REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1401 OF 2019

K. L. SUNEJA & ANR. …APPELLANT(S)

VERSUS

DR. (MRS.) MANJEET KAUR MONGA (D)
THROUGH HER LR & ANR. …RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 4530 OF 2019

J U D G M E N T

S. RAVINDRA BHAT, J.

1. There are two appeals preferred against a common order of the National Company Law Appellate Tribunal (hereinafter, "NCLAT"/"Tribunal"). The first, by the original home buyer's legal representative (hereinafter, "complainant") and the second by the builder / developer (hereinafter, "developer").

2. In 1989, one Smt. Gursharan Kaur had applied for a flat in a proposed group housing scheme called 'Siddharth Shila Apartments', situated at Plot No. 24 in Vaishali Scheme, Ghaziabad, U.P. (hereinafter, "Scheme"). After depositing three instalments towards the flat, she passed away, and was succeeded by her daughter-in-law Dr (Mrs.) Manjeet Kaur Monga, who deposited the fourth instalment. Thereafter, the developer issued an allotment letter dated 21.05.1992, earmarking Flat No. D-301 (3rd floor) with a super built-up area of 1375 sq. ft. in the Scheme. Dr Manjeet Kaur Monga deposited two further instalments, with the sixth instalment deposited in September 1993. Eight years later, i.e., in December 2001, a demand notice for payment of the eighth and ninth instalments was issued to the complainant. She resisted this notice, as there was no intimation about the progress of work and delivery of possession of flat to her. The developer however, issued a letter thereafter, cancelling the allotment of the complainant's flat on 30th April 2005. The complainant had deposited seven instalments up to 4th October 1993 totalling ₹ 4,53,750/-. With the cancellation letter, the developer enclosed a Pay Order dated 30th April 2005 for ₹ 4,53,750/- issued by Citibank towards full refund of payments made by the complainant towards the flat.

3. Aggrieved, the complainant through her lawyer, issued a notice dated 7th September 2005 to the developer, stating that she was always ready and willing to pay the instalments towards the flat, in tune with the allotment letter, but the developer did not keep up its part of the bargain regarding timeliness of delivery

of possession and quality of construction. The notice alleged that even 40% of the construction work had not been completed till the seventh instalment, though the complainant had paid a cumulative of ₹ 4,53,750/-. She demanded possession of the flat besides claiming ₹ 25,00,000/- as compensation. With the notice, the complainant returned the Pay Order of ₹ 4,53,750/-. She also sent a cheque of ₹1,00,000/- expressing willingness to pay the price of the flat. The developer replied to the notice on 26th September 2005 denying the allegations of delay in construction and accused the complainant of default in payment of instalments. However, the developer did concede to slight delay in completion of the project due to litigation with the Ghaziabad Development Authority.

4. Dr. Manjeet Kaur Monga filed a complaint under Section 36 of the (then) Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter, "MRTP Act") alleging unfair trade practice by the developer. The complaint claimed physical possession of the flat or an alternative flat of the same size and dimension. The complainant also applied under Section 12A of the MRTP Act seeking to restrain the developer from alienating flat D-301 in Siddharth Shila Apartments; she also filed C.A. No. 39/2009 for award of compensation of ₹ 25,00,000/- under Section 12B of MRTP Act alleging to be a victim of unfair trade practice at the hands of the developer. The MRTP Commission disposed off the application filed under Section 12A of the MRTP Act restraining the developer from creating third party interest with respect to the flat. The developer also resisted the complaint and claimed that the complainant was

disentitled to any relief under the MRTP Act. It was further alleged that the complainant had failed to deposit payments in accordance with the plan in the allotment letter and that she had, in terms of her letter dated 22nd May 2002, shown disinclination to take possession of the flat by alleging breach of confidence on the part of the developer. The Notice of Enquiry issued by the Commission was resisted on similar grounds.

5. Issues were framed for adjudication, which included whether the developer had indulged in unfair trade practice, whether they were prejudicial to the interest of the complainant and / or the public in general. The MRTP Act was repealed by Section 66 of the Competition Act, 2002 which was brought into force w.e.f. 1st September 2009. Chapter VIII-A introduced subsequently provided for establishment of an Appellate Tribunal to hear appeals against orders passed by the Competition Commission of India. The matters pending before MRTP Commission were transferred to the (then) Competition Appellate Tribunal (hereinafter, "COMPAT"). By order dated 29th July 2011, COMPAT framed issues in the application filed under Section 12B of the MRTP Act. The issues related to maintainability of the petition; whether unfair trade practice had been proved; and if so, were they prejudicial to the public; and also, if the complainant was entitled to any compensation.

