Industrial Credit And Development ... vs Smt. Smithaben H. Patel And Others on 10 February, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1036, 1999 (3) SCC 80, 1999 AIR SCW 669, 1999 (1) LRI 435, 1999 (2) ADSC 19, (1999) 2 ALLMR 434 (SC), 1999 ADSC 2 19, 1999 (3) KANT LD 210, 1999 (2) ALL CJ 1039, 1999 (1) SCALE 393, 1999 SCFBRC 105, 1999 ALL CJ 2 1039, 1999 (3) SRJ 372, (1999) 1 JT 430 (SC), 1999 (1) JT 430, (1999) ILR (KANT) 3329, (1998) 1 ORISSA LR 378, (2000) 1 LANDLR 129, (1999) 2 MAD LJ 114, (1999) 1 SCJ 405, (1999) 2 SUPREME 67, (1999) 2 RECCIVR 45, (1999) 2 ICC 339, (1999) 1 SCALE 393, (1999) 3 CIVLJ 845, (1999) 88 COMCAS 1, (1999) 1 CURCC 142, (1999) 3 KANT LJ 402, (1999) 3 MAD LW 194, (1998) 86 CUT LT 650, (1999) 2 BANKCLR 352

Bench: V.N. Khare, R.P. Sethi

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           CASE NO.:
Appeal (civil)  16902 of 1996

PETITIONER:
INDUSTRIAL CREDIT AND DEVELOPMENT SYNDICATE NOW CALLED I.C.D.S. LTD.

RESPONDENT:
SMT. SMITHABEN H. PATEL AND OTHERS

DATE OF JUDGMENT: 10/02/1999

BENCH:
V.N. KHARE & R.P. SETHI

JUDGMENT:
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JUDGMENT 1999 (1) SCR 555 The Judgment of the Court was delivered by SETHI, J. Whether a judgment debtor has any option or right to make the payment of the decretal amount in the manner he likes unilaterally?

Whether the mere acceptance of such amount by the creditor can be held to be agreeing to the condition put by the judgment debtor while satisfying the decree?

Whether a debtor can unilaterally insist upon the payment of the decretal amount in liquidation of the principal amount in the first instance notwithstanding his liability to pay the interest and costs?, are the questions required to be adjudicated in this appeal.

The facts giving rise to the filing of the present appeal are that in a suit filed by the appellant herein a decree was passed on the basis of the mortgage deed executed by the respondents holding them

liable to pay to the appellant-plaintiff a sum of Rs. 5,25,451.07 together with court costs and current and future interest at the rate of 18 per cent per annum of Rs. 1,80,000 and Rs. 2,31,138.52 from the date of the suit till the date of the payment. The decretal amount was, however, to be paid in monthly instal- ments of Rs. 20,000 commencing from 1.9.1983 after making the deduction of Rs. 20,000 stated to have been paid in the court. In case of default in the payment of two instalments, the plaintiff-appellant was held entitled to bring the suit schedule property for sale and to realise the entire balance due. In the event of the sale proceeds realised from the sale of the mortgaged property being insufficient to satisfy the decree, the appellant was further held entitled to recover the balance amount personally from defendant Nos. 1 to 6 jointly and severally. Finding that the defendants- judgment debtors had not paid the full amount, the appellant filed an execution petition praying to recover the amount by attachment and sale of the scheduled immovable property as also for the arrest of the judgment debtors. The executing court vide order dated 27.2.1993 over ruled various objections of the judgment debtors and held the decree holder entitled to take steps for the recovery of the balance decretal amount. The plea of the judgment debtors that the full payments towards the decretal amount had been made was not accepted by the executing court. The assertion of the judgment debtors that the payments made by them were in liquidation of the principal amount and not towards costs and interest were negatived. It was found on facts that the decree holder had intimated the judgment debtor that the amount paid by them had not been appropriated towards the principal amount. Not satisfied with the order of the executing court, the judgment debtors filed revision petition in the High Court which was accepted and the order of the trial court was set aside vide the judgment impugned in this appeal.

