GAHC010043322024

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/32/2024

NEW INDIA ASSURANCE CO. LTD.,
HAVING ITS REGISTERED OFFICE AT NEW INDIA ASSURANCE BUILDING, 87, MAHATMA GANDHI ROAD, MUMBAI, ITS NORTH EAST REGIONAL OFFICE AT ULUBARI, G.S. ROAD, GUWAHATI, ASSAM AND BRANCH OFFICE AT JORHAT, ASSAM, REPRESENTED BY ITS AUTHORIZED SIGNATORY.

VERSUS

M/S MALPANI INDUSTRIES
A PARTNERSHIP FIRM HAVING ITS HEAD OFFICE SITUATED AT BENGENAKHOWA, GOLAGHAT, ASSAM AND ITS VENEER AND SAW MIL AT DEHINGIA GAON, P.O. SILONIJAN, DIST. GOLAGHAT, ASSAM, PIN-785602.

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the petitioner : Mr. D Mozumder
Senior Advocate
Mr. RK Bhatra
Ms. P Hujuri
Mr. N Dhar

Advocates for the respondent : Mr. DK Mishra
Senior Advocate
Mr. B Prasad

Date of hearing & Judgment : **09.04.2024**

JUDGMENT & ORDER (ORAL)

This is an application under Article 115 of the Code of Civil Procedure, 1908 (for short, the Code), challenging the order dated 18.12.2023 passed in Misc.(J) Case No.24/2021 arising out of Title Execution Case No.3/2020 whereby the application so filed by the petitioner who was the judgment debtor was rejected thereby holding *inter alia* that the calculations so made in the execution application to the tune of Rs.4,73,00,565/- plus the cost awarded in the decree and the costs of the execution have to be paid by the judgment debtor/the petitioner herein.

2. I have heard Mr. D Mozumder, the learned senior counsel assisted by Mr. RK Bhatra, the learned counsel appearing on behalf of the petitioner and Mr. DK Mishra, the learned senior counsel assisted by Mr. B Prasad, the learned counsel appearing on behalf of the respondent.

3. The issue involved in the instant application is as to what interest the decree holder/the respondent herein would be entitled to and what would be the actual amount which is required to be paid by the judgment debtor for the purpose of satisfaction of the decree as it presently stands. For the purpose of

deciding the same, it is relevant to take note of certain factual aspects which led to the filing of the instant petition.

4. The respondent herein is a partnership firm registered under the Indian Partnership Act, 1932. The respondent was running a veneer and saw mill situated at Dihingiagaon P.O: Silonijan under Bokajan Police Station in the District of Karbi Anglong. The respondent had taken an insurance policy in respect to its mill premises. On 22.03.2001 at 00.30 hrs, a fire broke in, wherein as per the respondent, all the logs lying in the open, excepting one log was completely destroyed. The judgment debtor was informed, as alleged in the statement made in the plaint, on 23.03.2001. This aspect was duly acknowledged by the letter dated 26.03.2001 by the defendant No.3 in the suit (an official of the judgment debtor). It may be relevant to mention here that on 23.03.2001, the surveyor so appointed by the petitioner herein had visited the place, took photographs, examined witnesses and obtained various clarifications and documents. Subsequent thereto, the surveyor made various queries with the respondent herein and thereupon no steps was taken for the purpose of releasing the due claims of the respondent, for which a suit was filed by the respondent before the Court of the learned Civil Judge (Senior Division) Golaghat claiming an amount of Rs.2,26,75,388/-; future interest @18% per annum from the date of institution of the suit till full and final recovery; cost of the suit and for other relief and reliefs.

5. In Schedule A to the plaint, the respondent as plaintiff gave details as to how it assessed the value of the destroyed logs, which was quantified at Rs.1,67,33,986/- by taking into consideration the size of the logs in cum and

then multiplying each cum of logs @ Rs.5,300/- per cum. In Schedule B to the plaint, the plaintiff/respondent herein gave details as to on what basis the plaintiff/respondent herein claimed a decree for Rs.2,26,75,388/-. It is pertinent to mention herein that in Schedule B to the plaint, the plaintiff/respondent herein claimed interest @ 18% per annum from 22.03.2001 till 13.03.2003 i.e. the period from the date of fire till the date of filing of the suit. The said suit was registered and numbered as Money Suit No.09/2003. The defendants in the said suit, filed their written statement, denying any liability on various grounds. On the basis of the pleadings, as many as 15 issues were framed. For the purpose of the adjudication of the instant proceedings, the issue No.xii, xiv and xv being relevant are reproduced hereinbelow:

xii. Whether the defendants are liable for payment of interest for non-settling the plaintiff's claim and/or for non-payment of plaintiff dues in time?

xiv. Whether the plaintiff is entitled to a decree as prayed for?

xv. To what other relief/reliefs the parties are entitled?

6. From the above-quoted issues, it would be seen that the Issue No.xii dealt with two types of interest, the first pertains to interest for non-settling the plaintiff's claim and the second pertains to non-payment of the plaintiff's dues in time. The Issue No.xiv related to as to whether the plaintiff is entitled to a decree as prayed for and the Issue No.xv was in relation to what relief/reliefs the parties were entitled to?