6. Having regard to the evidence produced, COMPAT by its order[1] concluded that the developer had falsely represented to the general public (including the

[1] *Dr (Mrs) Manjeet Kaur Monga vs. Mr K.L. Suneja*, Civil Appeal No. 39/2009, dated 3rd August 2015.

complainant) the time within which the project was to be completed, i.e., three years, but did not complete the construction for more than a decade. The COMPAT held the developer guilty of unfair trade practice under Section 36-A (1) (i), (ii) & (ix) of the MRTP Act and also ruled that the complainant was justified in not paying further instalments and the developer committed illegality by cancelling the allotment. Noticing the law laid down by this court in *Ghaziabad Development Authority vs. Ved Prakash Agarwal*,[2] COMPAT held that it and its predecessor (MRTP Commission) could not assume the powers of a civil court to grant relief akin to specific performance. Hence, it declined the relief of delivery of possession of the flat. The COMPAT however directed the developer to pay compound interest @ 15% per annum to the legal representatives of the complainant with interest calculated on each instalment from the date of its deposit till 30th April 2005, i.e., the date on which the allotment was cancelled. Besides, the respondents were directed to pay the amount already invested by the complainant, i.e., ₹ 4,53,750/-, to the legal representatives of the complainant.

7. COMPAT's order was challenged by both the complainant and the developer through separate appeals before this court, which by its order dated 18th July 2017,[3] upheld the award of compensation to legal representatives of

[2] *Ghaziabad Development Authority vs. Ved Prakash Agarwal*, C.A. No. 794/2001, dated 14th May 2008.
[3] *Dr (Mrs) Manjeet Kaur Monga (Thr. LH Karan Vir Singh Monga) vs. Mr K.L. Suneja,* Civil Appeal No. 5032 / 2017, dated 18th July 2017.

the complainant in terms of the formula adopted by the COMPAT. This court observed as follows:

> *"... Merely because a liquidated amount is not stipulated or determined by the Tribunal, it cannot be said that it is not the compensation. Once the interest, as ordered by the Tribunal, is calculated that will be the amount of compensation referred to under section 12-B of the Act."*

8. This court also noticed the contentions of the developer that when it had taken the Pay Order from Citibank on 30th April 2005, the amount of ₹ 4,53,750/- covered by that instrument had been deducted from its current account. It was not however received by the complainant payee. The account holder / developer cancelled the Pay Order and requested for re-credit of the amount; which was done by Citibank on 22nd June 2016. The court also noted the contention of Citibank that the money deducted from current account of the developer in April 2005, though not paid to the payee, was not enjoyed by the bank as the Pay Order could have been presented at any moment. This court observed that both these issues had not been considered by COMPAT, apparently because these aspects were not addressed and Citibank was not a party before the Tribunal. The court therefore disposed of the appeals by remitting the matter to COMPAT with directions to implead Citibank as an additional respondent. Additionally, the developer was directed to pay the compensation worked at 15% compound interest up to 30th April 2005. The last issue which COMPAT was to consider on remand was whether there should be any compensation and if so, what should be the amount payable after 30th April 2005 and whether Citibank was liable to pay any interest to the account holder.

Impugned Order of the NCLAT

9. After remand, the complainant impleaded Citibank as a respondent. All respondents were allowed to file their respective affidavits in regard to payment of interest, if any, payable to the complainant from 1st May 2005 onwards. By the impugned order, NCLAT noticed the facts leading to the order of this Court, including that the complaint was filed in 2005 along with the *original* Pay Order, issued at the behest of the developer by Citibank, which had been returned initially by the complainant, but given back to the complainant. The NCLAT also considered the affidavit and pleadings of the parties, including Citibank, and noted that according to circulars, the amount of ₹ 4,53,750/- had been deducted from the developer's account and that Citibank too did not enjoy any interest on that amount, during pendency of the complaint before COMPAT. The impugned order noted that the legal representatives of the complainant did not get the refund of ₹ 4,53,750/- in terms of order dated 3rd August 2015 by COMPAT as funds were credited back to the account of the developer on 16th June 2016 and a fresh Pay Order (bearing No. 262910) dated 16th June 2016 was issued by Citibank. Ultimately that amount was made over to the complainant on 7th May 2016, in compliance with this court's orders dated 8th and 26th April 2016. The NCLAT, by the impugned order, directed as follows:

