

(Annexure P.3) filed under section 173 of the Code, I am unable to agree with this contention also. I find that from the allegations made in the First Information Report read with investigation carried out by the police, a *prima facie* case is made out against all the four petitioners for the commission of the various offences alleged against them. It is well settled law that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This court will not be justified in the exercise of its powers under section 482 of the Code in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the First Information Report. *Prima Facie*, I do not find any material to say that the allegations contained in the First Information Report are *mala fide* or frivolous or vexatious.

(15) As a result of the above discussion. I do not find any merit in this petition and the same is hereby dismissed. It is, however, made clear that nothing stated in this order is intended to prejudice the case of the either said and the same will be decided according to law.

S.C.K.

Before Hon'ble Dr. Sarojnei Saksena, J.

BANK OF INDIA,—Petitioner.

versus

M/S DELHI FARIDABAD TEXTILES PVT. LTD. AND  
OTHERS,—Respondents.

C.R. No. 534 of 1995.

22nd September, 1995.

*Code of Civil Procedure, 1908—Order 21 Rl. 1, Sub Rl. (2) & (3)—Judgment debtor deposits money in Court—Admittedly no notice or intimation was given by judgment debtor to decree holder regarding mode or manner of appropriation Court erred in holding decree holder was duty bound to appropriate amount deposited by judgment debtor towards principal and then interest.*

*Held, that the judgment debtor while depositing this amount in the Court never gave any notice/intimation to the decree holders to appropriate the amount either towards principal or towards interest.*

(Para 6)

*Further held*, that the ratio is that under order 21 Rule (1) Sub-Rule 2 & 3 CPC the judgment debtor is duty bound to give a notice or intimation to the decree holder, stating the manner of appropriation. If he fails to do so, the decree holder is within his rights to appropriate it first towards interest due and then towards principal.

(Para 11)

*Further held*, that the deposit of decretal amount made in pursuance of order of Court cannot be deemed to be towards principal. In absence of any intimation as required by sub-rule (2) of Rule 1 of Order 21 and indication of manner of appropriation, the payment could not be deemed to have been appropriated towards principal unless the decree holder admits it to be so.

(Para 12)

*Further held*, that the executing Court has fallen into an error in holding that the decree holder was duty bound to appropriate the amount deposited by the judgment debtors in the Court towards principal amount first and then towards interest as admittedly no notice or intimation was given by the judgment debtors to the petitioner-decree holder under sub-rule (2) or (3) of Rule 1 or Order 21 C.P.C. Accordingly, all the three revision petitions are hereby allowed.

(Para 13)

L. M. Suri, Sr. Advocate with Deepak Suri, Advocate, for the petitioner.

P. C. Goyal, Advocate, Bhavna Cuccria, Advocate also with him, for the Respondent.

#### JUDGMENT

*Dr. Sarojnei Saksena, J.*

(1) This order will dispose of Civil Revision Nos. 534, 535 and 536 of 1995.

(2) Petitioner-Bank filed Civil Suit No. 216/80 on May 1, 1980, against Messrs Barar Lion Tools Limited. This suit was decreed on June 2, 1984, for Rs. 15,15,297.12 alongwith pendente lite and future interest at the rate of 17 per cent per annum. The decree-holder Bank filed Execution Petition No. 33/10/86 for executing this decree.

(3) Petitioner-Bank filed Civil Suit No. 623/72 against M/s Delhi Faridabad Textiles Private Limited on November 16, 1979, which

was decreed on October 16, 1984, for an amount of Rs. 16,01,383.47 along with pendente lite and future interest at the rate of 17 per cent per annum. Decree-holder bank filed Execution Petition No. 34/10/85 for realising this amount.

(4) Petitioner-Bank filed Civil Suit No. 336/80 on November 15, 1979, against M/s Delhi Faridabad Textiles Private Limited, which was decreed on October 6, 1984, alongwith pendente lite and future interest at the rate of 17 per cent per annum. Petitioner Decree-holder filed Execution Petition No. 32/10/85 to execute the decree.