After referring to various judgments of different High Courts and of this Court, the single Judge of the High Court of Karnataka came to the conclusion that as the appellant herein did not reply to the letters accom- panying the installments which was sent by the judgment debtors specifi- cally mentioning that the amount be appropriated against the head of principal, it was to be presumed that there was implied acceptance of the amount towards the principal amount, on the part of the appellant-decree holder. In this context the court held :

> "Under these circumstances, if the respondents desired to dis-regard that instruction, then they ought to have communicated their refusal to the petitioners. It may be that the respondents decided to appropriate the amount in a manner contrary to the instructions from the petitioners which obviously they did."

It may not be out of place to notice at this stage that the learned single Judge of the High Court had not accepted the other contention of the judgment debtors that the decree holder was obliged to have returned the instalment payment if they were not agreeable to the manner of appropriation specified by the judgment debtors and the decree holders were held justified in having accepted the instalments. It was also noticed that immediately after the first payment was made, the decree holder had furnished the statement of accounts to the judgment debtors wherein it was specifically indicated that the payments had been adjusted towards the costs and interest and not the principal amount.

It is not disputed that in the terms of the decree, the trial court had not prescribed any mode for payment of the decretal amount excepting the fixing of instalments. It is also not disputed that there is no agreement between the parties regarding the mode of payment of the decretal amount. It is also the admitted position that the general rule of appropriation of payments towards the debt is that in the absence of a specific condition or agreement to the contrary, the money paid by the judgment debtor is first applied in the payment of interest and cost and then when that is satisfied, in payment of capital or the principal amount.

In Venkatadri Appa Row and Ors. v. Parthasarathi Appa Row, (L.R. 47 IA

150), the Judicial Committee of the Privy Council had held that upon taking an account of principal and interest due, the ordinary rule with regard to payments by the debtor unappropriated either to principal or interest is that they are first to be applied to the discharge of the interest. This Court in Meghraj and Ors. v. Mst. Bayabai and Ors., [1970] 1 SCR 523 reiterated the position of law and held that the normal rule was that in the case of a debt due with interest any payment made by the debtor was in the first instance to be applied towards satisfaction of interest and there-after to the principal. It was for the debtor to plead and prove the agreement if any, that the amounts paid or deposited in the court by him were accepted by the creditor/decree holder subject to the condition imposed by him. In that case the judgment debtor had urged that, when the amount was finally submitted by the mortgagee they were aware of the fact that certain amounts had been paid conditionally and the withdrawal of the amounts deposited in the court amounted to acceptance of the conditions subject to which the amounts were deposited. In the facts and circumstances of that case this court observed thus :

> "..... But the account submitted by the mortgagees shows clearly that they had given credit for the amounts deposited towards the interest and costs in the first instance and the balance only towards the principal. The account submitted by the mortgagees clearly negatives the plea of the mortgagors."

The same is the position in the instant case as earlier noticed and evident from the statement of accounts (annexure `C') admittedly furnished to the judgment debtor immediately after payment of the amounts consequent upon the passing of decree. To the same effect is the letter (annexure `e') and statement of account accompanying it.

Order 21, Rule 1 of C.P.C. provides the mode of paying money under the decree. Payments made to the decree holder out of court are required to be certified for adjustment in terms of Rule 2 of Order 21, C.P.C. Where any money payable under a decree is paid out of court or is otherwise adjusted in whole or in the part to the satisfaction of the decree, the decree holder is to certify such payment and adjustment towards the court whose duty is to execute the decree. The judgment debtor or any person who has become surety for the judgment debtor has also a right to inform the court of such payment or adjustment applying to the court for the issuance of a notice to the decree holder to show cause as to why such payment or adjustment be not recorded as certified and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the court is obliged to record the same accordingly. No payment or adjustment

