

5 SCOB [2015] AD 98

Appellate Division

PRESENT

Mr. Justice Md. Abdul Wahhab Miah

Mr. Justice Muhammad Imman Ali

Mr. Justice A. H. M. Shamsuddin Choudhury

CIVIL PETITION FOR LEAVE TO APPEAL NO. 1280 OF 2015

(From the judgement and order dated 17th of September, 2014 passed by the High Court Division in Writ Petition No. 4886 of 2013.)

M/S. Rajib TradersPetitioner

Versus

The Artha Rin Adalat as well as Joint District Judge, Additional Court, Jessore and anotherRespondents

For the Petitioner : Mr. Nurul Islam Chowdhury
Advocate-on-Record

For the Respondents : Not represented

Date of hearing & judgment : The 27th of August, 2015

How interest is to be calculated:

The interest to be paid by the judgment debtor will have to be calculated according to the prevailing interest rate or rates, which may be different for different periods, from the time of filing of the suit till the payment of the decretal amount by the judgment debtor. ... (Para 15)

J U D G E M E N T

MUHAMMAD IMMAN ALI, J:-

1. This civil petition for leave to appeal is directed against the judgement and order dated 17.09.2014 passed by a Division Bench of the High Court Division in Writ Petition No. 4886 of 2013 discharging the Rule.

2. The facts, relevant for disposal of the instant civil petition for leave to appeal, are that alleging default in repayment of loan obtained by the petitioner, Agrani Bank, Bus Stand Branch, Nowapara, Jessore (respondent No. 2), filed Money Suit No. 94 of 2004 against the petitioner and two others. The petitioner accordingly contested the said suit by filing written statement. Thereafter, upon hearing the parties, the Artha Rin Adalat, Jessore, by its judgement and decree dated 20.06.2006 decreed the suit against the petitioner and others.

Accordingly, the plaintiff-Bank filed Artha Execution Case No. 21 of 2006 on 07.09.2006 for realisation of Tk. 76,58,097/-. During pendency of the said execution case, the judgment-debtor-petitioner filed an application on 23.07.2012 for computing interest on the decretal amount at the rate of 8% in view of the then applicable provisions of law when the decree was passed.

3. After hearing the aforesaid application, and objection filed by the decree holder bank, the Adalat by its order dated 21.01.2013 rejected the application of the petitioner and computed the interest as prescribed under Section 50 of the Artha Rin Adalat Ain as amended from time to time.

4. Being aggrieved by the order dated 21.01.2013, the petitioner filed Writ Petition No. 4886 of 2013 before the High Court Division and obtained Rule, which upon hearing the parties, was discharged. Hence, the petitioner is now before us having filed the instant civil petition for leave to appeal.

5. Mr. Nurul Islam Chowdhury, learned Advocate-on-Record appearing on behalf of the petitioner submits that the High Court Division passed the judgement and order relying on a decision passed by an Indian Court which is not relevant to the case of the petitioner as the facts leading to the said decision regarding non-payment of taxes on which interest was imposed were different. In the instant case the subject matter is different as the dispute arose out of a judgement and decree passed in an Artha Rin Adalat matter. As such the judgement and order of the High Court Division calls for interference. He further submits that the High Court Division failed to consider that Respondent No. 1 committed error in counting the interest from 23.12.2007 to 24.02.2009 at the rate of 12%, defying the amendment of the Artha Rin Adalat Ain, 2003, (Act No. 16 of 2010) which provides that 8% would be replaced by 12%, and that the interest at the rate of 12% would be computed after the above amendment, i.e. after 2010. He lastly submits that the decree was passed in the year 2006 when the applicable rate was 8%, and as such a right accrued in favour of the judgment debtor to pay interest on the decretal amount at the said rate, and hence the accrued right of the petitioner cannot be taken away by subsequent amendments, and in this regard reference may be made to the case of *Khondaker Badiuzzaman Vs GM Bangladesh Krishi Bank and others* reported in *14 BLD 151*. As such the judgement and order passed by the High Court Division calls for interference.

6. No one appeared for the respondents.

7. We have considered the submissions of the learned Advocate for the petitioner and perused the impugned judgement and order of the High Court Division and other connected papers on record.

8. The point in issue in this case concerns the rate of interest to be awarded in view of amendment of the legal provision from time to time changing the rate of interest.