(5) During the pendency of these suits and after the passing of the decrees, the judgment-debtors made certain payments to the petitioner-Bank towards satisfaction of the decree. After the passing of the decrees, on October 22, 1993, the judgment-debtors paid in Court two drafts for Rs. 16,74,461.22 and Rs. 2,00,000 in aforesaid Execution Petition No. 34/10/85 and another draft of Rs. 2,00,000 in Execution petition No. 32/10/85. Petitioner-Bank appropriated these amounts against the interest becoming due till then. Judgment-debtors M/s Delhi Faridabad Textiles Private Limited in two cases and M/s Barar Lion Tools Limited moved three applications under Order 21 Rule 66 and section 151 CPC with the prayer that the payments made by them be first adjusted towards the principal amount due and then against the interest due, whereas decree-holder Bank has appropriated it otherwise.

(6) Concededly, the judgment-debtors while depositing this amount in the Court never gave any notice intimation to the decree-holders to appropriate the amount either towards principal or towards interest.

(7) The Executing Court, replying on *Punjab National Bank etc. v. Prem Sagar Choudhary and others* (1), recorded a finding that payments made by the judgment-debtors should first be appropriated towards principal amount due and then towards interest and costs. Thus, the aforesaid petitions were allowed. The Executing Court further held that the future interest from the date of institution of the suit till the date of realisation of the entire decretal amount will be charged by the decree-holder only on the principal amount i.e. not on the interest which formed part of the decree and then on the deminishing principal amount as per payments made by the

---

(1) A.I.R. 1988 H.P. 33.

judgment-debtors from time to time. The Executing Court also directed the petitioner decree-holder Bank to furnish its statement of account for the aboves payments accordingly.

(8) The only point argued before this Bench was whether the decree-holder is entitled to appropriate the aforesaid payments made by the judgment-debtors towards the interest due without being noticed by the judgment-debtors about the mode of appropriation ?

(9) Relying on *Rai Bahadur Seth Nemichand v. Seth Radha Kishan* (2), their Lordships of the Apex Court held in *Meghraj v. Mst. Bayabai* (3), that the judgment-debtor is bound to deposit the decretal amount in accordance with law as is provided by Order 21 Rule 1 CPC, but mere deposit in the absence of any notice and intimation that it was being deposited towards principal, it was for the decree-holder to appropriate it towards the dues.

(10) In *Prem Sagar Choudhary's* case (supra) this judgment of the Supreme Court was considered by a Single Bench of the High Court of Himachal Pradesh and it held that in case of money decree the normal rule approved in *Meghraj's* case (supra) with respect to appropriation of payments to be made towards the satisfaction of interest in the first instance and then of the principal amount of the Court decrees, has become inoperative after the amendment of Rule 1 Order 21 CPC by the C.P.C. (Amendment) Act, 1976. It further held that in view of the new provisions of Rule 1 of Order 21 it is no longer open to the decree-holder to appropriate payments received by him to that part of the decretal amount which does not bear any interest. On the other hand, such payment has to be applied first towards the part of the decretal amount which bears interest, if any. Sub-rules (4) and (5) of Rule 1 of Order 21 postulate cessation of interest on any payment made for the satisfaction of the decretal amount. It further held that the words "any payment" as used, given their natural meaning, do not admit any exception. Section 60 of the Contract Act does not vest a discretion in the creditor to apply the payment made by the debtor, without indicating to which debt the payment is to be applied, to any lawful debt including a time-barred debt, this section will have to be read subject to the provisions contained in the amended Rule 1 of Order 21 relating to decretal amounts, being specific in nature.

---

(2) A.I.R. 1922 P.C. 26.

(3) A.I.R. 1970 S.C. 161.

(11) This amended rule is also considered by a Single Bench of Kerala High Court in *M/s Sujatha Weaving Mills and others v. Syndicate Bank* (4), wherein it is held that when judgment-debtor makes any deposit in the Court, he should state mode of appropriation also. If he fails to do so, general rule that deposit will go in discharge of interest first will govern. The fact that decree-holder withdrew the said deposit, it cannot be said that there was compliance with sub-rule (4) of Rule 1 of Order 21, Code of Civil Procedure, so that the decree-holder was bound to adjust said deposit towards principal first. The ratio is that under Order 21 Rule 1 Sub Rules 2 and 3 CPC the judgment-debtor is duty bound to give a notice or intimation to the decree-holder, stating the manner of appropriation. If he fails to do so, the decree-holder is within his rights to appropriate it first towards interest due and then towards principal.

