

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

SUBJECT : WINDING UP

COMPANY EXECUTION NO.15/1977

Date of decision: 16th September, 2008.

In the matter of

Official Liquidator in the case of M/s.Udaibhan

Industries Ltd. attached to Rajasthan High Court ... Decree holder

Through : Mr.J.L.Grover with Mr.K.K.Mehrotra  
Advocates.

Versus

Hardit Singh Gyani (Deceased) thr. LRs. .... judgment debtor

Through : Mr.Sovee Chawla, Advocate

GITA MITTAL, J (Oral)

1. By this petition, the official liquidator attached to the Rajasthan High Court representing M/s.Udaibhan Industries Ltd. (in liquidation) has sought execution of a decree dated 3rd December, 1970 passed in Co.A.no.115/69. It appears that M/s.Udaibhan Industries Ltd. went into members' voluntary liquidation vide a resolution dated 2nd December, 1956. The judgment debtor Hardit Singh Gyani was appointed as its voluntary liquidator. An order dated 28th April, 1958 was passed by the High Court of Rajasthan at Jodhpur directing that the voluntary winding up of the company would continue under supervision of the court. The appointment of the judgment debtor as the liquidator was confirmed. Certain directions were given to the liquidator with regard to the affairs of the company.

2. It appears that an application was made by the Registrar of Companies for removal of the judgment debtor and the additional liquidator, who had been appointed. Vide an order dated 8th May, 1969 passed by the High Court of Rajasthan, the judgment debtor was removed from the appointment as the liquidator and was directed to make over charge to the new liquidator appointed by the court.

3. It appears that the allegation against Mr.Hardit Singh Gyani was that he had wrongly invested the fund of M/s.Udaibhan Industries Ltd. amounting to Rs.40,000/- in M/s.National Planners Ltd. which was also in liquidation. The judgment debtor had been appointed as a voluntary liquidator of this company as well. This amount was deposited

with the National Planners Ltd, in two instalments i.e. firstly on 1st January, 1965 for an amount of Rs.15,000/- and the second installment of Rs.25,000/- on 21st May, 1965.

4. An application was filed by the official liquidator under section 526(2) of the Companies Act, 1956 seeking appropriate directions seeking recovery of the amount which has been deposited with M/s.National Planners Ltd. from the judgment debtor. On a detailed consideration of the matter by a judgment dated 3rd December, 1970, the court passed a judgment in the following terms :- ?In the result, the application is allowed to the extent that non-applicant Hardit Singh Gyani is required to pay Rs.40,000/- to the applicant, alongwith interest at 12% per annum, with six monthly rests upto date and to deliver the books and papers mentioned in the preceding paragraph. The non-applicant shall pay Rs.100/- as costs of this application.

5. It has become necessary to notice certain essential facts with regard to the execution petition by the company under liquidation. In the present execution petition, it is stated that Execution no.1/973 was dismissed as unsatisfied on 21st October, 1976 by this Court. It has been stated that another Execution no.2/1977 had also been moved for arrest and detention of judgment debtor.

6. However, these do not appear to have been pressed. The present application being Co.Execution application No.15/1976 dated 1st December, 1977 is stated to have been filed in place of Co.Ex.no.2/1977. Learned counsel for the judgment debtor points out that there is no prayer for recovery of amounts in this petition and the only prayer which has been made is that the judgment debtor may be arrested and detained in civil prison. In para 5 of the present petition which requires a statement of the nature of the application it is averred that this application is made in place of Co.Ex.No.2/1977 where the fiduciary status of the judgment debtor has not been explained.

7. It appears that Shri Hardit Singh Gyani expired on 5th May, 1979. The record of this court shows that this factor was clearly within the knowledge of the decree holder. On 17th July, 1979, the court had dismissed the Co.Execution no.15/1977 so far as the decree holder seeking arrest of the judgment debtor who had since died. The decree holder sought liberty to pursue the matter in relation to his right of bringing on record legal representatives of the judgment debtor. The matter was adjourned giving time to the decree holder to take appropriate steps.

8. Perusal of the record would show that no steps were taken despite time having been repeatedly sought on behalf of the decree holder to implead the legal heirs. It is stated by Mr.K.K.Mehrotra Id counsel, that the legal heirs had filed a Special Leave Petition assailing the judgment and decree of the High Court of Rajasthan and consequently they were fully aware of the present proceedings. This fact goes against the decree holder as it establishes the fact that steps were not taken for bringing the legal heirs on record despite knowledge of the details and particulars of the legal heirs of the judgment debtor.

9. Mr. Sovee Chawla, learned counsel for the judgment debtor points out that in CA no.807/2006, it is stated by the official liquidator that the details of a legal heirs were received on account of receipt of a communication dated 21st March, 2006. Two reasons have been given for placing these submissions before this court with regard to the delayed impleadment. It is urged on behalf of the legal heirs that the delay in bringing the legal heirs would disentitle them from any interest for the period taken to implead the legal heirs. The second submission is that the decree holder has acted with utter negligence despite full knowledge of the complete facts.

