A N.K. RAJGARHIA

v.

M/S. MAHAVIR PLANTATION LTD. AND ORS.

DECEMBER 16,2005

B [S.B. SINHA AND P.K.BALASUBRAMANYAN, JJ.]

Code of Civil Procedure, 1908—Order XXIII Rule 4.—Recovery suit—Compromise between parties and consent decree passed for half of the amount—Part payment made and thereafter, settlement in execution proceedings—Consent order to the effect that in case of default in payment, decree holder would be entitled to execute the balance decree—Judgment debtor again defaulted, sought extension of time, grant of, by High Court—Thereafter, judgment debtor paid amount in terms of consent order—However, claim of decree holder that original claim revived on default—Sustainability of—Consent order, interpretation of—Held: Consent order is to be construed in entirety to ascertain its true intent and purport—Word 'decree' after word 'balance' was used loosely—Sum which was waived did not form part of consent decree—It was merely a claim which did not fructify into any decree—Hence, commission of default does not entitle the decree holder to execute the balance decree—Furthermore, such settlement in execution proceedings is permissible in law—Constitution of India, 1950—Article 136.

Appellant filed recovery suit for Rs. 75 lakhs towards repayment of advance with interst and damages against the respondent. However, the parties entered into a compromise and the court passed a consent decree for a sum of Rs. 41,69,110/- and respondents issue cheques. In terms of compromise clause in case of dishonour of cheque, the entire balance amount would be payable at one time failing which the decree holder was entitled to execute the decree for the same with interest. Respondent made only part payment and as such execution proceedings were initiated. Again parties entered into settlement with regard to the balance amount of Rs 42,04,222/- respondent gave an undertaking that in case of dishonour of any of the cheques the decree holder would be entitled to execute the balance decree. Respondent again defaulted and execution application was filed. However, respondent filed an application for extension of time for payment of decretal dues and High Court allowed the same. Aggrieved, appellant filed an appeal. Division Bench of High

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Court directed the respondent to present the cheques and in case of non-encashment to initiate appropriate proceedings. Respondent was granted another extension. Thereafter, the judgment-debtor paid the entire amount with interest, in terms of the consent order.

In the appeal, appellant-creditor contended that since the respondent failed to abide by its undertaking, the original claim of the appellant revived; and that the High Court had no jurisdiction to grant extension of time for payment of the decretal dues without his consent.

Respondent - debtor contended that this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution in favour of the appellant since the entire amount stands paid; and that despite Rule 4 of Order XXIII of CPC, there does not exist any bar to enter into a compromise at the execution stage.

Dismissing the appeal, the Court

HELD: 1.1. An order of a court of law and, in particular, a consent order, must be read in its entirety for the purpose of ascertaining its true intent and purport. It cannot be said that once a default is committed by the respondent, the appellant in terms thereof, would be entitled to execute the balance decree immediately which would mean he would be entitled to a further sum of about Rs. 41 lakhs, which was waived by him on the premise that the respondent had agreed to settle the disputes. The word 'decree' after the word 'balance', has been used loosely. The matter might have been different if the amount payable under the compromise entered into by the parties in the execution case would have been less than the amount paid by the respondent to the appellant in terms of the consent decree passed originally. It is not so. Whereas under the original decree, a sum of Rs. 41,69,110/- was payable, in terms of the consent order passed in the execution case, a sum of Rs. 42,04,222/- became payable. Furthermore, the sum which was waived did not form part of the consent decree. It was merely a claim which never fructified into any decree. [889-E; 890-D-F]

1.2. Order XXIII Rule 4 of CPC, 1908 states that other provisions thereof are not applicable to an execution proceedings. But, despite the same, the parties may enter into a settlement even in a execution proceedings. Thus, the compromise entered into by and between the parties in the execution proceedings was valid in law. The same was acted upon. Appellant received

A **the entire amount thereunder, albeit belatedly; but even therefor the respondent applied for and obtained extension of time to pay the same. Appellant had accepted such amount and did not question the order granting extension of time, thus the same had attained finality. [888-B; 889-A-C]**

B *Smt. Periyakkal and Ors.* **v.** *Smt. Dakshyani,* **AIR (1983) SC 428;** *Moti Lal Banker (dead) by his legal Representative* **v.** *Maharaj Kumar Mahmood Hasan Khan,* **AIR (1968) SC 1087, referred to.**

