

Meenakshi Saxena vs Ecgc Ltd(Formerly Known As Export ... on 18 May, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2831, 2018 (7) SCC 479, (2018) 7 SCALE 639, (2018) 4 CIVLJ 393, (2018) 5 ANDHLD 120, (2018) 3 CURCC 55, (2018) 188 ALLINDCAS 11 (SC), (2018) 3 CAL LJ 65, 2018 (130) ALR SOC 64 (ALL)

Author: N.V. Ramana

Bench: S. Abdul Nazeer, N. V. Ramana

REPORTABLE

THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.5681/2018
(Arising out of SLP (C) No. 6286 of 2017)

Meenakshi Saxena & Anr.

...Appellant (s)

Versus

ECGC Ltd. (Formerly known as Export

...Respondent (s)

Credit Guarantee Corporation of India Ltd.) and Anr.

JUDGMENT N.V. RAMANA, J.

1. Leave granted.

2. This case arises out of the impugned order dated 20.10.2016, in Revision Petition No. 614 of 2015, passed by the National Consumer Disputes Redressal Commission [hereinafter referred as 'NCDRC' for brevity] wherein the NCDRC has allowed the Revision and set aside the order of the District Forum which was confirmed by the State Commission.

3. A brief reference to the facts of the case necessary for the disposal of this case are that, the appellant had purchased an insurance policy No. SCRo000093, dated 27.07.2000, from respondent no. 1 against any loss suffered due to the reason of risks involved in the export of goods from India. Under Clause 13 of the contract, the respondent had agreed

to pay 90% of the accrued loss, in the following manner□ Clause 13□ Percentage of loss payable: The portion of the amount of loss which the Corporation hereby agrees to pay shall be 90%.

4. It would be necessary to note that the parties had explicitly included a clause concerning the rate of currency exchange in the following manner□ Clause 17 □ Rate of Exchange: All payments under this policy shall be in Indian Rupee at the head office of the Corporation and, for the purpose of payment of premiums and losses, the gross invoice value of the shipments invoiced in a foreign currency shall be converted into Indian Rupee at the Bank buying rate of exchange at Mumbai on the date of the relative shipment PROVIDED THAT, devaluation of the currency in which the buyer has to pay takes place before the claim is paid, the amount claimed in Indian currency shall be based on the devalued rate.

5. Coming back to the narration of the facts, appellant had sent a consignment of the goods by invoice no. 1, dated 01.04.2002, to M/s. Parveena Enterprises (NF) France for value of 11875.75 Euro vide bill of Lading No. PONLDEL 27008966 dated 24.04.2002. Even though the purchaser of the goods accepted the delivery, but failed to make payments to the appellant [seller]. After considering the claim of the appellant, respondent no. 1 offered to pay a compensation amounting to 79.5% of the loss, instead of 90% of the loss.

6. Aggrieved by the same, appellant filed a complaint before the District forum against the respondents, alleging deficiency in service on the part of the respondent.

7. The District Forum by order dated 12.10.2006, allowed the complaint and directed the respondent herein (Insurer) to pay as under□ We accept the present complaint and direct the Ops to pay the 90% of the value of 11875.75 Euro (goods exported by the petitioner vide Lading No. PONLDEL 27008966 dated 24.04.2002) together with interest at rate of 12% per annum from 24.7.2002 (because three months time was sufficient for the OPs to settle the claim) till the realization together with Rs. 3300/□ as litigation expenses within a period of 30 days from the date of receipt of copy of this order.

(emphasis provided)

8. Even the appeal before the State Commission and a further revision before the NCDRC were ended up in dismissal, therefore, the order passed by the District Forum with regard to the liability of the respondent/insurance company has attained finality.

9. Despite the order dated 12.10.2006, passed by Ld. District Forum, when the respondent no. 1 failed to make the payment to the petitioner□ complainant as per the terms set□ out therein, the appellant preferred an Execution Petition No. 34 of 2013 before the District Forum, Panipat. During the pendency of the execution petition, the respondent paid a sum of Rs. 11,23,906/□ to the

appellant/deGREE holders calculated on the basis of conversion rate of 11,875.75 Euros as on 24.04.2002 and the interest calculated thereon. The appellant/deGREE holders while accepting the said payment disputed that the payment satisfied the decree, mainly on the plea that value of the Euros payable should have been calculated on the conversion rate applicable on the date of payment.