7. The learned Trial Court vide the judgment and decree dated 07.03.2013

decreed the suit in favour of the plaintiff/respondent herein. Taking into consideration, the issue involved herein, this Court finds it relevant to take note of how the learned Trial Court decided the Issue Nos.xii, xiv and xv. In paragraph 48 of the said judgment passed by the learned Trial Court, it was opined that the plaintiff/respondent herein had duly fulfilled the demanded documents of the defendants/petitioner herein to settle the claim and even after two years of the request made by the plaintiff/respondent herein and the correspondences, the defendants/petitioner herein did not pay any heed for which the plaintiff/respondent herein suffered financial loss. It was categorically observed that the enquiry was required to be completed within a month, but the defendants/petitioner herein failed to do so and it is under such circumstances, the plaintiff/respondent had been compelled to file the suit. This finding is very relevant taking into account that this aspect duly touches the first part of the Issue No.xii.

8. The learned Trial Court further arrived at a finding that in terms with Section 70 of the Indian Contract Act, 1872 (for short, the Act of 1872), the defendants/petitioner herein were liable to compensate the plaintiff/respondent herein and as such arrived at an opinion that the defendants are liable for making payment of interest for non-settling the plaintiff's claim and non-payment in due time, which, therefore, touches the second part of the Issue No.xii. It is also very apposite to mention that the learned Trial Court while deciding the said issue dealt with the Regulation 9(6) of the Insurance Regulatory and Development Authority (Protection of Policy Holders' Interest) Regulation, 2002 (for short, the Regulation of 2002), but the learned Trial Court categorically observed that the plaintiff/respondent herein would be entitled to

interest @ 2% above the prime lending rate of schedule Bank as on the date of the said judgment and decree i.e. 07.03.2013. The said observation and findings of the learned Trial Court in respect of the Issue No.xii has great relevance for the purpose of adjudicating the instant case, *inasmuch as,* the learned Trial Court duly dealt with as to why the plaintiff was entitled to interest and from when.

9. Let this Court now take into consideration as to how the learned Trial Court dealt with the Issue Nos.xiv and xv. While deciding the Issue No.xiv and xv at paragraph 49, the learned Trial Court held that the plaintiff/respondent herein had been able to prove and establish that it was entitled to the recovery of money as prayed for, whereas the defendants/petitioner herein failed to establish that the logs and timbers were valueless due to exposure to sun and rain and attack of white ants and further the defendants also failed to prove that the logs and timbers were set on fire willfully and intentionally in order to destroy the same for wrongful gain by the plaintiff. In the penultimate paragraph of the judgment passed by the learned Trial Court i.e. at paragraph 50, the learned Trial Court granted the decree as prayed for. However, only instead of granting future interest @ 18% per annum had granted interest @ of 2% above the bank lending rate as per IRDA which is to be calculated as per bank norms as on 07.03.2013 on the decreetal amount per annum with effect from the date of institution of the suit i.e. 13.03.2003 till full and final recovery of the decreetal amount. Paragraph 50 of the said judgment of the learned Trial Court being relevant is reproduced hereinbelow:

> "*50. In the result, the suit is decreed in favour of the plaintiff on contest with cost for recovery of Rs.2,26,75,388/- (Rupees two crore twenty six*

lakh seventy five thousand three hundred eighty eight) only from the defendants along with further interest 2% above the bank lending as per IRDA which is to be calculated as per bank norms as on today i.e. 07.03.2013 on the decreetal amount per annum with effect from the date of institution of the suit i.e. 13.03.2003, till full and final recovery of the decreetal amount."

10. Being aggrieved by the said judgment and decree dated 07.03.2013, passed by the learned Trial Court, an appeal was preferred before this Court (hereinafter to be referred to as "the Coordinate Bench of this Court") by the petitioner herein which was registered and numbered as RFA No.40/2013. The Coordinate Bench of this Court vide its judgment and decree dated 27.11.2015 partly interfered with the said judgment and decree passed by the learned Trial Court by modifying the entitlement of the plaintiff. The modification was to the effect that while the learned Trial Court granted the decree on the basis of 2850 logs, which was claimed by the plaintiff, the Coordinate Bench of this Court had limited the entitlement of the plaintiff to 414 logs.

11. It is apposite herein to take note of that the Coordinate Bench of this Court while deciding the said appeal formulated five points for determination. The point for determination No.D and E being relevant for the purpose of the instant decision, the said points for determination No.D and E are reproduced as under:

(D). Whether the plaintiff is entitled to the principal amount claimed in the suit under Exts.44 and 45 and if so, to what extent?

(E). Whether the plaintiff is entitled to claim interest?

12. While deciding the point of determination at (D), the Coordinate Bench of this Court had categorically opined at paragraph 50 of the said judgment and decree to the effect that the plaintiff/respondent herein failed to prove that 2850 number of logs were stacked inside the mill premises and had been burnt in the fire inside the premises. It was opined that the evidence on record suggested that there were only 414 numbers of logs burnt inside the mill premise, hence the learned Trial Court was not correct in deciding the Issue Nos.ix, xi and xiv in favour of the plaintiff by holding that the plaintiff was entitled to a decree for recovery of an amount pertaining to 2850 logs out of the total inventoried logs numbering 3050 as per the stock register. Therefore, the Coordinate Bench of this Court interfered with the said issues to that extent. While concluding the said point of determination, it was unambiguously observed that the amount awarded to the plaintiff under the impugned decree shall remain confined to 414 numbers of logs only.

