

Punjab Woollen Textiles Firm Amritsar and others v. Bank of India
(I. S. Tiwana, J.)

and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. (See A.I.R. 1970 Supreme Court 1475). Equally well laid down is the law that while construing a decree the Court is entitled to look into the pleadings and the judgment that precede it. (See A.I.R. 1960 Supreme Court 388).

(6) Examining the facts in the light of these principles, it is patent from the records that the decree in question did not relate to any commercial transaction and, therefore, the proviso to section 34 of the Code of Civil Procedure, was not attracted to the facts of this case, in any manner. In the light of this conclusion, it is patent that the interest at a rate higher than six per cent could not be granted by the Court for the period subsequent to the passing of the decree. Since the provisions of section 34 of the Code of Civil Procedure are not procedural in nature and, in fact, deal with the jurisdiction of the Court to order or direct payment of interest, the said provision could not possibly be ignored and to the extent it has been ignored, the decree is rendered *null and void*. For this view I seek support from an earlier pronouncement of this Court in *Siri Chand and another v. Central Bank of India Yamunanagar and another* (1). Therefore, I allow this petition to the limited extent that the executing Court shall not realise interest at a rate higher than six per cent for the period subsequent to the date of passing the decree to the date of realisation of the amount. Thus, the impugned order of the executing Court is set aside as indicated above. No costs.

S.C.K.

Before : I. S. Tiwana, J.

PUNJAB WOOLLEN TEXTILES FIRM AMRITSAR AND OTHERS,
—Petitioners.

versus

BANK OF INDIA,—Respondent.

Civil Revision No. 1918 of 1990.

13th February, 1991.

Code of Civil Procedure, 1908 (V of 1908)—S. 2 cl. 2—Indian Contract Act, 1872—Ss. 74—Consent decree in a suit for recovery—Bank choosing to accept certain amount by way concession—Absence

(1) 1988 (1) P.L.R. 473.

of penal clause in such decree—Dejudant's failure to pay amount by agreed date—Execution of decree—S. 74 of the Contract Act does not apply to a consent decree.

Held, that a consent decree in terms of S. 2 cl. (2) of the Code of Civil Procedure nonetheless remains a decree as a result of the adjudication by the Court, and the principle incorporated in S. 74 of the Contract Act cannot be applied to such a decree. Whether there is a penal clause in the agreement or contract between the parties on which such a decree is based, has to be decided by the Court before the passing of the decree and not subsequent thereto.

(Para 4)

Held, further that if a consent decree makes a provision by way of concession rather than by way of penalty, S. 74 of the Contract Act cannot be attracted to such a decree. It is only when a clause or condition of the decree entitles a party to something to which he would not have been at all entitled to in the suit and not otherwise that a decree can be held to be penal.

(Para 5)

Petition u/s 115(c) Proviso (b) C.P.C. for revision of the order of the Court of Shri J. S. Chawla, PCS, Sub-Judge 1st Class, Amritsar, dated the 29th May, 1990 dismissing the application of the petitioner-judgment debtor, u/s 21 Rule 2, CPC for certifying and recording the full and final satisfaction of decree passed against them.

Claim : Execution Application under Order 21 Rule 2 read with section 151 C.P.C.

Claim in Revision : For reversal of order of Lower Appellate Court.

R. K. Chhibbar, Sr. Advocate with Anand Chhibbar, Advocate, for the Petitioners.

L. M. Suri, Sr. Advocate with Arun Kumar, Advocate, for the Respondents.

JUDGMENT

I. S. Tiwana, J.

(1) The vexed question whether section 74 of the Contract Act applies to a decree or a compromise decree passed by a competent Court, is one of the primary controversies that comes to the fore in this petition under section 115, C.P.C. It is directed against the order of the executing Court dated 29th May, 1990, whereby the

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petitioner-judgment-debtors' application under Order 21, Rule 2, C.P.C. for certifying or recording the full and final satisfaction of the decree passed against them has been dismissed. To appreciate the contentions raised by the learned counsel for the parties the following undisputed facts need only be noticed here.

