



2025 :DHC :2732



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on:12th December 2024

Pronounced on: 22nd April, 2025

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CM(M) 1113/2023 & CM APPL. 35964/2023 (stay)

MS PARSVNATH DEVELOPERS LTD

.....Petitioner

Through: Ms. Minakshi Jyoti , Advocate.

versus

MS KEDAR NATH GUPTA AND SONS HUFRespondent

Through: Mr. A.K. Gupta and Mr. Shivaji
Tiwari, Advocates

CORAM:-

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. The limited question to be answered in this petition is whether the amount deposited by the petitioner/Judgment Debtor [“JD”] in a preliminary decree is to be adjusted towards interest or towards principal decretal amount.



2. Brief facts are that preliminary decree dated 28.09.2018 was passed by the court of learned Additional District Judge-01, Patiala House Court, New Delhi to the extent of refunding the principal amount of Rs. 34,07,325.20/- (Rs. 29,56,670/- + Rs. 4,50,655.20/-) in CS 56823/2018, titled "*Kedar Nath Gupta & Sons (HUF) Vs. M/s. Parsvnath Developers Ltd.*". Petitioner herein is the **JD**. The relevant paras of the decree read as under:-

"11. I have thought over the said aspect - in view of the facts and circumstances of the case in my opinion since there is an offer/admission which has come on the part of the defendant **to refund the principle amount in my opinion it would be apt at this juncture to order payment of Rs. 34,07,325.201-[Rs.29,56,670 + Rs. 4,50,655.20], Rs.4,50,655.20/- is the amount which is otherwise also admitted by the defendant upon which defendant has paid the TDS - the same signifies that this amount becomes a part of the principle.**

12.2 Apart whereof I am also of the view that the question of interest as a whole should be disposed of at the final stage - not otherwise by acceding to the claim of the plaintiff to the extent of 10% leaving the remaining open for litigation. **The yardstick which I have adopted with regard to return of principle amount is more proper leaving the question of adjudication as to the interest open.**

.....
14. I may clarify that the present decree I disposal of application is only to the extent to refund of Rs. 34,07,325.201-[Rs.29,56,670 + Rs.4,50,655.20 for which TDS was filed]. The amount be deposited within 4weeks from . today by the defendant failing which coercive action shall be taken. **I am not passing any orders as to the aspect of interest.** That aspect is kept open.

15. The adjustment of Rs. 34,07,325.201- shall be as per law and the final adjustment would be at the time of final disposal of the suit"

3. In compliance of the preliminary decree, petitioner/JD made payments on different dates, as per following details:-



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| Sl. No. | Date | Mode of payment | Amount |
|---------|--------------|-----------------|------------------------|
| 1. | 03.11.2018 | Demand Draft | Rs. 5,00,000/- |
| 2. | 07.01.2019 | Demand Drafts | Rs.12.00,000/- |
| 3. | 13.02.2019 | Demand Drafts | Rs. 8,00,000/- |
| | 01.04.2019 | Cheque | Rs. 9,07,325/- |
| | Total Amount | | Rs. 34,07,325/- |

4. Since no orders were passed as to the aspect of interest, respondent/Decree Holder [“**DH**”], preferred CM (M) No. 1492/2018 before the High Court. This Court vide order dated 30.11.2021, directed the payment of interest @ 9% on Rs. 29,56,670/-. Directions in Para No. 14 & 15 read thus:-

“14. Accordingly, the impugned order passed by the Trial Court is modified to the extent that the petitioner, in addition to the sum of Rs. 34,07,325/- would also be entitled to interest at the rate of 9% p.a. on the sum of Rs. 29,56,670/-, the amount deposited by the petitioner.

15. The question whether the interest is payable on the amount of Rs. 4,50,655/-, would be determined by the trial court during the trial of the suit along with the rate of interest, uninfluenced by any observation made by this Court. Since the only question to be adjudicated by the trial Court is in respect of interest payable, trial court shall endeavour to expeditiously decide the suit.”

5. Respondent filed Execution Petition No. 130/2022 for execution of the preliminary decree and the order dated 30.11.2021, passed by the High Court in CM(M) No. 1492/2018.



6. In Execution Petition, petitioner filed an application, seeking extension of time in depositing the decretal amount in terms of preliminary decree and the order passed by this Court on 30.11.2021 along with its calculations.

7. The Civil Nazir filed a Calculation Sheet stating that the total amount due was Rs. 24,97,733/-, but as per the calculation filed by the petitioner, the balance interest payable was Rs. 23,10,381/-. Petitioner filed detailed elucidation of its calculation on 14.02.2023, clarifying how the petitioner reached to the balance interest payable of Rs. 23,10,381/-. Petitioner made further payments of Rs. 5 lakhs on 17.01.2023, Rs. 5 lakhs on 17.02.2023, Rs. 5 lakhs on 12.05.2023, through separate demand drafts towards interest in the above-mentioned execution petition.