13. The point for determination No.E i.e. whether the plaintiff was entitled to the claim of interest was dealt with in paragraphs 52, 53 and 54 of the said judgment and the same being relevant, is reproduced hereunder:

> "*52.1t has already been discussed herein before that the plaintiff was entitled to the benefit under the insurance policy to fhe extent of such number of logs burnt in the fire incident as woutd be covered by the policy document. It is not in dispute that the plaintiff firm had lodged its claim soon after the fire incident that took place in the month of March, 2001. The documentary evidence available on record shows that the plaintiff firm had furnished all necessary information including the documents that had been called for by the defendants having relevance for the purpose of settlement of the claim. Despite the fact that the demands made by the defendants were represented on all occasions, yet, the plaintiff firm had furnished all such documents on time and as per*

the demand made by the defendants.

53. As per the IRDA guidelines the defendants side was required to settle the claim within 30 days from the date of submission of the report of the surveyor. However, in the instant case the insurer had neither repudiated the claim of the plaintiff nor settled the same despite receipt of the surveyor report. Save and except alleging certain suspicious circumstances leading to the fire incident the defendants have failed to offer any justifiable ground for delaying the settlement of the insurance claim. Since the rights and obligations of the parties are governed under the contract having a commercial angle in the matter, it is obvious that delay in settlement of claims would have adverse financial implications on the insured, Records do not disclose any justifiable ground for the Insurer to delay the settlement of the claim over a period of 16 months after the claim was lodged.

54. It is not in dispute that as per the IRDA Regulations, the insured will be entitled to claim interest on the claimed amount if the settlement is delayed beyond 30 days from-the date of submission of the surveyors report. It is also not in dispute the RDA Regulations permit a claim of interest payment by the insurance claimant at the rate decreed by the learned trial court. In the Memorandum of appeal although the defendants/appellants have taken ground no.XIII questioning decision of the trial court as regards issue no. XII, yet, during the hearing of the appeal no argument has been advanced by the learned counsel for the appellants on the said point. A reading of the ground taken in the memo of appeal also does not indicate with any degree of clarity or precision as to on what basis the decision of the trial court rendered in issue no. XII is being assailed: On the contrary what can be seen is that the said ground pertained to the decision rendered in issue no. VIII. As such, I am of the considered opinion that the learned trial Court has rightly decided the issue Nos.X, XII & XV in favour of the plaintiff by awarding interest at the rate of Rs.2% above the Bank lending rate as per the IRDA regulations with effect from the date of institution of the suit i.e. 13.03.2003 till realization of the full and final amount."

14. From the above quoted paragraphs, it would be seen that the Coordinate Bench of this Court had duly taken note of two aspects of the matter. The first, the entitlement of the plaintiff to claim interest from March, 2001 on the basis that the settlement after the surveyor's report should have been within 30 days and the second is as regards the *pendente lite* and future interest also. The Coordinate Bench of this Court had affirmed that part of the judgment of the learned Trial Court in so far as the Issue No.xii.

15. It is, however, very significant to mention that the judgment and decree passed by the Coordinate Bench of this Court dated 27.11.2015 in RFA No.40/2013 was not put to challenge by the defendants/the petitioner herein. The plaintiff/respondent herein had put to challenge the said judgment and decree in so far as it interferes with the entitlement of the plaintiff as regards 2850 logs and limiting the entitlement to 414 logs. The said Appeal is pending before the Supreme Court in SLP(C)Nos.28277/2019 (Civil Appeal No.9334/9335 of 2019). It is also relevant to note that the Supreme Court had by its order dated 06.12.2019, granted the leave and clarified that the grant of the leave shall not come in the way of the disbursement of the claim which has been allowed by the Coordinate Bench of this Court in favour of the Appellant i.e. the Respondent herein.

16. On 04.06.2020, an application was filed by the respondent herein seeking assistance of the learned Executing Court for the execution of the decree passed by the Coordinate Bench of this Court on 27.11.2015 in RFA No.40/2013 claiming an amount of Rs.4,73,00,565/-. The said amount claimed was the amount of the principal with interest till 31.05.2020; further interest as per the decree to be calculated in the due time. In addition to that, the respondent herein sought for recovery of the cost awarded of an amount of Rs.21211/- as well as also the cost for the purpose of carrying out the execution of the decree. To the said application, a Schedule was attached giving the details, on the basis of which, the decreetal amount was claimed. This Court shall deal with the Schedule to the Application at a later stage of the instant Judgment. The said application was numbered as Money Execution No.03/2020.

17. The petitioner herein filed an objection to the said execution proceedings on the ground that the calculations which was made and on the basis of which the decree was sought to be executed was not in terms with the judgment and decree passed by the Coordinate Bench of this Court. Subsequent thereto, this objection was converted into an application under Section 47 and registered as Misc.(J) Case No.24/2021.

18. The learned Executing Court thereupon hearing both the parties, passed the impugned order and it is under such circumstances, the judgment debtor/petitioner herein had invoked the revisional jurisdiction of this Court under Section 115 of the Code.