> *"It is accordingly found that the direction of COMPAT in terms of order dated 3rd August, 2015 in regard to payment of Principal amount of Rs.4,53,750/- stood not complied with till 7th May, 2016. In view of the same, the legal representatives of the Complainant would be entitled to further compensation in the form of compound interest @ 15% per annum on the principal amount of Rs.4,53,750/- w.e.f. 1st May, 2005 till 7th May, 2016 further entitled to pendente lite and future interest*

till realization of the accumulated arrears from Respondents No. 1 and 2. (i.e., the developer)"

Contentions of the Complainant

10. The arguments on behalf of the complainant were common to both appeals. It was urged that NCLAT fell into error as it failed to appreciate that since the legal representatives of the complainant did not get the refund of the amount of ₹ 4,53,750/- from the developer until 7th May 2016, the interest on the said principal amount ought to run from 4th October 1993 till the date of realization of the amount i.e. 7th May 2016.

11. It was argued that once the Tribunal found that the developer was in the wrong – a determination that was upheld by this court, which held that the complainant was entitled to compensation, by way of compound interest – that direction had to be taken to its logical end, which meant that interest on the sum of ₹ 4,53,750/- was also payable from the date it was deposited with the developer (in 1993) till the amount was realized. This was the only restitutionary and equitable order, having regard to all circumstances of the case.

12. It was submitted that the developer's argument that the amount had been deducted from its account, and that it was not aware about the filing of the original Pay Order, could not be countenanced. Learned counsel highlighted, that moreover, the developer took full advantage of the amounts deposited by the complainant, and after cancelling the allotment, had immediately allotted the flat to another purchaser, for a considerably higher sum of ₹ 21 lakhs. This fact was not disputed by the developer. Therefore, the complainant could not be

placed at a disadvantage, because the amounts deposited and lying with the developer had multiplied manifold. The developer had the advantage (twice over) of obtaining consideration from the new allottee / purchaser.

Contentions of the Developer

13. The developer urged, in response to the complainant's appeal, as well in its appeal, that no fault could be attached to it, and it could not be fastened with any liability, once the Pay Order dated 30th April 2005 was received by the complainant. It was urged by senior counsel for the developer that this court had carefully restricted the remand to whether any liability arose due to any *fault or deficiency* on its part, after April 2005, given that the Pay Order was not encashed by the complainant. In this connection, it was submitted that Citibank had categorically averred that the amount was deducted from the developer's account, when the Pay Order was issued. The bank also stated that the amount did not earn any interest, and was kept separately, in accordance with instructions and directives of the Reserve Bank of India (hereinafter, "RBI"). The developer became aware that the Pay Order was part of the complaint filed before the MRTP Commission for the first time on 29th April 2016, when a statement was made by the complainant's counsel.

14. It was submitted that this court recorded that the Pay Order was on the file of the MRTP Commission, and consequently permitted its revalidation. It was in these circumstances, that the developer approached the Commission,

resulting in revalidation and subsequent handing over of the instrument to the complainant.

15. All these facts clearly established that the developer was not at fault; the complainant in fact acknowledged having received the Pay Order, returned by the developer, through letter dated 26th September 2005. Learned counsel relied on the pleadings before the MRTP Commission, and pointed out that the index to the complaint and the documents filed along with it, nowhere mentioned or referred to the *original* Pay Order.

16. It was submitted that having returned the amount, through the medium of the Pay Order, the developer had no further obligation to pay further interest thereafter. It was submitted that the complainant would have been justified in stating, if the facts were such that the amount was with the developer, or lying in its account. However, once the amount was debited from its account, and the Pay Order was made over to the complainant, who sought to return, it, but after that, was handed back the Pay Order, the developer could not be held responsible.

17. Counsel for the developer relied on Order XXI Rule 1(4) and (5) of the Code of Civil Procedure, 1908 (hereinafter, "CPC") to state that once the amount in question was paid through the bank (i.e., through an instrument issued by the bank, such as Demand Draft or Pay Order, as opposed to a cheque, "*drawn on a bank*") the liability would cease. Counsel for the developer relied

on the decisions in *Hindustan Paper Corporation Ltd vs. Ananta Bhattacharjee*[4] and in *Gurpreet Singh vs. Union of India*[5].