(2) The respondent Bank filed a suit against the petitioners claiming the following reliefs:—

- “(a) That a joint and several decree against the defendants Nos. 1 to 4 for payment to the plaintiff of the total amount of Rs. 44,96,030.66 referred to in paragraph 52 hereinabove together with interest upto the date of payment;
- (b) That an interim and further interest on the amounts referred to in paragraphs Nos. 43 and 44 hereinabove at the respective rates referred to in paragraph Nos. 43 and 44 hereinabove from the date of the filing of the suit till date of payment;
- (c) That a decree that the mortgaged property and the hypothecated property and the pledged property referred to in paragraphs Nos. 49 and 50 hereinabove or a sufficient part thereof be sold by and under the directions of this Hon'ble Court and the proceed of the sale be paid into the Court and applied in payments of the amounts referred to in prayers (a) and (b) above;
- (d) That alternatively a decree be passed against defendant No. 5 for an amount of Rs. 15,00,000 for the shortfall and damages that the plaintiff may suffer due to acts of the defendant No. 5 as mentioned earlier;
- (e) That costs of this suit be paid by the defendants.”

Though initially the petitioners chose to contest it, yet at a later stage it was got decreed on February 9, 1979, on the basis of a compromise of the same date (Exhibit P. 1 on the suit file). This compromise was made a part of the decree passed by the trial Court and the material part of it (paragraph 3) relevant to the disposal of this petition, reads as follows:—

- “3. (a) The defendants No. 1 to 4 admit the claim of the plaintiff Bank as prayed in clauses (a), (b) and (c) of the plaint and it is submitted that a joint and several decree with costs and future interest be passed accordingly.

(b) Parties have agreed that in case the defendants No. 1 to 4 now pay a lump sum amount of Rs. 56.10 lacs under the terms herein, within 6 months or such other time as this Honourable Court may deem fit then the decree aforesaid shall be deemed to have been fully and finally satisfied.

(c)

It is further agreed between the parties that in case the defendants No. 1 to 4 fail to procure buyer for the sale of the aforesaid properties or fail to pay the sum of Rs. 56.10 lacs in accordance with the above mentioned terms by the date fixed, then and in that eventuality the Bank shall have the right to proceed with the execution of the said decree in the manner thought fit by it.

4. In the premises, it is humbly prayed : that an order be made recording the compromise on the terms as set out in paragraph 3 (a) (b) and (c) above and a decree be passed in accordance therewith."

The Court framed the decree in the following words:—

"This suit is coming on this day for final disposal before me Mrs. Sudershan Modi, PCS, Sub-Judge Ist Class, Amritsar in the presence of Shri N. N. Bhatia, Advocate for the plaintiff and Shri A.R. Aggarwal, Advocate for defendants No. 1 to 4. It is ordered that as per statement of the counsel for the plaintiff the suit of plaintiff against defendant No. 5 is dismissed. The parties left to bear their own costs and as per statement of the parties, the suit of the plaintiff is decreed in favour of the plaintiff against the defendants No. 1 to 4 with costs and further interest as agreed in the compromise. In case the defts. No. 1 to 4 make payment of Rs. Fifty six lacs and ten thousand only upto 31st December, 1979 the suit of the plaintiff shall stand fully satisfied in view of the compromise Ex. P. 1 which also forms part of this order. In case the defendant No. 1 to 4 fail to make payment of the aforesaid amount upto 31st December, 1979, then the plaintiff would be entitled to recover the remaining decretal amount after giving adjustment of the amount paid by the defendant No. 1 to

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4 by getting the decree executed in view of compromise Ex. P. 1. Shri Krishan Gopal Arora, Advocate, Amritsar hereby appointed as Receiver. His fee is fixed at Rs. 4,000 which will be paid by the plaintiff."

Since the petitioners failed to carry out the terms of the decree, the respondent Bank filed an execution petition. During the pendency of these proceedings the petitioners filed the present application claiming that they had already paid the decretal amount though subsequent to 31st December, 1979, therefore, the decree stood fully and finally satisfied. On a contest having been raised by the respondent Bank, the lower Court has dismissed this application for the reasons that:—

- (i) "The judgment debtor/applicants have misled the Court by alleging that no future interest was awarded. Therefore, the present application is *mala fide* on this score."
- (ii) In view of Article 125 of the Limitation Act, 1963, the application was barred by time as it had not been filed within 30 days from the alleged satisfaction or adjustment of the decree passed against the petitioners.
- (iii) "That only concession was given to the judgment-debtors/applicants that in case they made the payment of Rs. 56,10,000 upto 31st December, 1979, the decree shall stand satisfied. The statement of account furnished by the J.Ds./applicants shows that they did not pay Rs. 56,10,000 upto 31st December, 1979 but made the first payment of Rs. 16,000 on 1st May, 1980 and subsequent payments thereafter. Therefore, the J.Ds./applicants having failed to pay Rs. 56,10,000 as agreed upto 31st December, 1979 are not entitled to the concession but are entitled to the adjustment of payments made by them."

