrual of interest on interest or on any aggregate amount. Clearly the Decree does not order the charging of compound interest. On the other hand, it orders for interest to be charged and paid until realization of the decretal amount but the meaning of the term "decretal amount" is not given.

14. For interest under the Decree to be applied and calculated, it is necessary that the base figure, that is, "decretal amount", is an ascertained or a readily ascertainable amount. The view that the expression "decretal amount" should be an ascertained sum finds support from the terms of Order XXI Rule 23-A CPC wherein for raising an objection to a decree, the judgment debtor must deposit or secure the "decretal amount" with the

executing court. Likewise in Muhammad Sadiq vs. WAPDA (PLD 2003 SC 290) it has been held that deposit in Court under Order XXI Rule 1 CPC of money payable under a decree entitles a judgment debtor to the relief of suspension in the accrual of further interest. For a deposit to be made to avail the said relief it is necessary that the requisite amount is ascertained or readily ascertainable. Such a sum is the principal amount adjudged and the decretal amount. In the present case also such sum is the decretal amount upon which interest under the Decree is to accrue.

15. It cannot be disputed that the payment of interest on the decretal amount is also an obligation of the judgment debtor bank under the Decree. This obligation continues until the decretal amount is paid in full. On that reasoning unpaid interest accruing until payment of the principal amount of the decree should add on to the remaining sum of the principal amount adjudged and become a part of the balance decretal amount that is subject to interest. However, as noted above, there is no order in the Decree for payment of interest on the unpaid amount of accrued interest. Interest *pendente lite* and further interest are both discretionary reliefs granted under Section 34 CPC. Unless expressly ordered in a decree such interest accrues on principal amount adjudged and not on the aggregate of that amount with accumulated interest. The net effect in the present case is that accrual of interest occurs at simple rate rather than compound rate. This principle of law stands endorsed in M.Y Malik & Co. vs. Splendours International (1997 SCMR 309).

16. Delay in discharging the decretal obligation to pay interest does not carry any apparent cost for the judgment debtor bank under the Decree. Possibly on that perception the judgment

debtor bank after payment of the principal amount adjudged on 23.12.1998 took its sweet time to pay the amount of interest accrued up to that date. The said accrued amount of £99,181.06 was paid to the petitioner on 16.02.2010, almost 9 ½ years later. Delay in the discharge of the interest liability under the Decree as accrued on 23.12.1998 attracts a principle of law that went unnoticed by learned High Court. This is the principle of appropriation of payments towards the discharge of moneys due under a decree that orders payment of principal amount adjudged, interest and costs. The rule on the appropriation of payments for the adjustment of a debt carrying interest was stated by the Privy Council in **Meka Venkatadri vs. Raja Parthasarathy** (AIR 1922 PC 233). It was held therein as follows:

"The question then remains as to how, apart from any specific appropriation, these sums ought to be dealt with. There is a debt due that carries interest. 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."

That said rule has also been cited with the approval in **Rai Bahadur Seth Nemichand vs. Seth Radha Kishen** (AIR 1922 PC 26). More recently it has been followed by the Indian Supreme Court in **M/s. I.C.D.S. Ltd. vs. Smithaben H. Patel** (AIR 1999 SC 1036). It is explained that:

"14. In view of what has been noticed hereinabove, we hold that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustment, be made firstly in payment of interest and costs and thereafter in payment of the

principal amount. Such a principle is, however, subject to one exception, i.e. that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 to 61 of the Contract Act are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt."

17. In the present case the Decree dated 17.01.1995 does not fix the manner in which payments are to be appropriated under the three heads of liability ordered by it, namely principal sum adjudged, accrued interest thereon and costs of the suit. Applying the above noted principle of appropriation of payments the initial payment of £152,542.97 made by the judgment debtor bank on 23.12.1998 is first to be adjusted against accrued interest amount of £99,181.06 and then costs of Rs.70,223/- leaving an amount of roughly £53,000/- for adjustment against the decretal amount, that is the principal sum adjudged. After appropriating the payment made by the judgment debtor bank in the above mentioned order, an amount exceeding £100,000/- out of the decretal amount remains outstanding for payment on 23.12.1998. That amount accrues interest at the rate applied by the order of the learned Executing Court dated 16.07.2001. The second payment of £99,181.06 made by the judgment debtor bank on 16.02.2010 is again subject to appropriation under the principle cited above. As there remained outstanding a part of the decretal amount after appropriation of payment made on 23.12.1998 therefore such outstanding amount incurs interest until 16.02.2010 when the second payment was made by the judgment debtor bank. Subject to

the calculation and adjustment of accrued interest amount until 16.02.2010 the satisfaction of the decree is to be obtained strictly in accordance with the principle of appropriation of payments that is discussed above. This is a task to be accomplished by the learned Executing Court.

18. During the course of hearing, the learned counsel for the petitioner has forcefully stressed restoration of the order by the learned Executing Court dated 13.03.2007. This order accepted the review application filed by the judgment debtor bank against the order dated 16.07.2001 solely by acting on the consent of the petitioner decree holder to the appointment of another local commission for making a fresh calculation of interest accrued on the decretal amount. No grounds are discussed nor reasons given to justify review of the order dated 16.07.2001. Equally, the binding effect of the order dated 16.07.2001 on the petitioner decree holder following the withdrawal of his Civil Revision No. 1925 of 2001 against the said order stands overlooked by the learned Executing Court. On 21.04.2007, the said learned Court perused the report filed by the new local commission appointed on 13.03.2007. This report recommended £557,910.31 as accrued interest under the decree until 23.12.1998. By order dated 21.04.2007 learned Executing Court rejected the fresh calculation of interest for repeating in entirety the decree holder's version of the interest account submitted in the learned Executing Court. It was also observed that the said report had been prepared without associating the judgment debtor bank. The said order concludes that the local commissioner's report is one sided and that the interest calculation made by the learned Executing Court in its order dated 16.07.2001 is fair and correct. It is clear that the order dated 13.03.2007 by the

learned Executing Court is invalid for its several defects, including the failure to establish the grounds of maintainability of a review application against the order dated 16.07.2001 and the absence of reasons on the merits to justify review. Indeed consent of parties alone cannot reopen closed proceedings nor satisfy legal conditions predicated the exercise of jurisdiction by a Court of law. Accordingly, the order dated 13.03.2007 by the learned Executing Court was rightly disregarded by the same Court in order dated 21.04.2007.

19. For the foregoing reasons, these petitions are converted into appeals and partially allowed. The impugned judgment dated 31.03.2009 of the learned High Court is set aside. However, the remand order made therein to the learned Executing Court is reaffirmed for undertaking afresh the calculation of liability of the judgment debtor bank and the realization of dues under the Decree in accordance with the principles set out above. No order as to costs.

Announced in open Court

on 05.06.2015
at Islamabad.

APPROVED FOR REPORTING.