10. The District Forum taking into consideration all these aspects, has allowed the Execution Petition with the following observations:

“After hearing counsel for both the parties and after perusal of the order of this forum it is very clear that this forum has passed an order to pay 90% of value of 11,875.75 Euro. As such, the OP was to pay the amount in Indian currency whichever was the value of Euro. Specifically, when court is passing an order for payment of amount as value of Euro the OP is bound to pay the value of Euro when he is making the payment. Order of this forum was passed in 2006 but till 2013 ECGC has not paid the amount to the complainant in compliance of the order. Now at this stage it is well settled law that executing court cannot go behind the decree under execution. In view of the order of this Forum, the ECGC has to pay the value of Euro when he is paying the amount. Amount is to be paid in value of Euro whichever value exists at the time of payment, in compliance with the order of this Forum. In view of the above discussion, certainly ECGC has not paid the complete amount as per order passed by this Forum. Hence ECGC is further directed to pay the amount (sic) (emphasis supplied)

11. Respondent/insurance company being aggrieved by the aforesaid order of the Executing Court approached the State Commission of Haryana in Revision Petition No. 66 of 2014. The State Commission of Haryana did not find any merit in the petition and dismissed the same. Again, the respondent approached the NCDRC in revision being Revision Petition No. 614 of 2015. Interestingly, the NCDRC, by order dated 24.03.2015, dismissed the revision petition as withdrawn with a liberty to the Respondents to approach the appropriate forum.

12. However, thereafter, respondents approached this court by filing a special leave petition being SLP (C) No. 21085□86/2015 (later converted into Civil Appeal No. 6108□6109 of 2016). This Court by order dated 11.07.2016, while allowing the appeal, remanded the matter back to the NCDRC for consideration on merits under the revisional jurisdiction in

the following manner□We have heard learned counsel for the parties at some length. Our attention has been drawn by learned counsel for two parties to an order dated 9th January, 2015 passed by a Full Bench of the National Commission in Revision Petition No. 1792 of 2012 whereby the National Commission has taken the view that although no appeal is maintainable against the order passed by the State Commission in exercise of its appellate jurisdiction, any order passed by the State Commission in exercise of its appellate or revisional jurisdiction can be challenged before the National Commission by way of revision under 21(b) of the Consumer Protection Act. Learned counsel for the appellant submits that the appellant is ready to take resort to the revisional jurisdiction of the National Commission in the light of the Full Bench decision of the National Commission, mentioned above, and that the matter could for that purpose be remitted back to the National Commission. We accordingly allow these appeals but only to the extent that order dated 24 th march, 2015 passed by the National Commission dismissing the revision petition filed by the appellant shall stand set aside, Revision Petition No. 614 of 2015 restored and remitted back to the National Commission for the disposal in accordance with the law in the light of the Full Bench decision of the National Commission, referred to earlier.

(emphasis supplied)

13. On remand NCDRC, by order dated 20.10.2016, which is impugned before us has allowed the revision of the respondent on the ground that the Clause 17 of the Contract had explicitly provided for the rule for calculating the rate of conversion in the following manner□

11. On bare reading of the above, it is clear that as per the insurance contract, the opposite party insurer was required to pay the insurance claim as per the conversion rate of the invoiced foreign currency in Indian rupee as per the bank buying rate of interest at Mumbai on the date of subject shipment for which the invoice was issued.

Undisputedly, sum of Rs. 11,23,906 paid by the judgment debtor was calculated on the basis of conversion rate applicable at the time of shipment of invoiced value and the interest awarded by the consumer forum. Therefore, it cannot be said that any further amount is due from the opposite party under the decree. Both the fora below have passed the impugned order in utter disregard of the expressed term no. 17 of the insurance contract. The order thus suffers from material irregularity and cannot be sustained.

14. Aggrieved by the order of the NCDRC, the petitioner is in appeal before this Court by a special leave petition.

15. Heard counsel appearing on behalf of both parties and perused the material available on record.

16. Before we dwell on to the merits of this case, we would like to note certain aspects of execution of a decree. Section 25 and 27 of the Consumer Protection Act, 1986, provides for execution of awards. It would be relevant to note that the 'execution' means □ The word 'execution' in its widest sense signifies the enforcement of or giving effect to the judgments or orders of the court of justice. In a narrower sense, it means the enforcement of those judgments or orders by a public officer under the writs of fieri facias, possession, delivery, sequestration, fieri facias de bonis ecclesiasticis, etc.

17. The amended Section 25 of the Consumer protection Act, which is effective from 15.3.2003 may be relevant to be noted □ "25. Enforcement of orders of the District Forum, the State Commission or the National Commission □ (1) Where an interim order made under this Act, is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub □ section (1) shall remain in force for more than three months at the end of which, if the non □ compliance continues, the property attached maybe sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto. (3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such district Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue."

(emphasis supplied)

18. The whole purpose of Execution proceedings is to enforce the verdict of the court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value. It is settled law that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree.