8. After considering the calculations filed by the parties and the Civil Nazir and after considering arguments from both the sides and while placing reliance on the decision of this Court in the case of **Brijesh Kumar Verma Vs. Aurangjeb & Anr., FAO 345/2016, decided on 24.05.2028**, the executing court, appropriated the amount paid by the JD, firstly towards interest and the remaining amount towards principal amount and finally concluded that principal amount to Rs. 21,93,104/- along with interest thereon from 12.05.2023 to 26.05.2023 was due and payable. The calculations arrived at by the executing court in its order dated 26.05.2023 are reproduced below:-



Total Principal: 29,56,670 (deposited on different dates between 2005 to 2011)

Date of first payment by JD: 03.11.2018

Interest @ 9% per annum on the Principal till 03.11.2018

| Principal | Date of Deposit | Period of Interest | Total interest |
|----------------------------------|-----------------|---|----------------|
| Rs.6,56,250/- | 15.02.2005 | 15.02.2005 to 03.11.2018 (5009 days) | Rs. 8,10,456/- |
| Rs.6,56,250/- | 19.01.2006 | 19.01.2006 to 03.11.2018 (4671 days) | Rs. 7,55,767/- |
| Rs.5,00,000/- | 16.02.2010 | 16.02.2010 to 03.11.2018 (3182 days) | Rs. 3,92,022/- |
| Rs.11,44,170/- | 29.11.2011 | 29.11.2011 to 03.11.2018 (2531 days) | Rs. 7,13,995/- |
| Total Principal : Rs.29,56,670/- | | Total Interest : Rs. 26,72,240/- | |

Amount due on 03.11.2018:

Principal + Interest =29,56,670/- + 2672240/-

| <i>Appropriation of amount of Rs.5,00,000/- paid by JD on 03.11.2018</i> | |
|--|---|
| Amount towards interest of Rs.26,72,240/- | 5,00,000/- |
| Amount towards Principal of Rs.29,56,670/- | Nil |
| Balance after appropriation | Principal: 29,56,670/- Interest: 2672240/- -500000/- 21,72,240/- |

2nd payment by JD: Rs.12,00,000/- on 07.01.2019

Amount due on 07.01.2019 :

Principal: Rs.29,56,670/-

Interest: Previous Interest (Rs.21,72,240/-) + New Interest
{Interest on Principal (29,56,570/-) from 03.11.2018 to 07.01.2019(65 days)}, i.e., Rs.47,385/-
=Rs.22,19,625/-

**Appropriation of amount of Rs.12,00,000/- paid by JD on 07.01.2019**

| | |
|--|---|
| Amount towards interest of Rs.22,19,625/- | 12,00,000/- |
| Amount towards Principal of Rs.29,56,670/- | Nil |
| Balance after appropriation | Principal: 29,56,670/- Interest: 2219625/- |
| | <u>-1200000/-</u> |
| | 10,19,625/- |

3rd payment by JD: Rs.8,00,000/- on 13.02.2019

Amount due on 13.02.2019:

Principal: Rs.29,56,670/-

Interest: Previous Interest (Rs.10,19,625/-) + New Interest {Interest on Principal (29,56,670/-) from 07.01.2019 to 13.02.2019(37 days)}, i.e., Rs.26,973/-
=Rs.10,46,598/-

Appropriation of amount of Rs.8,00,000/- paid by JD on 13.0.2019

| | |
|--|---|
| Amount towards interest of Rs.10,46,598/- | 8,00,000/- |
| Amount towards Principal of Rs.29,56,670/- | Nil |
| Balance after appropriation | Principal: 29,56,670/- Interest: 10,46,598/- <u>-800000/-</u> 2,46,598/- |

4th payment by JD: Rs.9,07,325/- on 01.04.2019

Amount due on 01.04.2019 :

Principal: Rs.29,56,670/-



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Amount due on 12.05.2023:

Principal: Rs.23,30,206/-

Interest: Previous Interest (Rs.2,96,831/-) + New Interest
{Interest on Principal (23,30,206/-) from 17.01.2023
to 12.05.2023(115 days)}, i.e., Rs.66,067/-
=Rs.3,62,898/-

| <i>Appropriation of amount of Rs.5,00,000/-paid by JD on 12.05.2023</i> | |
|---|---|
| Amount towards interest of Rs.3,62,898/- | 362,898/- |
| Amount towards Principal of Rs.23,30,206/- | 1,37,102/- |
| Balance after appropriation | Principal: 23,30,206/- <u>-1,37,102/-</u> 21,93,104/- Interest: 3,62,898/- <u>- 3,62,898/-</u> Nil |