1.3. If the orders of extension have validly been passed, the order of the court stood complied with. The order of the Division Bench of High Court
C **was not questioned by the respondent before this Court but then no direction was issued therein. No judgment was passed. The said order was passed without issuing any notice to the respondents. The appeal was disposed of as having become infructuous. Thus, it was not final. Thereby, merely a liberty had been granted to the appellant to agitate his grievances before the Single Judge of High Court for execution as well as for contempt. By reason of the**
D **said order, alone the appellant could not put forth his claim. Appellant, thus, cannot take any benefit thereof. [889-D, E]**

1.4. Respondent agreed to pay not only a lump sum interest but also 15% interest on the principal amount of the further payment. On calculation, a sum of Rs. 42,04,222/- was found to be payable out of which the judgment
E **debtor had paid a sum of Rs. 10,00,000/- by way of three demand drafts. Appropriating the said amount, the outstanding principal sum came to Rs. 26,69,110. However, the balance amount outstanding as on that day came to Rs. 32,04,222. It was that amount which was to be liquidated by paying instalment of Rs. 6 lakhs each per month. It is in the aforementioned**
F **backdrop, the undertaking given by the respondent before the Single Judge of the High Court is to be construed. [890-B, C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7535 of 2005.

From the Judgment and Order dated 17.5.2005 of the Delhi High Court
G in E.F.A.(OS) No. 22 of 2004.

C. Mukund, Ashok Jain, Pankaj Jain, Mrs. Neeraj Anand and Bijoy Kumar Jain for the Appellant.

C.N. Sree Kumar and Ms. Deepa S. for the Respondents.

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The Judgment of the Court was delivered by A

S.B. SINHA, J. Leave granted.

Interpretation of a consent order falls for determination by this Court in this appeal which arises out of a judgment and order dated 17.05.2005 passed by a Division Bench of High Court of Delhi in EFA(OS) No. 22/2004. B

The Respondent herein took an advance of certain sum of money from the Appellant herein. A suit for recovery of Rs. 75 lakhs towards refund of the said amount with interest and damages was filed by the Appellant. The parties, however, entered into a compromise in terms whereof the Appellant was to receive a sum of Rs. 41,69,110/-, the relevant clause whereof reads as C under:

> "....It is specifically made clear that on dishonour of the said cheques or any one of them on any ground whatsoever then and in that event the entire remaining balance amount shall become payable at one time and the plaintiff shall be entitled to execute the decree for realization D of the entire remaining balance amount which shall remain payable plus interest to be calculated @15% p.a. and shall also be entitled to take all legal steps as may be permissible under the law to the plaintiff."

It is not in dispute that the Respondent herein paid a sum of Rs. 5 lakhs E to the Appellant and as it failed and/ or neglected to abide by its undertaking as regard payment of the balance sum, an execution application came to be filed which was marked as Execution Application No. 58 of 2001. In the said execution proceedings again, the parties entered into a settlement and a learned Single Judge of the Delhi High Court by an order dated 13.9.2001 recorded the same which reads as under: F

> "...These undertakings are accepted. He further agrees that in case any of the cheques is dishonoured he will be liable for not only contempt for violating these undertaking. The decree holder shall be entitled to execute the balance decree immediately. It is also agreed between the parties that the decree holder shall withdraw all civil/ G criminal cases after the entire payment is made by judgment debtor in the manner stated above. However, the decree holder shall not pursue these cases and get these cases adjourned after 20.3.2002 by which time the judgment debtor is supposed to clear the entire decretal amount.

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A The execution petition accordingly is disposed of."

Allegedly, the Respondent became a defaulter again. As three cheques out of six post dated cheques were dishonoured, another execution application was filed by the Appellant herein which was marked as Execution Application No. 45 of 2002. The Respondent, however, filed an application for extension B of time and a learned Single Judge of the Delhi High Court, relying on or on the basis of the decision of this Court in *Smt. Periyakkal and Ors.* v. *Smt. Dakshyani,* AIR (1983) SC 428, granted such extension stating:

> "...It is on account of the illness of the Managing Director of the judgment debtor company and on account of the fact that the company C is facing financial problems, extension/ enlargement of time for the payment of balance decretal amount is made. The judgment debtor is also agreeable to pay interest at the rate of 15% per annum on the reduced balance amount. Though ordinarily time for payment should not be extended on the mere asking of the judgment debtor, but in the D present case disallowing the judgment debtors' request would cause great injustice to the judgment debtor. Accordingly, in order to meet the ends of justice, the application for extension of time is allowed. The decree holder would present the cheque dated 20th January, 2002 and 20th February, 2002 for Rs. 6 lakhs each on 20th March, 2002 along with the third cheque dated 20th March, 2002 for Rs. 2,04,222. E The judgment debtor would also pay Rs. 22,500/- towards interest calculated at the rate of 15% per annum on that date. The judgment debtor would, thus, clear the entire decretal amount on 20th March, 2002. The application is accordingly disposed of."