10. An issue has been raised on behalf of the judgment debtor that the decree, so far as the award of the principal amount is concerned, stood satisfied. Perusal of the order sheet of the present case as well as the averments made by the decree holder in CA No.807/2006 would show that Shri Hardit Singh Gyani and/or his legal heirs have effected the payment between 18th August, 1971 and 1st December, 1983. In para 5 of the CA No.807/2006, the following payments have admittedly been received by the decree holder from or on behalf of the judgment debtor :-

Amount	Date of payment
Rs.5000/-	18.08.1971
Rs.5000/-	09.12.1982
Rs.5000/-	22.12.1982
Rs.5000/-	19.01.1983
Rs.5000/-	15.12.1983
Rs.5000/-	18.03.1983
Rs.5000/-	14.05.1983
Rs.5000/-	01.12.1983

Thus a total sum of Rs.40,000/- stands received by the decree holder upto 1st December, 1983. The parties are at variance over the interest which was awarded by the court in the judgment and decree dated 3rd December, 1970.

11. The judgment debtor had to pay Rs.40,000/- to the applicant-decree holder. So far as interest is concerned, the court has categorically directed that the judgment debtor would be liable to pay interest @ 12 per cent with six monthly rests 'upto date'. According to Mr. Mehrotra, learned counsel for the decree holder the word 'upto' in the judgment has to be interpreted that interest @ 12% with six monthly rests is to be paid by the judgment debtor till the payment of the full decretal amount.

12. On the other hand, it is urged by Mr. Chalwa, learned counsel representing the judgment debtor that the expression used by the court is explicit and there is no ambiguity and only interest 'upto date' has to be paid which, according to him would mean interest upto the date of the judgment. Reliance is placed upon section 34(2) of the Civil Procedure Code in support of the submission that even if the contention of the decree holder was to be accepted, there is no award of any future interest to the decree holder and such a claim has to be taken as having been rejected.

13. The present case displays a sorry state of affairs in the manner in which the present legal proceedings are being conducted. The only prayer in this execution application is for arrest and detention of the judgment debtor. There is no prayer for recovery let alone any prayer for attachment of any property of the judgment debtor. The execution petition which was filed, was not accompanied with a certified copy of either the judgment or the decree. No judgment even in respect of which the order is sought, was placed on record. This deficiency was noticed by the court on 3rd April, 2008. Despite the clear requirement of law, still only a certified copy of the judgment dated 3rd December, 1970 has been placed before this court without the decree sheet in respect

thereof. Even if it is treated for execution of the decree seeking recovery of the amount awarded by this court, this execution petition would deserve to be rejected on this ground itself.

14. Be that as it may, this matter is pending since long and no steps have been effected for impleadment of the legal heirs for a long period of 27 years. It took even longer, that is a period of almost thirty years for copy of the judgment to be brought on record. The decree has not been filed even till date.

15. Rule 6A of Order 20 of the Code of Civil Procedure permits a court to treat the operative portion of the judgment as a decree in case the decree has not been prepared. No such submission has been made. In the interest of justice and for reasons of expediency, I would proceed to treat the last para of the judgment as a decree for the purposes of the present order.

16. I find that the judgment dated 3rd December, 1970 is clear in its directions. In addition to the principal amount of Rs.40,000/- court has awarded interest @ 12% per annum. The expression 'upto date' refers to the date on which the judgment has been passed and nothing further. It certainly cannot be held that the court intended 'upto date' interest at six monthly rests beyond 3rd December, 1970, the date when the judgment was pronounced. The six monthly rests would relate to the period between the date on which the amount became due till the date of the judgment. It has to be held that this would be the only amount which would be payable by the judgment debtor.

17. The decree holder has placed a copy of the order dated 21st March, 1991 passed by the Division Bench of the High Court of Rajasthan before me. This order was passed in a SB (Co.) Appl.No.10/1983 which appears to have been filed by the judgment debtor requiring recovery of the amount to be effected from M/s.National Planners Ltd. with whom the amount was deposited. The Division Bench dismissed the application leaving the applicants to pursue the remedy in the liquidation proceedings relating to M/s.National Planners Ltd. for recovery of the amount paid by S.Hardit Singh Gyani and the applicants under orders of the court. The order dated 21st March, 1991, therefore, has no bearing in the instant case.

18. I also find that Section 34(2) of the CPC clearly deals with a situation as in the instant case. As per sub-section 2 of Section 34 of the CPC, where a decree is silent with respect to the payment of future interest on the principal amount or the same is from the date of decree or the payment till realisation, the court shall be deemed to have refused such interest and a separate suit therefore shall not lie. There is no doubt that the judgment dated 3rd December, 1990 does not award any interest in favour of the decree holder after the date of passing of the decree. The decree holder was therefore held entitled only pendente lite interests and no future interest by the learned trial judge.

19. In any case for long years, the decree holder has taken no steps whatsoever for execution of a decree passed as back as in 1970 and cannot be rewarded for its delays and

negligence by payment of interest. Accordingly, the submission of the decree holder that it is entitled for the future interest after 3rd December, 1970 is rejected.

20. Mr.Sovee Chawla, learned counsel representing the legal heirs of the judgment debtor has very fairly stated on instructions that his client would have no objection to the payment of interest on the basis of the reducing balance based on the dates on which the instalments were made till the date of judgment dated 3rd December, 1970. Let a computation of interest on this basis be brought on record of the court within 10 days by both the decree holders and judgment debtor. Further orders shall be passed on consideration of the such statement. List on 30th September, 2008.

September 16, 2008

Sd./-  
GITA MITTAL, J