

APPELLATE CIVIL

Before D. S. Tewatia, J.

HARYANA FINANCIAL CORPORATION,—Appellant.

versus.

MESSRS DOGRA STEEL INDUSTRIES ETC.,—Respondents.

First Appeal From Order No. 188 of 1970.

March 24, 1972.

Code of Civil Procedure (Act V of 1908)—Order 34, rules 10 and 11 (b)—Expression 'upto the date of realisation'—meaning of—Stated—Decree-holder—Whether entitled to claim all incidental charges incurred upto the date of realisation of the decretal amount.

Held, that the expression "realisation" means the time when the mortgagee becomes entitled to actually handle the cash and he cannot be considered to be so entitled until the auction sale is confirmed. Where some period separates the date of confirmation of sale from the date on which the amount is actually delivered to the decree-holder, the basic principle that has to be kept in mind is as to on what particular date the decree holder was legally in a position to get the payment. If that date coincides with the date of the confirmation of the sale then it is that date, which must be construed to be the date of realisation and if on that date the decree holder is not in a position to legally realise the decretal amount then it is the date on which he is found to be in such a position that has to be construed as the 'date of realisation of the amount'. (Paras 5 and 6).

Held, that a perusal of rule 10 of Order 34 of the Code of Civil Procedure leaves no manner of doubt that the decree holder is entitled to all reasonable incidental charges incurred by him upto the date of realisation of the decretal amount. (Para 8).

First Appeal from the order of the Court of Shri A. K. Jain, Additional District Judge, Gurgaon, dated the 7th November, 1970, 9th November, 1970, allowing the application of the applicant with costs and ordering to pay Rs. 1,55,927.56 to the appellant.

K. L. Kapur, Advocate, for the appellant.

H. L. Sarin, Advocate with M. L. Sarin and K. T. S. Tulsi, Advocates for respondent No. 1 and Kuldip Singh, Advocate, for the respondent No. 2.

JUDGMENT

TEWATIA, J.—The respondent No. 1, took a loan, of Rs. 1.75 lakhs from Punjab Financial Corporation, on the basis of a registered mortgage deed, dated 27th August, 1959. On 1st April, 1967, the Punjab

Financial Corporation was reorganised and the said loan fell to the share of the Haryana Financial Corporation (hereinafter referred to as the decree holder) which came into existence as a result of the said reorganisation. On the failure of the respondent No. 1 Messrs Dogra Steel Industries, Faridabad (hereinafter called the judgment-debtor) to comply with the terms of loan and the mortgage deed, the decree-holder took out proceedings under section 31 of the State Financial Corporation Act, 1951 and during the course of the said proceedings Messrs Dogra Steel Industries, Faridabad, admitted the claim of the Haryana Financial Corporation in full and in terms of, the said admission, District Judge, Gurgaon, decreed the claim,—*vide* his order, dated 19th June, 1967. The said order *inter alia* provided that the decree-holder would be entitled to future interest and the incidental expenses as prayed for in the application till the date of realisation. In pursuance of the above said order, dated 19th June, 1967, of the District Judge, the mortgaged property was put to sale by the Court. However, the said auction was set aside on 1st February, 1969. The auction purchaser, who purchased the said property at the second sale, deposited the full purchase amount on 28th June, 1969 in the Court. Although the objections to the second sale were dismissed by the Additional District Judge on 3rd April, 1970, but the Additional District Judge did not issue the payment voucher to the decree holder for Rs. 1,500,927.56 before 9th November, 1970, as he took long time in settling the dispute between the decreeholder on the one hand and some interveners on the other regarding the priority for payment from the amount, realised by the said auction of the property of the judgment-debtor, lying in deposit with the Court.

(2) The learned Additional District Judge, allowed only simple interest on the principal loan amount and that too up to 28th June, 1969, that is, the date of the deposit of the sale proceeds. He also allowed incidental expenses that were incurred only up to 28th June, 1969 and disallowed the expenses incurred between 28th June, 1969 and 29th November, 1970, the date on which the actual payment was effected,—such as a sum of Rs. 308.75 incurred by the appellant prior to the confirmation of sale on account of premium for insuring the mortgageed factory building and machinery of the judgment-debtor installed therein; the travelling allowance amounting to Rs. 34.60 paid to the official of the decree-holder to attend the Court auction; the sum of Rs. 403 incurred by the decree-holder in representing the decree-holder in the suit against the judgment-debtor in Delhi High Court concerning the mortgaged properties and a sum of

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Rs. 57.30 on account of the expenses incurred by the local counsel in conducting the proceedings in the Court of the Additional District Judge. The decree-holder aggrieved by the said order has come in appeal.

(3) Mr. K. L. Kapur, learned counsel for the appellant, has urged that the decree-holder was entitled to the payment of compound future interest up to the date of realisation of the decretal amount, that is, 9th November, 1970. He also submits that the decree holder was also entitled to the reimbursement of the above said expenses incurred by him between the period 26th June, 1969 to 9th November, 1970.

(4) In support of his first submission Mr. K. L. Kapur has placed reliance on *Meghraj Marwari v. Nursing Mohan Thakur* (1), *Ramchandra Marotrao Wanjari v. Ramchandra Gujaba Shrawane* (2) and *Khalilulrahman v. Gokul Chand* (3).