The Appellant preferred an appeal thereagainst and by an order dated F 20th March, 2002, a direction was issued by the Division Bench of the Delhi High Court. The Division Bench directed the Respondent to present three cheques on that day itself and in case those cheques were not encashed it was threatened that appropriate proceedings would be initiated. It does not appear that any notice was issued to the Respondent in the said appeal. By G an order dated 1.4.2002, the said appeal was disposed of stating:

> "We have perused the record and also the application filed today indicating that two of the cheques given by the judgment debtor have been dishonoured and the fate of the third cheque is not known. The respondent primarily filed an application before the learned Single H Judge for grant of extension of time for making payment. The learned

Single Judge granted the extension for making payment until 20.3.2002. Since the extended time has already come to an end the appeal to our mind has become infructuous. The appellant will be, however, within his rights to approach the learned Single Judge for execution as well as for contempt. The filing of the appeal will not come in the way of the appellant in pursuing his remedy before the learned Single Judge."

The said order of the Division Bench is said to be still in force. The Respondent, however, obtained another extension from another learned Single Judge of the High Court in terms of an order dated 28.8.2002. The Appellant, herein did not question the said order. The said order, thus, attained finality.

It is, however, not in dispute that the judgment debtor has paid the entire amount together with interest in terms of the consent order dated 5.2.2002 passed in the aforementioned execution petition. It is, furthermore, not in dispute that the contempt application filed against the Respondent herein by the Appellant for violating the undertaking by him has ultimately been dismissed.

The short question which, thus, arises for consideration is the interpretation of the words "balance decree" occurring in the order dated 13.9.2001, as extracted supra.

The contention of the learned counsel appearing on behalf of the Appellant is two-fold. Firstly, the High Court of Delhi had no jurisdiction to grant extension of time for payment of the decretal dues without his consent and secondly, having regard to the fact that the Respondent failed to abide by its undertaking, the original claim of the Appellant revived.

The contention of Mr. C.N. Sree Kumar, learned counsel appearing on behalf of the Respondent, on the other hand, was that despite Rule 4 of Order XXIII of the Code of Civil Procedure, there does not exist any bar to enter into a compromise at the execution stage and, in any event, with regard to the fact that the entire amount has now been paid, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India in favour of the Appellant.

The suit was filed for recovery of a sum of Rs. 75 lakhs. The consent decree passed by the court shows that a decree for a sum of Rs. 41,69,110 became payable wherefor nine cheques were issued. It is also not in dispute that the plaintiff waived his remaining claim on the premise that the Respondent

had agreed to settle the disputes.

Clause (b) of the Compromise Petition filed by the parties merely shows that in the event, any of the cheque is dishonoured or returned unpaid, the entire remaining balance amount shall become payable at one time in which event, the decree holder would be entitled to execute the decree for realization of the entire remaining balance amount plus interest calculated at the rate of 15% per annum. Order XXIII, Rule 4 of the Code of Civil Procedure states that other provisions thereof are not applicable to an execution proceedings. But, despite the same, it is now well-settled that the parties may enter into a settlement even in a execution proceedings.

In *Moti Lal Banker (dead) by his legal Representative* v. *Maharaj Kumar Mahmood Hasan Khan,* AIR (1968) SC 1087, this Court held such compromise to be permissible in law stating:

> "...Independently of Order 23, Rule 3, the provisions of Order 21, Rule 2 and Section 47 enable the executing Court to record and enforce such a compromise in execution proceedings. Nor does Order 20, Rule 11(2) affect this power of the executing Court. Order 20, Rule 11 enables the court passing the decree to order postponement of the payment of the decretal amount on such terms as to the payment of interest as it thinks fit on the application of the judgment-debtor and with the consent of the decree-holder. It does not affect the power of the executing Court under Section 47 and Order 21, Rule 2."