19. In the backdrop of the above, let this Court, therefore, take note of the submissions which have been forwarded by the learned counsels for the parties. Mr. D Mozumder, the learned senior counsel appearing on behalf of the petitioner herein submitted that as per the judgment and decree passed by the Coordinate Bench of this Court the interest rate would be the bank rate. He submitted that on 09.04.2010, the benchmark prime lending rate system which was introduced in the year 2003 was no longer holding the field and the bank rate has to be on the basis of the base rate, more particularly, w.e.f. 1st July 2010. Drawing attention to the Annexure-D to the additional affidavit filed by the petitioner herein on 02.04.2024, the learned senior counsel submitted that at that relevant point of time, more particularly, in the month of February, 2013, the maximum base rate was 10.50% and the minimum base rate was 9.70%.

He further submitted that the prime deposit rate at that relevant point of time was 9% which was the maximum and 7.50% which was the minimum. The learned senior counsel for the petitioner further submitted that the question of calculating the entitlement or, more particularly, the interest on the bank prime lending rate could not have been taken into account, *inasmuch as*, the prime lending rate concept was no longer holding the field at that relevant point of time.

20. The learned senior counsel further submitted that if the calculations in the Schedule to the Execution Application is taken into consideration, it would show that the basis on which the plaintiff/decree holder had claimed the amount is based upon compounding the interest, which is completely foreign to the directions passed by the learned Trial Court as well as the learned Coordinate Bench of this Court. He submitted that the instant proceeding arises out of a proceeding under the Code of Civil Procedure, 1908 and Section 34 of the said Code does not conceptualize the awarding of compound interest.

21. The learned senior counsel further submitted that a review application has been filed recently to the judgment and decree passed by the Coordinate Bench of this Court on 27.11.2015 which is presently pending adjudication. He further submitted that the said review application is yet to be taken up by the Court.

22. *Per contra*, Mr. DK Mishra, the learned senior counsel appearing on behalf of the decree holder submitted that at paragraph 23 of the plaint, the plaintiff/decree holder had categorically asserted the loss it had occasioned on

account of not being able to do business in respect to those logs and thereby the plaintiff had duly claimed special damages during the period, from the date of submission of the claim till the date of institution of the suit. The learned senior counsel further submitted that a perusal of Schedule B to the plaint would clearly show that 18% interest was calculated on the amount arrived at in Schedule A and on the basis thereof, the amount of Rs.2,26,75,388/- was arrived at. The learned senior counsel further submitted that the interference made by the Coordinate Bench of this Court was only to the extent of the entitlement pertaining to 2850 logs, which the learned Trial Court had decreed. He submitted that the Coordinate Bench of this Court had held that the plaintiff was entitled to the loss occasioned on the basis of 414 logs. He, therefore, submitted that the claim as regards 18% interest, which was in the form of a special damages for the period prior to filing of the suit i.e. from the date of intimation of the fire to the date of filing of the suit was not interfered with by the Coordinate Bench of this Court and in fact, the said aspect of the matter was never agitated during the First Appellate stage.

23. The learned senior counsel further submitted that Issue No.xii, while being decided by the learned Trial Court, it was categorically held that the plaintiff would be entitled to interest @2% above the prime lending rate of the schedule bank as on 07.03.2013. Drawing the attention of this Court to paragraphs 52 to 54 of the judgment passed by the Coordinate Bench of this Court, the learned senior counsel emphasized that the Coordinate Bench of this Court affirmed the decision of the learned Trial Court in respect of Issue No.xii, and, therefore, the submission of the petitioner that the Reserve Bank of India (for short, the RBI) had abolished the system of bank prime lending rate or not

had no relevance in view of the judgment and decree being clear on that aspect. He further submitted that the learned Executing Court is only to execute the decree as it is and cannot go beyond the decree, and, as such, whether the RBI had abolished the bank's prime lending rate system is outside the purview of the Executing Court. In addition to that, the learned senior counsel submitted that it is not that there is no prime lending rate. Referring to the Circular dated 09.04.2010 of the RBI enclosed by the petitioner in their additional affidavit, he referred to Clause viii and submitted that the base rate would only be the minimum rate for all loans, i.e. the banks are not permitted to resort to any lending below the base rate. The same, therefore, does not apply to the prime lending rate, which would obviously different from the minimum lending rate. The learned senior counsel, therefore, submitted that the prime lending rate has been duly certified by the Chief Manager State Bank of India (for short, the SBI), which has been brought on record by way of an affidavit filed by the respondent on 28.03.2024 certifying that the prime lending rate of the SBI as on 07.03.2013 was 14.45% per annum. He, therefore, submitted that the plaintiff/decree holders were entitled to interest @16.45% as per the judgment and decree passed by the learned Trial Court as well as also the Coordinate Bench of this Court.

24. The learned senior counsel further submitted that the decree holder is entitled to interest which is to be compounded, taking into account that the learned Trial Court had observed at paragraphs 50 of its judgment that the calculation of the interest would be as per Bank norms. The learned senior counsel submitted that Bank norms stipulates compounding of the interest. The learned senior counsel referred to the judgment of the Supreme Court in the

case *of Indian Council for Enviro-Legal Action Vs. Union of India and others* reported in *(2011) 8 SCC 161,* more particularly, referred to paragraphs 178 to 181.

25. Upon hearing the learned counsels appearing for both the parties and on the basis of the materials on record, and the contentions advanced, the following points for determination arises for consideration:

(i). Whether the impugned order passed by the learned Executing Court suffers from any jurisdictional error, more particularly, in view of the observations made by the learned Trial Court in respect to issue No.xii and affirmed by the learned Coordinate Bench of this Court?