(5) After hearing the learned counsel for both the sides and after giving my careful thought to the matter, I am of the opinion, that this appeal must succeed in toto. The short point that arises for decision pertains to the meaning that should be ascribed to the expression "up to the date of realisation." Whether the date of realisation coincides with the date of deposit of the sale proceeds in the Court or the date on which the money so deposited in the Court becomes available to the decree-holder. In all the three authorities relied upon by Mr. K. L. Kapur, it was held that the expression "realisation" means the time when the mortgagee becomes entitled to actually handle the cash and it was held that the mortgagee cannot be considered to be entitled to handle the cash until the auction sale is confirmed. In the present case a period of almost seven months and six days separates the date of the confirmation of sale, which is 3rd April, 1970 from the date on which the actual voucher was drawn up by the Court and delivered to the decree holder.

(6) Mr. Krishan Lal Kapur has urged that the decree-holder is entitled to future compound interest not only up to the date of 3rd

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- (1) I.L.R. (1906) XXXIII Cal. 846.
 - (2) A.I.R. 1938 Nagpur 54.
 - (3) A.I.R. 1919 All. 253.

April, 1970; but up to 9th November, 1970; that is, the date of delivery of the payment voucher to the decree-holder. He submits that in the ruling relied upon by him the Court construed the date of realisation as the date of the confirmation of sale because in those cases the payment voucher was drawn up next day of the confirmation of the sale and the payment was effected on the following day. He submits that in construing the date of realisation the basic principle that has to be kept in mind is as to on what particular date, the decree-holder was legally in a position to get the payment. If that date coincides with the date of the confirmation of the sale then it is that date, which must be construed to be the date of realisation, and if on that date the decree-holder is not in a position to legally realise the decretal amount then it is the date on which he is found to be in such a position that has to be construed as the date of realisation of the amount because he submits that the realisation of the decretal amount should not be construed to refer to the realisation of the same by the Court, but to the realisation or its payment to the decree-holder. In support of this submission he makes reference to the provisions of Order XXXIV rule 11(b) of the Code of Civil Procedure, which are in the following terms:—

“In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:—

(a) * * * * *

(b) subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at such rate as the Court deems reasonable.”

I think there is merit in the contention advanced by the learned counsel. Obviously the decree-holder was not legally in a position to realise the decretal amount on the date of the confirmation of the sale because certain other creditors of the judgment-debtor had laid their claims to the amount lying with the Court and the Court decided to draw up the payment voucher only after deciding the contesting claims to the amount in question. Before the conclusion of these auxiliary proceedings the decree-holder, could not have legally realised the decretal amount. Thus it was through no fault of the decree-holder, that is, the appellant-Corporation that the

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realisation of the admitted amount got delayed. Hence the date of the realisation has to be construed to be the date on which the Court drew up the payment voucher, that is, 9th November, 1970. The contents of rule 11 of Order XXXIV of the Code of Civil Procedure, lend support to the view I have taken. Therefore, I hold that the appellant-corporation was entitled to the future interest up to 9th November, 1970.

(7) Now, the next question that arises for consideration is as to whether the decree-holder was entitled to simple interest or compound interest. In this connection the order of the District Judge, Gurgaon, dated 19th June, 1967, decreeing the claim of the appellant-Corporation makes the position clear. It explicitly provides that the decree-holder will be entitled to future interest as claimed, and the interest that was claimed by the decree-holder, as noticed in the order itself was compound interest at the rate of $9\frac{1}{2}$ per cent with half yearly rest. Hence in view of this the Additional District Judge, was not right in holding that the decree-holder was entitled to only simple interest. I hold that the appellant-Corporation was entitled to compound future interest on the principal sum.

(8) The last submission that survives for consideration pertains to the incidental expenses, to which, the decree-holder is entitled. Mr. K. L. Kapur, in this connection has made a reference to Order XXXIV rule 10, of the Code of Civil Procedure, which is in the following terms:—

“In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.”

A perusal of this rule leaves no manner of doubt that the decree-holder was entitled to all reasonable incidental charges incurred by it up to the date of realisation, that is, 9th November, 1970. The expenses which had been claimed by the appellant-Corporation

and disallowed by the Additional District Judge, are quite reasonable, in my opinion, and the learned counsel for the respondent has not challenged in this Court the reasonableness of the expenses in question. Hence I am of the opinion, that the appellant-Corporation is entitled to the payment of these expenses also and so I hold that the Additional District Judge was not right in disallowing the same.

(9) For the reasons stated above I order that the decree-holder is entitled to future compound interest on the principal sum up to 9th November, 1970 and the incidental expenses as claimed by the appellant-Corporation.

(10) Mr. K. L. Kapur, learned counsel for the appellant has calculated the total sum to which he is thus entitled and it comes to Rs. 1,81,909.70: The learned District Judge allowed the payment of only a sum of Rs 1,55,927.56 and hence the appellant is entitled to the balance, which comes to Rs. 25,982.14. Learned counsel for the respondent has not challenged the correctness of these figures, given by the learned counsel for the appellant and mentioned herein.

(11) For the reasons stated above this appeal is allowed with costs.

N. K. S.

APPELLATE CIVIL

Before Harbans Singh, C.J. and R. S. Sarkaria, J,

M/S. EAST INDIA COTTON MANUFACTURING CO. (P) LTD.,—Appellant.

versus.

THE ASSESSING AUTHORITY-CUM-EXCISE AND TAXATION OFFICER,
GURGAON and another,—Respondents.

Letters Patent Appeal No. 681 of 1970.

March 28, 1972.

Central Sales Tax Act (LXXIV of 1956)—Sections 2, 7 and 8—"Sizing, bleaching and dyeing of raw cloth"—Whether amounts to "textile manufacturing"—Purchase of material by a dealer under a certificate—Material used