In other words the Court opined that the decree in question does not contain any penal clause or imposed any penalty on the judgment debtors.

(3) Having heard the learned counsel for the parties at some length I find that the above noted conclusions of the executing Court are well merited. The learned counsel for the petitioners has not argued or suggested anything to dislodge the conclusions recorded at (i) or (ii) and rather concentrated on impugning the third conclusion recorded by the Court. On the other hand, Mr. Suri, learned counsel for the respondent, while upholding the opinion of the lower Court on this point has urged with some amount of vehemence

that the provisions of section 74 of the Contract Act are not at all attracted or applicable to a decree. Though I find that this last mentioned stand of Mr. Suri is thoroughly controversial in the light of different judgments of different High Courts, yet on first principles I uphold his stand. I do not feel the necessity of referring to all the judgments cited by the learned counsel for the parties for and against the above noted proposition except advertng to some of the earlier judgments of this Court since I am of the opinion that sitting singly I cannot possibly resolve the controversy in an effective manner.

(4) A bare reading of clause (2) of section 2, C.P.C. which defines 'decree' clearly indicates that it includes a compromise or a consent decree. Undoubtedly such a decree embodies the agreement between the parties with the Court's command added to it. In spite of the fact that the decree is based on a compromise or agreement between the parties it does invite the exercise of adjudicatory powers and conclusively determines the rights of the parties with regard to matter in controversy. Such a consent decree in terms of section 2, C.P.C. nonetheless remains a decree as a result of the adjudication by the Court, and the principle incorporated in section 74 of the Contract Act, can, to my mind, never be applied to such a decree. Whether there is a penal clause in the agreement or contract between the parties on which such a decree is based, has to be decided by the Court before the passing of the decree and not subsequent thereto. If the stand of the petitioners is to be accepted then a good number of such consent decrees may never assume finality. The very idea of the decree being penal appears to me to be foreign to the decree or the rights of the parties settled by the said decree. May be that for construing a decree, the Court in appropriate cases is entitled to take into consideration the pleadings as well as the proceedings leading to the passing of the decree but that is where the decree is ambiguous, indefinite or lacks certainty. In other words, it is only in order to find out the meaning of the words employed in a decree that the Court may look behind it. On the other hand, this approach cannot be adopted when the decree is concise and precise. Some of the earlier judgments of this Court on which Mr. Chhibbar seeks reliance to support his stand are *Khetu v. Jyoti and others* (1); *Chattar Singh and another v. Khetu and another* (2) and *Gabriel India Ltd. v. Arun and Rajive Pvt. Ltd.* (3). However in all these cases it was assumed without any

(1) (1963) 65 P.L.R. 78.

(2) 1966 C.L.J. (Pb.) 665.

(3) 1987 PAP 21 Punjab & Haryana.

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debate or controversy that the provisions of section 74 of the Contract Act applied to a compromise decree. Since in the instant case I am of the opinion that the third conclusion of the lower Court as noticed above also deserves to be sustained. I have not chosen to make a reference to a larger Bench.

(5) Now when can a decree be held to be penal? The answer, to my mind, is that only when a clause or condition of the decree entitles a party to something to which he would not have been at all entitled to in the suit and not otherwise. In other words if such a decree makes a provision by way of concession rather than by way of penalty, the abovenoted section of the Contract Act cannot be attracted to such a decree. In the instant case the learned counsel for the petitioners concedes that by the date the parties entered into compromise and the decree was passed on 9th February, 1979, the claims of the respondent had come to Rs. 70,37,950.82, i.e. the principal amount of Rs. 44,96,030.66 plus the agreed interest on that, yet the Bank chose to accept Rs. 56,10,000 in case the same was paid to it by 31st December, 1979, to discharge the liability of the petitioners fully and finally. Thus it is patent that the Bank chose to accept this amount only by way of concession. Since the petitioners have failed to avail of this concession by not paying the amount by the agreed date, they cannot possibly complain of having been penalised in any manner. For committing this default they have to thank themselves. Thus they have no case either in law or in equity.

(6) For the reasons recorded above this petition fails and is dismissed with costs which I determine at Rs. 1,000.

R.N.R.

Before : I. S. Tiwana, J.

D. D. MALIK,—Petitioner

versus

S. M. NEHRA,—Respondent.

Civil Revision No. 2720 of 1990.

14th February, 1991.

East Punjab Urban Rent Restriction Act (III of 1949) as amended by Act 2 of 1985—Ss. 13-A and 18-A—Additional accommodation—Tenant's application for leave to contest rejected—Supreme Court