(12) This controversy is clinched by the latest judgment of the Apex Court in *Mathunni Mathai v. Hindustan Organic Chemicals Limited and another* (5). Their Lordships of the Apex Court have held that the deposit of decretal amount made in pursuance of order of Court cannot be deemed to be towards principal. In absence of any intimation as required by sub-rule (2) of Rule 1 of Order 21 and indication of manner of appropriation, the payment could not be deemed to have been appropriated towards principal unless the decree-holder admits it to be so. They have further held that the ratio laid down in *Meghraj's* case (supra) applies now with greater rigour. The reason for the rule both in the unamended and amended provision appears to be that if the judgment-debtor intends that the running of interest should cease then he must intimate in writing and ensure that it is served on the decree-holder. Sub-rules (4) and (5) added in 1976 to protect the judgment-debtor provide for ceasure of interest from the date of deposit or payment. But the cessation of interest under sub-rule (4) takes place not by payment alone but from the date of service of notice referred to in sub-ruel (2).

(13) Thus, relying on the aforesaid judgment of the Apex Court, I find that the executing Court has fallen into an error in holding that the decree-holder was duty bound to appropriate the amount deposited by the judgment-debtors in the Court towards principal amount first and then towards interest as admittedly no notice or

---

(4) A.I.R. 1994 Kerala 386.

(5) A.I.R. 1995 S.C. 1572.

Ram Kumar v. Presiding Officer, Industrial-cum-Labour Court-I, 233  
Faridabad and another (G. S. Singhvi, J.)

---

intimation was given by the judgment-debtors to the petitioner-decree holder under sub-rule (2) or (3) of Rule 1 of order 21 CPC. Accordingly, all the three revision petitions are hereby allowed. The impugned orders are set aside.

---

J.S.T.

Before Hon'ble G. S. Singhvi & S. S. Sudhalkar, JJ.

RAM KUMAR,—Petitioner.

versus

PRESIDING OFFICER, INDUSTRIAL-CUM-LABOUR COURT-I,  
FARIDABAD AND ANOTHER,—Respondent.

C.W.P. 4273 of 1996

31st May, 1996

*Industrial Disputes Act, 1947—Ss. 2A, 10(1)(c) and 25J(1)—Punjab Shops and Commercial Establishments Act, 1958—Ss. 22 and 33—Reference—Reinstatement—Industrial worker cannot be denied reinstatement on the ground that the establishment is registered under the Shops and Commercial Establishments Act and that he would be entitled only to claim compensation under section 22 of the 1958 Act—Remedy under 1958 Act is of very limited character and does not bar remedy under the 1947 Act—Both the Acts operate in different fields and there is no inconsistency between the same—The provisions of the 1947 Act are more beneficial than the 1958 Act and would prevail in view of proviso to S. 25J(1) of the 1947 Act—S. 33 of the 1958 Act saves rights and privileges of employees on the date of enforcement of the 1958 Act—Award of Labour Court finding termination unjustified and denying relief of reinstatement on the ground of S. 22 of the Shops and Commercial Establishments Act quashed.*

**The Nawanshahr Central Co-operative Bank Limited versus The Presiding Officer, Labour Court, Jullundur, 1980(3) SLR 358 over-ruled.**

**Held that,** though there may appear to be some overlapping of the provisions of '1947 Act' and '1958 Act' in certain respects, the two enactments operate in different fields and there is no inconsistency between the same. No doubt Section 22 of 1958 Act provides remedy of an employee in a case of unreasonable termination of service and where the employer fails to comply with Section 22(1) but the remedy available to the workman is of a very limited character, namely, compensation of two months' salary. For contravention of Section 22(1), the employer can also be made liable to pay penalty in the