can be recorded at the instance of the judgment debtor unless it is made in the manner provided under Rule 1 or the payment or adjustment is proved by documentary evidence or the payment or adjustment is admitted by, or on behalf of the decree holder in a reply to the notice given to him under sub-rule (2) of Rule 1, Order 21 of C.P.C. In the absence of payment having been made in accordance with the mode prescribed or the satisfaction recorded under Rule 2, the judgment debtor cannot claim the. benefit of adjustment in the manner insisted upon by him. In order to overcome the legal obstacles in their way, the judgment debtors have sought refuge under the cloak of alleged protection provided by Section 60 of the Indian Contract Act, 1872. It is further submitted that in view of the later judgments of this Court in Mathunni Mathai v. Hindus-tan Organic Chemicals Ltd. & Ors., [1995] 4 SCC 26 and in Prem Nath Kapur and Anr. v. National Fertilizers Corporation of India Ltd. and Ors., [1966] 2 SCC 71, the law laid down in Meghraj's case (supra) has to be held as no good law.

We are of the opinion that such a plea is far-fetched and begged only for the purpose of putting an imaginary defence to the claim of the appellant- decree holder. Section 59 of the Indian Contract Act deals with the application of payment where debt to be discharged is indicated and Section 60 where debt to be discharged is not indicated. The aforesaid sections 59 and 60 are reproduced below :

> "Section 59. Application of payment where debt to be discharged is indicated - Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.
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> Section 60. Application of payment where debt to be discharged is not indicated-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."

A perusal of Section 59 would clearly indicate that it refers to several distinct debts payable by a person and not to the various heads of one debt. The principal and interest due on a single debt or decree passed on such debt carrying subsequent interest cannot be held to be several distinct debts. A Full Bench of the Lahore High Court in Jia Ram v. Sulakhan Mal. A.I.R. (1941) Lahore 386 dealt with the scope of Section 59 to Sections 61 of the Indian Contract Act and held :-

> "Sections 59 to 61, Contract Act, embody the general rules as to appropriation of payments in cases where a debtor owes several distinct debts to one person and voluntarily makes payment to him. They do not deal with cases in which principal and interest are due on a single debt, or where a decree has been passed on such a debt, carrying interest on the sum adjudged to be due on the decree. These sections are based upon the rule of English Law, well settled since (1816) 1 Mer 608 = 14 R R 166 Clayton's case, that where a debtor, owing several distinct debts to one person,

makes a payment to him intimating that the payment is to be applied in discharge of particular debt, the creditor, if he accepts the payment, must apply it accordingly. If, however, the debtor has omitted to intimate and there are no circumstances indicating to which debt the payment is to be applied the creditor may, at his discretion, apply it to any debt actually due and payable to him by the debtor at the time. In case neither party makes the appropria-tion, the payment is to be applied in discharge of the- debts in order of time; and if the debts are of equal standing the payment is made in the discharge of each of them proportionately. It will be seen that these rules have no application to a case in which only one debt is due and at the time of payment, besides the principal sum secured, interest has also accrued due. In such cases, the rule of English Law, laid down as far back as 1702 in (1702) 2 Freeman 261 : 22 ER 1197, Chase v. Box. Is that.....

`if a -man is indebted to another for principal and interest and payeth the money generally, it shall be applied in the first place to sink the interest before any part of the principal should be sunk.' In (1898) 2 Q.B. 460 = 67 L.J. Q.B. 851' 79 L.T. 821 = 47 W.R. 42, Parr's Banking Co. Ltd. v. Yates, Lord Rigby J. described it as "the old and well settled rule" that where both principal and interest are due the sums paid on account must be applied first to interest. That rule, where it is applicable is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract, and would be most unreasonable as against him. Fisher in his standard work on the Law of Mortgages (Edn. 7), P. 620, while dealing with the question of appropriation of payments towards a mortgage debt, states the law as follows :

"Where the debtor claims to be discharged by reason of payments which were not specially made in respect either of the principal or the interest of the mortgage, the rule is that a general payment shall be applied in the first place to sink the interest, before any part of the principal is discharged."