(ii). Whether the learned Executing Court could have entered into the aspect pertaining to abolishment of the bank's prime lending rate system and introduction of the base rate system by the RBI, while executing the decree?

(iii). Whether the interest awarded by the Court is simple interest or compound interest?

26. This Court in the previous segments of the instant judgment had dealt with as to how both the Trial Court as well as the learned First Appellate Court had decided the Issue No.xii. The decision of the learned Trial Court in respect to Issue No.xii categorically shows that the learned Trial Court had duly taken note of two aspects of the matter as to whether the defendants were liable for payment of interest for non-settling of the plaintiff's claim and for non-payment of the plaintiff's dues in time. In the learned Trial Court judgment, it was held

that the plaintiff suffered financial loss on the ground that even after two years of the request made by the plaintiff the defendant did not pay any heed. A perusal of the judgment of the learned Trial Court in respect to Issue No.xii as well as in the Issue No.xiv and xv, however, do not show that the learned Trial Court had taken into consideration what was the loss suffered by the plaintiff on account of blockage of the claim amount for a long period which was primarily asserted in paragraph 23 of the plaint. The learned Trial Court only held that on account of the delay in settling the dues to the plaintiff, the plaintiff is liable to be compensated in terms of Section 70 of the Indian Contract Act, 1872 and as such, held that the defendants/judgment debtor were liable to make payment of interest for non-settling of the plaintiff's claim and for non-payment of the plaintiff's dues in time. It is apparent from the judgment of the learned Trial Court that though the learned Trial Court referred to Regulation 9(6) of the Regulation of 2002, but the learned Trial Court held that the plaintiff was entitled to **interest @ 2% above the prime lending rate of the schedule bank as on 07.03.2013**. Be that as it may, in paragraph 50 of the judgment of the learned Trial Court, the expression used is "*further interest 2% above the Bank lending rate as per IRDA which is to be calculated as per Bank norms as on today i.e. 07.03.2013 on the decreetal amount per annum with effect from the date of institution of the suit i.e. 13.03.2003 till full and final recovery of the decreetal amount*". It is also relevant at this stage to mention that the learned Trial Court had decreed the suit by granting the relief of the realization of Rs.2,26,75,388/- which was the amount as stated in Schedule-B to the plaint. At the cost of repetition, it is relevant to recapitulate that the amount as mentioned in Schedule B was arrived at by calculating 18% interest from 22.03.2001 to 13.03.2003 on the amount claimed as mentioned in Schedule-A to the plaint.

27. In the judgment and decree of the Coordinate Bench of this Court rendered on 27.11.2015, the Coordinate Bench had categorically held that since the rights and obligations of the parties are governed under the contract having a commercial angle in the matter, it is obvious that delay in settlement of claims would have adverse financial implications on the insured. It was further held that the records did not disclose any justifiable ground for the insurer to delay the settlement of the claim over a period of 16 months after the claim was lodged. It was also observed that the insured would be entitled to claim interest on the claimed amount if the settlement is delayed beyond 30 days from the date of submission of the surveyor's report. At this stage, it is relevant to observe that the surveyor did not submit the report as would be apparent from a perusal of the plaint. The Coordinate Bench of this Court affirmed the findings of the learned Trial Court in respect to Issue Nos.x, xii, xvi by categorically holding that the learned "Trial Court had rightly awarded interest @ 2% above the bank lending rate as per the IRDA Regulations w.e.f. the date of institution of the suit i.e. 13.03.2003 till realization of the full and final amount. It is, however, relevant at this stage to take note of that though the Coordinate Bench of this Court had affirmed the findings in respect to Issue No.xii of the learned Trial Court, but used the expression "2% above the Bank lending rate as per the IRDA Regulations" and not "2% above the prime lending rate of the Schedule Bank" which was decided by the learned Trial Court in Issue No.xii.

28. From the judgment passed by the learned coordinate Bench, it is also apparent that it held that the plaintiff is entitled to interest on the claimed amount if the settlement is delayed beyond 30 days from the date of submission

of the surveyors report. Further it was also held that the plaintiff was entitled to *pendente lite* and further interest. This Court, however, finds it appropriate to observe that neither the learned Trial Court nor the Coordinate Bench of this Court had specifically dealt with whether the pre-suit interest would be 18% per annum although the learned Trial Court in paragraph 50 of the judgment, decreed the entire amount of Rs.2,26,75,388/- which was inclusive of 18% interest. The Coordinate Bench of this Court did not specifically deal with the said aspect of the matter and had only held that the plaintiff would be entitled to the amount in respect to 414 logs and not in 2850 logs.

29. The question, therefore, arises as to what interest the plaintiff would be entitled to the pre-suit amount *inasmuch as*, there arises no problem in deciding what would be *pendent lite* and future interest as the Coordinate Bench of this Court was clear in that respect. This Court had already observed that the Issue No.xii, dealt with pre-suit interest as well as *pendent lite* and future interest. At this stage, this Court also takes due consideration of the fact that the judgment of the learned Trial Court had merged with the judgment of the Coordinate Bench of this Court. Therefore, the decision on the question of interest has to be taken as to what was decided by the Coordinate Bench of this Court.