19. In the facts and circumstances of the case there is no dispute about the fact that the liability of the respondent company to a tune of 90% value of 11875.75 Euros with interest at the rate of 12% from 24.7.2002 has attained finality. As per the calculation memo filed by the appellant in execution proceedings she claimed total amount of Rs. 25,76,883.00 i.e principal amount of Rs. 7,61,105.00 calculated @ Rs 71.21 per Euro as on 17.4.2013 being 90% value of 11,875.75 Euros. Further interest granted by the court from 24.7.2002 to 24.4.2013 to a tune of Rs. 18,12,478.00.

20. Admittedly, during the pendency of the execution proceedings an amount of Rs. 4,86,953 as 90% value of 11,875.75 Euros as on 24.4.2002 and interest thereon of Rs. 6,33,653 as directed by the court were paid by the respondent herein. Both the State Commission and District Commission interpreted the order dt 12.10.2006 observing that Euro conversion rate has to be calculated as on the date of payment and hence the respondent company has to pay the remaining amount. However the NCDRC has taken a different view while interpreting clause 17 of the agreement and concluded that conversion rate has to be as on the date of subject shipment for which the invoice was issued and as the full amount with the same calculation is paid by the respondent, NCDRC has dismissed the revision petition.

21. In the light of the above findings of the forums, in the light of the arguments advanced, we have to examine whether the interpretation adopted is in the process of giving a true effect to the decree or they have gone beyond the decree by drawing a new decree. We are compelled to observe that an order which is passed in the year 2006 is still subject to litigation till date for the simple reason minimum care is not taken by the forum to clarify the reckoning date for conversion rate of currency.

22. In a contractual matter, when the decree is silent with regard to the reckoning date of conversion of foreign currency in to Indian rupees, what would be the methodology to be followed by the executing court is no more res integra, as this court has an occasion to deal with elaborately in the case of Forasol v. ONGC, 1984 (Supp.) SCC 263, the facts of that case revolved around a contract entered into between ONGC and Forasol for carrying out structural drilling in relation to the exploration of oil in the Jaisalmer area. The contract mandated a part payment in the foreign currency i.e., French francs. Due to belligerent situation prevalent between India and Pakistan in 1965, the contract was suspended. In the meanwhile the Indian currency was devalued resulting in Forasol claiming higher conversion rate. As the dispute was not settled, the matter was referred to an arbitration. For the present, it is sufficient to note that by the award of the arbitrator/Umpire mandated conversion at the rate of FF 1000 equal to 1517.80 instead of exchange rate of FF 1.033 equal to Re. 1.000. The aforesaid award was filed before the Delhi High

Court, which accordingly passed the decree on 07.05.1975 without any objections from the parties as to the form.

23. Thereafter, the Forasol filed an application for execution of the award being Execution No. 77 of 1976. ONGC objected to the aforesaid execution by contending that the rate specified in the award was to be limited to the interest granted thereon and the same does not affect the main contractual amount. The learned single Judge negatived all the contentions of ONGC. On appeal before the Division Bench, the High Court accepted the contention of ONGC and therefore, Forasol appealed before this court. The question before the court was concerning choosing the best date for the rate of conversion was expressed as under□

23. The question which now remains to be considered in Forasol's appeal is the date to be selected by the Court for converting into Indian Rupees the French Franc part of the said award in respect of which no rate of exchange has been fixed either by the said contract or the said award.

(emphasis supplied)

24. This Court recognized the principle that a determination of relevant date for conversion of currency would first take place in accordance with the contractual provision and thereafter, if such explicit determination is not available, then the court would have to determine the best possible date.

25. Further this court recognized the discretion of the Court to select the relevant dates and pointed out some of them in the following manner□

24. In an action to recover an amount payable in a foreign currency, five dates compete for selection by the Court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided. These dates are:

(1) the date when the amount became due and payable;

(2) the date of the commencement of the action;

(3) the date of the decree;

(4) the date when the Court orders execution to issue; and (5) the date when the decretal amount is paid or realised.

25. In a case where a decree has been passed by the Court in terms of an award made in a foreign currency a sixth date also enters, the competition, namely, the date of the award. The

case before us is one in which a decree in terms of such an award has been passed by the Court.

(emphasis supplied)

26. Ultimately this Court on an extensive analysis came to a conclusion in the following manner□

70. It would be convenient if we now set out the practice, which according to us, ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court. It is unnecessary for us to categorize the cases in which such a claim can be made and decreed. They have been sufficiently indicated in the English decisions referred to by us above. Such instances can, however, never, be exhausted because the law cannot afford to be static but must constantly develop and progress as the society to which it applies, changes its complexion and old ideologies and concepts are discarded and replaced by new. Suffice it to say that the case with which we are concerned was one which fell in this category. In such a suit, the plaintiff, who has not received the amount due to him in a foreign currency, and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency.