Yet again in *Periyakkal,* (supra), this Court held that, in certain situations, the court has also jurisdiction to extend the time stating:

> "...The parties, however, entered into a compromise and invited the court to make an order in terms of the compromise, which the court did. The time for deposit stipulated by the parties became the time allowed by the court and this gave the court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. True the court would not rewrite a contract between the parties but the court would relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the court, the court's freedom to act to further the ends of justice would surely not stand curtailed."

There cannot, thus, be any doubt that the compromise entered into by and between the parties hereto in the execution proceedings was valid in law. The Appellant moreover does not say that the same was not acted upon. Admittedly, he received the entire amount thereunder, albeit belatedly; but even therefor the Respondent applied for and obtained extension of time to pay the same.

Rightly or wrongly, the learned Single Judge of the Delhi High Court by an order dated 28.8.2002 extended the time to the Respondent herein for paying the decretal amount with interest upto 23.7.2002. The Appellant herein had accepted such amount and that order was not questioned and, thus, the same had attained finality. What was questioned was the liability incurred by the Respondent not being able to adhere to the terms thereof.

If the orders of extension have validly been passed, the order of the court stood complied with. It may be true that the order dated 1.4.2002 was not questioned by the Respondent before this Court but then no direction was issued therein. No judgment was passed. The said order was passed without issuing any notice to the Respondents. The appeal was disposed of as having become infructuous. It was, thus, not final. Thereby, merely a liberty had been granted to the Appellant to agitate his grievances before the learned Single Judge for execution as well as for contempt. By reason of the said order, alone the Appellant could not put forth his claim. The *Appellant*, thus, cannot take any benefit thereof.

An order of a court of law and, in particular, a consent order, must be read in its entirety for the purpose of ascertaining its true intent and purport.

The learned Single Judge in his order dated 13.9.2001 recorded as to how much amount was paid by the Respondent to the Appellant before the execution case was filed. The execution case admittedly was filed for recovery of the balance sum of Rs. 36,59,110/- together with interest at the rate of 15% per annum. The settlement between the parties was arrived at at this juncture in terms whereof it was agreed:

> "1. The judgment debtor shall pay the balance amount of Rs. 36,59,110 in the instalments.
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> 2. For the past period, i.e., from the date of Decree till date the judgment debtor shall pay the lump sum interest of Rs. 6,35,082.

A 3. The judgment debtor shall pay 15% interest on the principal amount of the further period."

Not only the Respondent agreed to pay a lump sum interest of Rs. 6,35,082 but also became agreeable to pay 15% interest on the principal amount of the further payment. On calculation, a sum of Rs. 42,04,222/- was B found to be payable out of which the judgment debtor had paid a sum of Rs. 10,00,000/- by way of three demand drafts. Appropriating the said amount, the outstanding principal sum came to Rs. 26,69,110. However, the balance amount outstanding as on that day came to Rs. 32,04,222. It was that amount which was to be liquidated by paying instalment of Rs. 6 lakhs each per month. It is in the aforementioned backdrop, the undertaking given before the learned C Single Judge of the High Court by the Respondent herein is to be construed.

The contention of the learned counsel appearing on behalf of the Appellant is that once a default is committed by the Respondent, the Appellant in terms thereof, would be entitled to execute the balance decree immediately D which would mean he would be entitled to a further sum of about Rs. 41 lakhs, which was waived by him. We do not agree. The word 'decree' after the word 'balance', in our opinion, has been used loosely. The matter might have been different if the amount payable under the compromise entered into by the parties in the execution case would have been less than the amount paid by the Respondent to the Appellant in terms of the consent decree passed E originally. It is not so. Whereas under the original decree, a sum of Rs. 41,69,110/- was payable, in terms of the consent order passed in the execution case, a sum of Rs. 42,04,222/- became payable. The sum which was waived by the Appellant did not form part of the consent decree. It was merely a claim. Such a claim never fructified into any decree and in that view of the F matter the plea of Respondent being liable to pay the said amount to the Appellant despite the fact that no decree in relation thereto was passed cannot be countenanced.

For the reasons aforementioned, we are of the opinion that the impugned judgment and order cannot be faulted. This appeal is dismissed. However, in G the facts and circumstances of this case, there shall be no order as to costs.

N.J. Appeal dismissed.