30. The Coordinate Bench of this Court did not interfere with the findings arrived at in respect to Issue No.xii. While discussing the Issue No.xii it was held that there was no justifiable grounds for delay of 16 months after the claim was lodged. It is the opinion of this Court that under such circumstances, the interest pre-suit on these 414 logs has to be taken for a period of 16 months and the rate has to be on the basis of the decision of the learned Trial Court in

Issue No.xii, taking into account that the Coordinate Bench of this Court affirmed the findings in respect to Issue No.xii. Consequently, therefore, it has to be understood that the pre-suit, *pendente lite* and future interest so adjudged payable to the decree holder would be 2% above the prime lending rate of the Schedule bank as on 07.03.2013.

31. In view of the above observations and findings, let this Court take note of the Schedule to the Execution Application wherein the details of the amount claimed was mentioned. A perusal of the Schedule would show that the pre-suit interest claimed was 18%. Not only that the *pendente lite* and future interest is claimed at 16.45%. At this stage, it is apposite herein to mention that the basis of claiming the pendente lite and future interest is on a certificate issued by the Chief Manager, State Bank of India, Golaghat Branch, wherein it was mentioned that the Benchmark Prime Lending rate was 14.45% per annum effective from 04.02.2013. This Court had also perused the basis on which the Principal + Interest as on 31.05.2020 was claimed at Rs.4,72,69,354/-. The calculation on the basis of which the said amount was arrived at could be seen from Annexures IV and V of the additional affidavit filed by the respondent herein on 28.03.2024. A perusal of the said annexures would show that the interest so claimed is by calculating the interest as compound interest and not simple interest.

32. This brings this Court to the third point for determination framed as to whether the learned Trial Court or the Coordinate Bench of this Court had awarded simple interest or compound interest. As noted above, Mr. DK Mishra, the learned senior counsel argued that the interest so awarded was compound

interest on the basis of paragraph 23 of the plaint and the observations of the learned Trial Court in paragraph 50 of its judgment wherein it was observed that the interest to be calculated in terms with the bank norms. In that regard, the learned senior counsel referred to the judgment of the Supreme Court in Indian Council for Enviro-Legal Action (supra) and referred to paragraphs 178 to 181. This Court had duly perused the same.

33. Before further proceeding, this Court finds it relevant to observe that a perusal of the plaint, the details of which have already been mentioned above, would show that the suit was filed for recovery of an amount of Rs.2,26,75,388/- along with future interest @ 18% per annum from the date of filing of the suit till realization. The said suit was filed before the learned Trial Court in terms with Section 9 of the Code and accordingly, the provisions of Section 34 of the Code would apply as regards the grant of interest. This Court finds it relevant at this stage to take note of the judgment of the Supreme Court in Indian Council for Enviro-Legal Action (supra) and, more particularly, the paragraphs 168 and 169 wherein the Supreme Court categorically observed that in view of the wording of Section 34 of the Code, the interest to be paid would be simple interest and further distinguished that the proceedings which the Supreme Court was dealing in that case was different. Paragraphs 168 and 169 are quoted hereinbelow:

> "*168. One reason the law has not developed on this is because of the wording of Section 34 of the Code of Civil Procedure which still proceeds on the basis of simple interest. In fact, it is this difference which prompts much of our commercial litigation because the debtor feels—calculates and assesses—that to cause litigation and then to contest with obstructions and delays will be beneficial because the court is empowered*

to allow only simple interest. A case for law reform on this is a separate issue."

"*169. In the point under consideration, which does not arise from a suit for recovery under the Code of Civil Procedure, the inherent powers in the court and the principles of justice and equity are each sufficient to enable an order directing payment of compound interest. The power to order compound interest as part of restitution cannot be disputed, otherwise there can never be restitution."*

34. This Court further finds it relevant to observe that the case before the Supreme Court in Indian Council for Enviro-Legal Action (supra) was a case dealing with the principles governing compensation for the loss suffered by the citizenry due to pollution and 'the polluter's pay' principle. In the opinion of this Court, the principles so observed in paragraphs 178 and 181 are observations, essentially relating to public law remedies under inherent powers of the Supreme Court and cannot be applied to the facts of the present case. In fact, in a recent judgment of the Supreme Court in the case of *Suneja Towers Private Limited and another Vs. Anita Merchant*, reported in *(2023) 9 SCC 194*, the Supreme Court was dealing with the issues as to whether the Consumer Fora had the power to impose compound interest. Paragraphs 61 to 63 being relevant are quoted herein below:

"*61. The synthesis of the cited decisions aforesaid, for the present purpose, leads to the result that none of these decisions could be taken as guide for award of compound interest in an action before the Consumer Fora under the 1986 Act. In regard to such cases, in our view, the Fora would be entitled to provide for the amount of compensation as deemed fit, having regard to the facts and circumstances of the case and the gravity of the negligence of the opposite party and consequential injury*

suffered by the consumer. The Fora could award even punitive damages but that would depend on the relevant circumstances and for that matter, the relevant factors shall have to be specified. In regard to such awarding of compensation and/or punitive damages, the Fora concerned could take all the relevant factors into account and award such amount as deemed fit and necessary but ordinarily, in the matters of money refund, awarding of compound interest as a measure of punitive damages is not envisaged."