The judgment of the Lahore High Court is based upon sound principle and has kept in mind the intention of the Legislature in enacting Sections 59 to 61 of the Act. We do not agree with the learned counsel of the respondents that Section 60 of the Contract Act has to be read inde-pendently excluding the provisions of Section 59. Accepting such an argu-ment would amount to doing violence to the language employed in the Section and the purpose sought to be achieved by it. Besides, it would also be contradictory in terms. Section 60, if applied independently, cannot be held to be conferring any right upon the judgment debtor as it confers a discretion in favour of the creditor to apply such deposited amount to any lawful debt actually due and payable by the debtor when such debtor omits to intimate the discharge of the debt in the manner envisaged under Section 59. We are of the opinion that Sections 59 and 60, Contract Act. would be applicable only in pre decretal stage and not thereafter. Post-decretal payments have to be made either in terms of the decree or in accordance with the agreement arrived at between the parties though on the general principles as mentioned in Sections 59 and 60 of the Contract Act. As and when such an agreement

either express or implied is relied upon, the burden of proving it would always be upon its propounder. The judgment debtors, in the instant case, are proved to have failed in discharg-ing such an onus. There does not appear to be any obligation on the decree holder to intimate the judgment debtor that the amount paid to him had not been accepted in the manner specified by him in the letter accompany-ing the payment insisting upon such a course would result in unnecessary burden upon the financial institutions and conferment of unwanted unilateral discretion in favour of the defaulters. Acceptance of the plea that the amount paid first should be adjusted in the principal amount would not only be against the provision of law but against the public policy as well, To provide security, continuity and certainity in business transaction, the Legislature has been making specific provisions in that regard which may be found in various provisions of the Negotiable Instruments Act or Order 37, Code of Civil Procedure and other statutory provisions.

The reliance of the learned counsel for the respondents in Mathunni Mathai's case (supra) is misplaced inasmuch as in that case this court had followed the principles of law laid down in Meghraj case (supra) and held :-

> "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 per-mitted 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 Venkatadari Appa Rao Bahadur Zamindar Garu v. Raja Parthasar-thy Appa Rao Bahadur Zamindar Garu, AIR (1922) PC 233 the rationale was explained thus :
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> 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'.
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> 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 :
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> "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 ex-plained judicially in Raj Bahadur Seth Nemichand v. Seth Radha Kishen, AIR (1922) PC 26 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 provisions 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 case. 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 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 costs as held in Meka Venkatadari case. 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 :

Order XXI, Rule 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, acknowledgement due.

(3).....

(4) On any amount paid under clause (a) or clause (c) or 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 acknowledgement 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 applies not with greater rigour."

Similarly, in Prem Nath Kapur's case (supra) this court held the non- applicability of Meghraj case under the peculiar facts of that case and had rightly distinguished its applicability. In this regard the Court observed.

"The ratio in Meghraj case is equally inapplicable to the ap-propriation of debt under the Act. It is seen that by operation of Section 53 of the Act order 21, Rule 1 being inconsistent with the express provisions contained in Sections 34 and 28, stands ex-cluded. The ratio therein, therefore, is applicable only to a debtor and creditor in

> an ordinary civil suit governed by the provisions of the C.P.C. Order 21, Rule 1 being inconsistent with the express provision contained in Sections 34 and 28 of the Act, it cannot stand extended to the cases covered by the Act. It is unfortunate that these provisions were not brought to the attention of this Court when it decided Mathunni Mathai case, which make all the dif-ference. With due respect to our learned brethren who decided that case, we are, therefore, constrained to observe that Mathunni Mathai case cannot be taken to have laid down the correct law."

We have also perused the judgment of the Orissa High Court in Central Warehousing Corporation Berhampur v. M/s. Govinda Choudhary and Sons, AIR (1989) Orissa 90 and are of the view that the facts of that case are distinguishable and that the learned single Judge of the Orissa High Court fell in error by distinguishing the applicability of Meghraj case (supra) to the fads of that case. In view of what we have held hereinabove, we are of the opinion that the learned Judge was not justified to hold `where a debtor makes payment without making any indication as to how the payment is to he 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".

The learned Judge however referred to various circumstances which according to him indicated that the judgment-debtor in that case had made the payments only towards the principal amount and not towards the interest and costs.

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, adjustments, 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.

Under the circumstances, this appeal is allowed by setting aside the impugned order passed by the learned Single Judge and by upholding the order of the executing court. The appellant is also entitled to costs throughout.