9. The admitted position is that on the day when the decree was passed section 50 of the Artha Rin Adalat Ain, 2003 (the Ain) provided for interest to be imposed at the rate of 8%. Subsequently, by amendment in 2007 the rate of interest was increased to 12%. The High Court Division observed that the trial Court in awarding the decree ordered that the plaintiff bank is entitled to realize interest as per prescribed rate from 01.04.04 till realization of the decretal amount and went on to hold that this meant that the interest would be applicable at the rate when the order of the Court was passed. The High Court Division further observed

that if the petitioner had repaid the entire decretal amount before the rate of interest was amended then the dispute would not arise.

10. The Artha Rin Adalat (Amendment) Ain, 2010, (Act No. 16 of 2010) came into force on 30.3.2010 by which section 50 of the Ain, 2003 was amended increasing the rate of interest from 8% to 12%.

11. Section 50 (2) of the Ain, 2003, as amended, provides as follows:

""50z (2) অর্থাৎ আদালত কর্তৃক প্রদত্ত ডিক্রীর বিরুদ্ধে কোনো পক্ষ কোন আপীল, রিভিশন, আপীল বিভাগে বা অন্য কোনরূপ দরখাস্ত কোন উচ্চতর আদালতে দায়ের না করিলে, মামলা দায়েরের দিবস হইতে ডিক্রির টাকা আদায় হইবার দিবস পর্যন্ত সময়ের জন্য ডিক্রিকৃত টাকার উপর ১২% (হি় শতাংশ) বার্ষিক সরল হারে, কোন আপীল, রিভিশন বা অন্য কোন দরখাস্ত কোন উচ্চতর আদালতে দায়ের করিলে পূর্বেক্ত সময়কালের জন্য ১৬% (ষোল শতাংশ) বার্ষিক সরল হারে, এবং আপীল বা উচ্চতর আদালতের ডিক্রি বা আদেশের বিরুদ্ধে আপীল বিভাগে আপীল করিলে, পূর্বেক্ত সময়কালের জন্য ১৮% (আঠার শতাংশ) বার্ষিক সরল হারে, উপধারা (৩) এর বিধান সাপেক্ষে, সুদ, বা, ক্ষেত্রমত, মুনাফা আরোপিত হইবে।"

12. Since the matter is still pending as a money execution case before the Artha Rin Adalat, what rate of interest is to be awarded on appeal before the High Court Division or the Appellate Division is not material in the instant case. However, the rate of interest to be awarded for the period from filing of the suit till the realization of the decretal amount is clearly 12% as from 31.3.2010. We note that interest was calculated at 8% for the period before the Act came into force in force in 2010 because the Ordinance enhancing the rate to 12% was not approved by Parliament from 25.02.2009 to 31.03.2010.

13. The High Court Division placing reliance upon a decision of the Indian Supreme Court in the case of **Maya Rani Punj vs. C.I.T., Delhi(1996)1SCC-445** held that the non-payment of the decretal amount by the judgement debtor was a continuing default which meant that each and every day the judgement debtor incurred a liability to pay interest at a rate applicable on that day. With respect, we agree that if the judgement debtor had paid the decretal amount within the period stipulated by the trial Court, then the rate of interest applicable at that time would have been the appropriate rate of interest to be paid. Since the judgement debtor did not pay the decretal amount in accordance with the order of the Court it would be liable to pay at the various rates which may change from time to time.

14. It may be noted here that the rate of interest charged at any given time by financial institutions under directions of the Central Bank reflects the prevalent economic condition of the country. If the interest rate was lowered then the judgement debtor would have received the benefit of the lower interest. It cannot be said that any vested right accrued to the judgement-debtor with regard to the rate of interest for all time to come. At best it can be said that within the time for payment as stipulated by the Court the rate of interest would be the same as on the date of the decree. If the Court had specified that the rate would be 8% till realization of the decretal amount then the change of rate of interest would not affect the judgement-debtor detrimentally or beneficially in case the interest was lowered. However, in this case the rate was to be the "prescribed rate from 01.04.2004 till the realization of the decretal money." 'Prescribed' would mean prescribed by law. In the facts of the instant case the 'prescribed rate' was amended more than once since 01.04.2004.

15. Accordingly, we are of the view that the interest to be paid by the judgement debtor will have to be calculated according to the prevailing interest rate or rates, which may be different for different periods, from the time of filing of the suit till the payment of the decretal amount by the judgement debtor

16. In the light of the discussion above, we find that the impugned judgement does not suffer from any illegality or infirmity and does not call for any interference.

17. Accordingly, the civil petition for leave to appeal is dismissed.