"62. As to what would be the quantum of compensation and for that matter, what would be the quantum of punitive damages, would depend on facts and circumstances of each case but while awarding so, the Fora would be advised to specify all the relevant factors and basis of its quantification. A shortcut of awarding compound interest is neither envisaged by the statute nor do we find any such term of contract between the parties or any such usage. As noticed, the attempt to seek compound interest in such real estate dealings did not meet with approval of this Court and in IREO Grace Realtech13 such a claim was declined by a three-Judge Bench of this Court for having no nexus with the commercial realities of the prevailing market. Going by the principles governing the nature of jurisdiction of the Consumer Fora as also the principles enunciated by this Court including those in the three-Judge Bench decision, we need to disapprove the proposition of awarding compound interest in the cases of monetary refund in such dealings."

"63. Several submissions made on behalf of the respondent as to the alleged advantage derived by the appellants by retention of money, again, cannot lead to award of compound interest while ordering refund. For award of compound interest, relevant factors shall have to be taken into

account which would include uncertainties of market and several other imponderables. We would hasten to observe that if at all by way of compensation, the Consumer Forum considers it proper to examine the time value for money, an in-depth and thorough analysis would be required while taking into account all the facts and the material surrounding factors, including those of realities as also uncertainties of market."

35. Now let this Court take note of the judgment and decree passed by the learned Coordinate Bench of this Court as to whether there was a direction to pay compound interest. A perusal of the judgment of the learned Coordinate Bench of this Court is completely silent on the aspect of awarding compound interest. Not only that, the learned Trial Court had also not mentioned that the interest so awarded would be compound interest. It seems that both the learned Trial Court and the Coordinate Bench of this Court being aware that the suit was filed for recovery of money that too by invoking the jurisdiction of the Civil Court under Section 9 of the Code did not award compound interest. In that view of the matter, when the Coordinate Bench of this Court did not grant the compound interest, the question of the Executing Court to permit compound interest would amount to going behind the decree which is not permissible as per the settled principles of law. The above, therefore, decides the third point for determination.

36. Another very vital aspect of the matter which also requires consideration in view of the Schedule to the Execution Application and the various calculations put forward by the parties is how the interest is required to be calculated and how the amount paid is required to be apportioned. In this regard, this Court

finds it relevant to take note of the judgment of the Constitution Bench of the Supreme Court in the case of *Gurpreet Singh Vs. Union of India* reported in *(2006) 8 SCC 457*, wherein the Supreme Court clearly explained the manner by which the interest is to be calculated. Paragraphs 25, 26 and 27 being relevant is reproduced hereunder:

> "*25. In the Objects and Reasons for amendment of Order 21 Rule 1, it was set out as follows:*
>
> "*The Committee notes that there is no provision in the Code in relation to cessation of interest on the money paid under a decree, out of court, to a decree-holder, by postal money order or through a bank or by any other mode wherein payment is evidenced in writing. The Committee is of the view that, in such a case, the interest should cease to run from the date of such payment. In case the decree-holder refuses to accept the postal money order or payment through a bank, interest should cease to run from the date on which the money was tendered to him in ordinary course of business of the postal authorities or the bank. Sub-rule (5) in Rule 1 Order 21 has been inserted accordingly.*"
>
> *The legislative intent in enacting sub-rules (4) and (5) is therefore clear and it is that interest should cease on the deposit being made and notice given or on the amount being tendered outside the court in the manner provided. Mulla in his Commentary on the Code of Civil Procedure, 15th Edn., Vol. II at p. 1583 has set out the effect of the rules as follows:*
>
> "*Normal rule with respect to money decree is (i) the appropriation of payments towards satisfaction of interest in the first instance, and (ii) then towards principal amount. But this became inoperative, after the amendment of Rule 1 Order 21 CPC. Section 60 of the Contract Act cannot be invoked for the application of the aforesaid normal rule.*"
>
> "*26. Thus, in cases of execution of money decrees or award-decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree-holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree-holder and there is no question of the decree-holder claiming a re-appropriation when it is found that more amounts are due to him and the same is also deposited by the judgment-debtor. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.*
>
> *27. As an illustration, we can take the following situation. Suppose, a decree is*

passed for a sum of Rs 5000 by the trial court along with interest and costs and the judgment-debtor deposits the same and gives notice to the decree-holder either by approaching the executing court under Order 21 Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order 21 Rule 1 of the Code. The decree-holder is not satisfied with the decree of the trial court. He goes up in appeal and the appellate court enhances the decree amount to Rs 10,000 with interest and costs. The rule in terms of Order 21 Rule 1, as it now stands, in the background of Order 24 would clearly be, that the further obligation of the judgment-debtor is only to deposit the additional amount of Rs 5000 decreed by the appellate court with interest thereon from the date the interest is held due and the costs of the appeal. The decree-holder would not be entitled to say that he can get further interest even on the sum of Rs 5000 decreed by the trial court and deposited by the judgment-debtor even before the enhancement of the amount by the appellate court or that he can reopen the transaction and make a re-appropriation of interest first on Rs 10,000, costs and then the principal and claim interest on the whole of the balance sum again. Certainly, at both stages, if there is shortfall in deposit, the decree-holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment-debtor would still be liable for interest on the whole of the principal amount in case the appellate court enhances the same and awards interest on the enhanced amount. This position regarding execution of money decrees has now become clear in the light of the amendments to Order 21 Rule 1 by Act 104 of 1976. The argument that what is awarded by the appellate court is the amount that should have been awarded by the trial court and so looked at, until the entire principal is paid, the decree-holder would be entitled to interest on the amount awarded by the appellate court and therefore he can seek to make a re-appropriation by first crediting the amount deposited by the judgment-debtor pursuant to the decree of the trial court towards the cost in both the courts, towards the interest due on the entire amount and only thereafter towards the principal, is not justified on the scheme of Order 21 Rule 1 understood in the context of Order 24 Rules 1 to 4 of the Code. The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment-debtor to pay interest on that part of the principal which he has already paid or deposited."