Amount due as on date: Principal: Rs.21,93,104/-

Interest: Interest on Principal (21,93,104/-) from 12.05.2023 to 26.05.2023 (14 days) = Rs.7,569/-

9. Feeling aggrieved, petitioner preferred the present petition.
10. Learned counsel, appearing for the petitioner, submits that adjustment of an amount towards principal/interest has to be necessarily in accordance with the specific direction contained in the decree and not otherwise. It is submitted that the learned executing court failed to consider that the specific directions in the preliminary decree were to pay only the principal amount of Rs. 29,56,670/- and Rs. 4,50,655/- only and there was no direction whatsoever to pay the interest.



11. Learned counsel further submits that petitioner paid the entire amount of preliminary decree prior to the order dated 30.11.2021 passed by the High Court ordering to pay the interest and also much prior to filing of the execution petition. It is argued that the amount paid in 2019 cannot be adjusted towards interest when the order of interest was made only on 30.11.2021.

12. While referring to the judgments of **Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh, (2013) 1 SCC 243** and **Brijesh Kumar Verma (supra)**, it has been submitted that executing court has not considered that the general rule of appropriation towards decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and only in the absence of such directions that the adjustments can be made towards the payment of interest and cost and thereafter towards the payment of principal amount. It is submitted that in CM(M) No. 1492/2018, the High Court only directed the petitioner to pay interest at the rate of 9% per annum on the principal amount but no direction was passed for adjustment of already paid principal amount, firstly towards payment of interest. It is argued that that the learned executing court has not properly interpreted the law and therefore the impugned order is liable to be set aside.

13. In the case of **Gurpreet Singh Vs. Union of India, (2006) 8 SCC 457**, the Constitution Bench of the Supreme Court held that the payment made by the judgment debtor to decree holder has to be



appropriated first towards the interest and costs and then, towards the principal. In the case of **Bharat Heavy Electrical Ltd. Vs. R.S. Avtar Singh** (*supra*), the Supreme Court held that the general rule of appropriation towards decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions, adjustments be made firstly towards the payment of interest and costs and thereafter towards the payment of the principal amount subject, of course, to any agreement between the parties.

14. In the case of **Brijesh Kumar Verma Vs. Aurangjeb** (*supra*), after discussing various judgments including that of **Gurpreet Singh Vs. Union of India** (*supra*), **Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh** (*supra*), **V. Kala Bharathi Vs. Oriental Insurance Company Ltd., Branch Chitoor, (2014) 5 SCC 577** and **United India Insurance Co. Vs. Kanwar Lal, Review Pet.391/2013 in MAC.APP.385/2007** decided on 30th May, 2014, the court summarized the principles laid down in the above judgments in Para-8, which is extracted below:-

“8. Summary of principles laid down in the above judgments. The general rule of appropriation of the decretal amount is that the amount deposited by the judgment debtor shall be first adjusted towards interest and costs, and thereafter towards the principal amount.”

15. Admittedly, the preliminary decree was only to the extent of Rs. 34,07,325.20/-. No order was passed with regard to any interest. Undisputedly, the amount of Rs. 34,07,325/- was paid during the



period 03.11.2018 to 01.04.2019 in compliance of the preliminary decree. Admittedly, the interest at the rate of 9% per annum came to be awarded in CM(M) No. 1492/2018 by order dated 30.11.2021, which is subsequent to the dates on which the aforesaid payments were made.

16. The order dated 30.11.2021 modified the orders passed by the trial court. As per the doctrine of Merger, if lower court's decision is upheld or modified by a higher court, the lower court's ruling merges with the decision of the superior court. The learned executing court rightly took view that the order of the trial court has merged with the order of the High Court dated 30.11.2021. The effect of said merger would be that the preliminary decree would be treated as a decree for the refund of the principal amount of Rs. 34,07,325.20/- with interest at the rate of 9% per annum on the sum of Rs. 29,56,670/-.

17. Notwithstanding the fact that certain payments were made between 03.11.2018 to 01.04.2019, applying the principles as laid down by the Supreme Court and this Court, the amount of Rs. 34,07,325.20/- paid by the petitioner shall be first appropriated towards interest and thereafter towards principal. That being so, the computation made by the learned executing court vide its order dated 26.05.2023 on such basis, cannot be faulted with.

18. Viewed thus, I find no perversity or impropriety in the impugned order passed by the learned executing court. I thus find no merit in the present petition.



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19. The same is accordingly dismissed.

RAVINDER DUDEJA, J.

APRIL 22nd, 2025

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