

**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**(JUDICIAL DEPARTMENT)**

**C.R. No.87/2019**

Pervez Hussain Qureshi

*versus*

Federal Government Employees Housing Foundation & another

Petitioner by: Ms. Robina Shaheen, Advocate.

Respondent No.1 by: Mr. Muhammad Nazir Jawad, Advocate.

Date of Hearing: 17.01.2020.

**MOHSIN AKHTAR KAYANI, J:** Through the captioned civil revision petition the petitioner has assailed the judgment of the learned Additional District Judge (West), Islamabad dated 03.12.2018, whereby order of the learned Executing Court regarding calculation of interest of balance payment was set-aside and direction was issued to the learned Executing Court to calculate interest on simple rate, instead of compound rate.

2. Brief facts referred in the instant civil revision petition are that petitioner being a Government employee, on the basis of provisional offer of allotment letter dated 27.08.1999 filed a suit for declaration to the effect that he is entitled to plot in Category-II on ownership basis in Phase-III of Sector G-13, Islamabad, which was partially decreed in favour of the petitioner to the extent of recovery of deposited amount together with 10% mark-up as well as costs from the date of actual deposit of the dues till actual realization of the same. However, the method at which interest was to be calculated either on simple or compound rate being discretionary element of the Court was not discussed, which put the parties into manifold litigations at different forums and ultimately the learned Executing Court ordered to calculate the interest at compound rate vide order dated 04.05.2018. The Federal Government Employees Housing Foundation (FGEHF) being judgment-debtor and aggrieved thereof preferred an appeal before learned Additional District Judge, which was accepted vide impugned judgment dated 03.12.2018, whereby the learned Executing Court was directed to

calculate the interest on simple rate instead of compound rate as per decree awarded in favour of the petitioner. Hence, the instant civil revision petition.

3. Learned counsel for petitioner contended that admittedly the FGEHF being judgment-debtor had partially paid the decretal amount leaving outstanding amount of Rs.1,442,305.3/- till date despite clear direction of the learned Executing Court to pay the decretal amount in view of judgment and decree dated 28.06.2005; that the petitioner's application filed under Section 47 CPC containing calculation of interest was accepted vide order dated 08.05.2015 and revision thereof filed by the FGEHF/respondent was dismissed on 20.01.2016, against which the FGEHF/respondent moved this Hon'ble Court through W.P. No.1407/2016, which was dismissed *in limine* vide order dated 20.04.2016, therefore, the calculation of interest as mentioned in application filed by the petitioner under Section 47 CPC attained finality, which could not be set-aside by the learned Additional District Judge in appeal at belated stage, therefore, the impugned judgment dated 03.12.2018 may be set-aside.

4. Conversely, learned counsel for respondent FGEHF contended that order of the learned Executing Court dated 04.05.2018 is illegal, against the law and facts; that the petitioner being decree-holder calculated the interest as per compound rate, whereas he is entitled to simple interest; that the FGEHF being judgment-debtor has already paid the entire original amount of Rs.454,900/- deposited by the petitioner together with additional amount of Rs.654,072/- being the interest calculated at 10% per annum, therefore, nothing is outstanding against the FGEHF/respondent, hence, the instant civil revision petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the controversy raised in the instant civil revision is regarding calculation of interest on decretal amount as to whether the same would be calculated on simple or compound basis. The record reflects that the petitioner had filed a suit for declaration to the effect that he in pursuance to allotment letter dated 27.08.1999 issued in his favour is entitled to plot in Category-II on ownership basis in

Phase-III, Sector G-13, Islamabad, which has been launched by the respondent FGEHF. The said allotment was subsequently cancelled, however the learned Trial Court after recording of complete evidence dismissed the suit to the extent of declaration qua the rights of petitioner, though the amount so deposited by the petitioner against the said plot was allowed by learned Civil Judge 1<sup>st</sup> Class, Islamabad vide judgment and decree 28.06.2005 and the same was to be returned through a partial decree in the following manner:

*"As a result of my findings on Issue No.1, suit of the plaintiff is partly decreed only to the extent that he would be entitled to receive and recover the dues deposited by him plus 10% Mark up as well as costs, from the date of actual deposit of the dues till actual realization of the same and the defendant is directed to pay the same within a period of one room from today. To the remaining extent the suit is dismissed."*

7. The above said judgment and decree attained finality as the appeal filed by respondent was withdrawn on 13.06.2011 and later on the petitioner filed execution petition on 13.06.2011 regarding recovery of his deposited amount as well as mark up @ 10% from date of its deposit till actual realization of the amount. The respondent FGEHF filed objection on said execution petition on the ground that petitioner is not entitled for mark up, however the said objection petition was dismissed vide order dated 08.05.2014 with direction to the respondent authority to clear the payment. The respondent FGEHF has assailed the order through revision petition before learned District Judge, which was dismissed vide order dated 20.01.2016. The respondent FGEHF then approached this Hon'ble Court by filing W.P. No.1407/2016, which was also dismissed vide order dated 20.04.2016. However, in this round, the only question left for determination of this Court is regarding the calculation of interest as to whether the same would be calculated on simple or compound basis.

8. It is trite law that the learned Executing Court cannot go beyond the original decree while the terms therein clearly spell out that petitioner was awarded with mark-up of 10% as well as the costs, however the learned Trial Court has not referred the calculation of interest to be made on simple or compound basis, therefore, this Court is

guided by the principles laid down in PLD 1998 Lahore 20 (Raja Nasir Khan vs. Abdul Sattar Khan), whereby it was held that Section 34 of the CPC gives a complete discretion to the Court to award interest if it deems reasonable to do so in the interest of justice and fair play. While considering the timeframe in which the respondent FGEHF has retained the amount, the rise in the prices of property from deposit of amount till its realization, the socio-economic condition prevailing in the country and long delayed payments under vicious and oppressive circumstances, this Court is convinced that all these factors were necessary to be considered by the learned Trial Court for grant of interest and as such, these factors are missing in the judgment of the learned Trial Court. However, the claim of the plaintiff/petitioner as referred in the plaint was not granted by the learned trial Court, rather converted the relief by way of compensation of principal amount together with the interest of 10% per annum till actual realization of the amount with costs, which otherwise shows application of Section 34 of the CPC being discretionary power of the Court.

9. On the other hand, the apex Court in case reported as 2015 SCMR 1461 (Najm Koreshi vs. Chase Manhattan Bank now Muslim Commercial Bank Ltd.), has held that:

*"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 pendent 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."*

10. The above referred principles clearly spell out that payment of interest on decretal amount was obligation of judgment-debtor under the decree and such obligation continue until decretal amount is paid in full, therefore, on such reasoning the unpaid interest accruing until payment of principal amount of the decree should

add on to the remaining sum of principal amount adjudged and becomes part of balance decretal amount that was subject to interest. However, in the present case there was no order in the decree for payment of interest on the unpaid amount of the accrued interest at compound rate, hence the discretionary relief granted by the learned Trial Court in terms of Section 34 of the CPC has to be construed unless it has expressly been ordered in the decree that interest should have been paid on compound rate, the same should have been paid in such manner. Therefore, while applying the said principles, the learned Executing Court cannot go beyond the original decree, which in fact is silent qua application of compound interest.

11. In view of above background, the learned Executing Court shall calculate the interest as referred in the decree on simple interest basis, however the conduct of respondent FGEHF clearly spells out their intentional delay for payment to the petitioner and forced him to unnecessary litigation, due to which petitioner has suffered huge financial loss in terms of time and money.

12. While applying the above principles, since no illegality has been observed in the impugned judgment dated 03.12.2018, therefore, the instant civil revision is not maintainable and same is hereby **DISMISSED**. The respondent FGEHF is also burdened with cost of Rs.100,000/- to be paid within one (01) month to the petitioner for causing delay in the payment of decretal amount.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 03.02.2020.

JUDGE

Khalid Z.