37. From the above paragraphs of the Constitution Bench judgment of the Supreme Court quoted hereinabove, it would transpire that the Supreme Court categorically observed that though the normal rule with respect to the money

decree is the apportionment of the payment towards satisfaction of the interest in the first instance and then towards the principal. However, the same became inoperative with the amendment of Rule 1 of Order XXI. It was, therefore, observed that in case of execution of money decree interest ceases to run on the amount deposited to the extent of the deposit. It was clarified that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due in the decree.

38. In the instant case, if this Court again recapitulates the facts, it would be seen that the Coordinate Bench of this Court held that the plaintiff was entitled to the amount in respect to 414 logs. In paragraph 53 of the judgment of the Coordinate Bench of this Court, the Coordinate Bench of this Court categorically observed that there was a delay of 16 months, after the claim was lodged. Under such circumstances, it is the opinion of this Court that the plaintiff/decree holder would be entitled to interest pre-suit @16.45% for a period of 16 months, prior to filing of the suit. The amount which would be arrived at would be the principal decreetal amount in view of the clear language of Section 34 of the Code. In addition to that, it is also seen from the judgment of the Coordinate Bench of this Court that the plaintiff/decree holder would be entitled to interest @ 16.45% w.e.f. 13.03.2003, which is the date of institution of the suit. This interest which would accrue has to be applied in terms with paragraphs 26 and 27 of the judgment in Gurpreet Singh (supra), meaning thereby, that the payment which has been made from time to time has to be apportioned against the interest first and after the exhaustion of the interest, the amount can then be apportioned against the cost and, thereupon the

apportionment can only take place against the principal.

39. This Court has duly taken note of that on 06.09.2013, an amount of Rs.15,00,000/- was paid by the petitioner herein. The said amount of Rs.15,00,000/- has to be, therefore, first apportioned against the interest. It is observed that till the entire interest amount is duly taken care of, the amounts so deposited from time to time, interest @16.45% would keep on accruing upon the principal or so much of the principal remaining. It is made clear that the interest would be simple interest @16.45% per annum.

40. Now coming back to the impugned order, it would be seen that the learned Executing Court erred in law in proceeding with the execution of the decree in respect to an amount beyond what was decreed which would be apparent from the above analysis. Consequently, it is the opinion of this Court that the learned Executing Court had exercised it jurisdiction beyond the jurisdiction conferred upon it by law as well as had also exercised the jurisdiction illegally and with material irregularity for which the impugned order is required to be set aside and quashed. This adjudication, therefore, decides the first point for determination.

41. The second point for determination as to whether the learned Executing Court ought to have taken into consideration about the abolishment of the bank prime lending rate system vide the Circular dated 09.04.2010 by the RBI. Firstly, this very aspect of the matter was never brought to the attention of the learned Executing Court and secondly, when the decree categorically mentions that it is

2% above the prime lending rate, in the opinion of this Court, the learned Executing Court would not be within its jurisdiction to travel beyond the decree so passed.

42. In addition to that this Court also finds it very pertinent to observe that a perusal of the Circular dated 09.04.2010 of the Reserve Bank of India also shows that the base rate is the minimum lending rate and the same cannot be equated with the prime lending rate. There is no bar on the part of the Schedule banks to charge other rates, but such rate so charged have to transparently show the base rate. Under such circumstances, the said submission made by the learned senior counsel appearing on behalf of the petitioner as regards the base prime lending rate system having been abolished vide the Circular dated 09.04.2010 is totally misconceived in the present facts.

43. Consequently, the instant petition stands disposed of with the following observations and directions:

(a). The impugned order dated 18.12.2023 passed in Misc.(J) Case No.24/2021 in Title Execution Case No.3/2020 in set aside and quashed.

(b). The interest to which the respondent would be entitled to pre-suit would be @16.45% per annum for a period of 16 months prior to the filing of the suit i.e. w.e.f. 13.11.2001 to 13.03.2003. The said interest amount alongwith the principal amount would be the decreetal amount and by virtue of Section 34 of the Code shall be the Principal Decreetal Amount.

(c). The respondent herein would be entitled to simple interest @16.45% on the Principal Decreetal Amount w.e.f.13.03.2003 till realization.

(d). The calculations for apportionment of the interest, costs, and then the principal has to be made in terms with the observations made by the Supreme Court in Gurpreet Singh (supra); the relevant paragraphs having been quoted hereinabove.

(e). The parties herein are directed to submit the details of the calculations before the learned Executing Court on 29.04.2024 on the basis of the above observations, so that the learned Executing Court can proceed with the execution of the decree in terms with the observations made hereinabove.

JUDGE

Comparing Assistant