For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount due to him. In either event, the valuation of the suit for the purposes of court fees and the pecuniary limit of the jurisdiction of the court will be the amount in Indian currency claimed in the suit. The plaintiff may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaint would be for a decree that the defendant do pay to him the foreign currency sum claimed in the plaint subject to the permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted and that in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the defendant do pay to the plaintiff the rupee equivalent of the foreign currency sum claimed at the rate of exchange prevailing on the date of the judgment. For the purposes of court fees and jurisdiction the plaintiff should, however, value his claim in the suit by converting the foreign currency sum claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange

is. He should further give an undertaking in the plaint that he would make good the deficiency in the court fees, if any, if at the date of the judgment, at the rate of exchange then prevailing, the rupee equivalent of the foreign currency sum decreed is higher than that mentioned in the plaint for the purposes of court fees and jurisdiction. At the hearing of such a suit, before passing the decree, the court should call upon the plaintiff to prove the rate of exchange prevailing on the date of the judgment or on the date nearest or most nearly preceding the date of the judgment. If necessary, after delivering judgment on all other issues, the court may stand over the rest of the judgment and the passing of the decree and adjourn the matter to enable the plaintiff to prove such rate of exchange. The decree to be passed by the court should be one which orders the defendant to pay to the plaintiff the foreign currency sum adjudged by the court subject to the requisite permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted, and in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the equivalent of such foreign currency sum converted into Indian rupees at the rate of exchange proved before the court as aforesaid. In the event of the decree being challenged in appeal or other proceedings and such appeal or other proceedings being decided in whole or in part in favour of the plaintiff, the appellate court or the court hearing the application in the other proceedings challenging the decree should follow the same procedure as the trial court for the purpose of ascertaining the rate of exchange prevailing on the date of its appellate decree or of its order on such application or on the date nearest or most nearly preceding the date of such decree or order. If such rate of exchange is different from the rate in the decree which has been challenged, the court should make the necessary modification with respect to the rate of exchange by its appellate decree or final order. In all such cases, execution can only issue for the rupee equivalent specified in the decree, appellate decree or final order, as the case may be. These questions, of course, would not arise if pending appeal or other proceedings adopted by the defendant the decree has been executed or the money thereunder received by the plaintiff.

27. In the light of the ratio laid down by this court in determining the relevant date for conversion of currency, the first procedure to be adopted by the court is to decide the same in accordance with terms of the contract, if such a clause is not available in the agreement then the courts have to determine the best possible date, then this court went ahead and dealt with the procedure to be adopted. But in the present facts that exercise is not relevant as there is a specific clause in the agreement i.e clause 17 which deals with rate of interest. The clause clearly says that currency should be converted into rupees at the bank buying rate of exchange at Mumbai on the date of relevant shipment. A close look at the relevant order dt. 12.10.2006 also discloses that the district forum has granted interest on the amount from 24.7.2002 which can be

construed that the District Forum though has not mentioned about clause 17 of the agreement but taking in to consideration the very same clause has given interest from that day. The interpretation given by District Forum as well as the State Commission to the order dt. 12.10.2006 is contrary to the terms of the agreement and amounts to drawing a new decree which is not permissible.

28. We are unable to agree with the contentions of the learned counsel for the appellant that the NCDRC has gone beyond the decree and the NCDRC ought not to have gone into clause 17 are meritless hence rejected. In a case of this nature the only remedy available to the court is either to look at the terms of the contract or in the absence of the same to follow the procedure laid down by this court in the above stated judgment. The order passed by NCDRC is strictly in accordance with the settled legal position and we do not find any infirmity with the order.

29. In conclusion, reading the judgment as a whole, without undertaking a piece meal approach as suggested by the appellant herein, interpreting the decree in a manner which may amount to substitution of a new decree is not countenanced under law. Therefore, it is clear that as per the insurance contract, the respondent insurer was required to pay the insurance claim in accordance with the conversion rate of the invoiced foreign currency in Indian rupee as per the bank buying rate of interest at Mumbai on the date of subject shipment for which the invoice was issued. We are apprised of the fact that the respondent judgment debtor has paid an amount of Rs. 11,23,906 / - to the petitioner during the pendency of execution proceedings. The aforesaid payment was calculated on the basis of conversion rate applicable at the time of shipment of invoiced value and the interest awarded by the consumer forum. In view of the same the respondent has complied with the order of the forum by paying full and final amount in terms of the order.

30. Hence, we find no grounds to interfere with the order of the NCDRC which is based on sound principles of law. Accordingly, this appeal is dismissed.

.....J. (N. V. RAMANA)J.
(S. ABDUL NAZEER) NEW DELHI, MAY 18, 2018.