Analysis and Conclusion

18. For deciding this appeal, it is unnecessary to recount the entire spectrum of facts and analyse the rival contentions, so far as they relate to the liability of the developer for the period prior to 30th April 2005. The scope of the Tribunal's remit, in this case, was defined by this court's final order in the appeal decided by it earlier.[6] This court, after noticing that the developer had applied for revalidation after the complainant had urged before the court that the Pay Order had been deposited in the MRT Commission, further noted that the instrument had been revalidated in 2016 and the amount was credited to the account of the developer on 22nd May 2016. The court then proceeded to frame the scope of the remand in the following terms:

> *"…To that limited extent, we propose to send back the matters to the tribunal. Therefore, these appeals are disposed of as follows:*
> *(1) Citibank NA represented by its manager, Jeevan Bharti building 124 Connaught Circus, New Delhi will stand impleaded as additional respondent in the complaint before the Competition Appellate Tribunal, New Delhi.*
> *(2) the builder shall pay the compensation worked out at the rate of 15 percent compound interest up to 30-04-2005.*
> *(3) whether there should be any compensation, and if so, what should be the amount payable after 30-04-2005, and whether the Citibank's liable to pay in interest to the account holder (sic)by the Tribunal.*
>
> *To the above limited extent we remit the matters to the Competition Appellate Tribunal, New Delhi.*
>
> *It will be open to the parties to take all available contentions in respect of the issues limited to, the Tribunal."*

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[4] *Hindustan Paper Corporation Ltd vs. Ananta Bhattacharjee*, (2004) 6 SCC 213, dated 28th April 2004.
[5] *Gurpreet Singh vs. Union of India*, 2006 (8) SCC 457, dated 19th October 2006.
[6] *Supra* note 3, para 9.

19. It is quite evident from the above that, with respect to the 30th April 2005 liability, this court had affirmed the findings of the COMPAT and also negatived the contentions of the complainant's legal heirs to the extent that separate compensation other than compound interest was payable. The developer was therefore directed to pay as a measure of compensation compound interest at 15% per annum for the entire period, i.e., 1993 to 2005. Since this court was apprised of the fact that the complainant had deposited the Pay Order before the MRTP Commission, it thought it appropriate to call for details from Citibank. After considering the affidavit and the materials placed before it, this court decided that the appropriate course would be to limit the matter to consider whether for the duration after 2005, any liability could be attached to the developer. That was the *rationale* for the limited scope of the remand.

20. The materials on record would disclose that in this case, after issuing notice, the complainant returned the Pay Order received by her under cover of letter dated 7th September 2005, however, the developer (in response to the complainant's notice), by letter dated 26th September 2005, denied the allegations contained in the notice and also returned the Pay Order for ₹ 4,53,750/- and the banker's cheque for ₹ 1 lakh. It is also evident that on 7th October 2005, the complaint was filed. A copy of the complaint is on record. Curiously, it contains no mention of the Pay Order, nor does it say that the complainant filed the Pay Order *in original* along with the pleading. This is an

undeniable fact. Even the counter affidavit filed by the complainant in the developer's appeal states that she:

> *"Bonafidely also deposited the Pay Orders dated 30-04-2005 in the registry along with the complaint under protest in court."*

21. Since the pleadings in the complaint did not refer to the Pay Order, which was attached in the original along with the complaint, the developer's reply too was silent on this aspect. This is evident from a bare reading of the reply to the complaint before the MRTP Commission filed by the developer on 3rd February 2006. Likewise, the reply to the Notice of Enquiry, which was issued by the MRTP Commission, and filed by the developer (supported by affidavit dated 25th January 2007) also does not allude to the Pay Order.

22. In the previous proceedings before this court, in the complainant's appeal,[7] this court's order, dated 29th April 2016 reads as follows:

> *"The learned counsel for the appellant submits that the Demand Drafts furnished by the respondents have already been deposited before the MRTP Commission. The respondents are free to move the Competition commission for withdrawal of the amount.*
> *We record the statement of the appellant that in case, such an attempt is made by the respondents, the appellant shall not object the withdrawal of the drafts/amounts".*

23. In terms of the leave granted by this court, through that order, the developer moved an application before the COMPAT, which issued the following directions on 18th May 2016:

> *"This is an application on behalf of respondent Nos. 1 and 2 for release of Pay Order No. 885894 dated 30.04.2005 for Rs.4,53,750/- drawn in favour of Dr. (Mrs.) Manjeet Kaur Monga for revalidation thereof in the name of the legal representatives of Dr. (Mrs.) Manjeet Kaur Monga.*

[7] *Supra* note 3.

> *Shri Aditya Narain, learned counsel for the applicants states that his client will be satisfied if the pay order deposited in 2005 is returned to his client for the purpose of renewal, if any, 1n accordance with. law. Learned counsel for the representatives of the original complainant says that she does not have any objection.*
>
> *In view of the above, the application is allowed. The demand Draft No. 885894 dated 30.04.2005 lying in the registry of the Tribunal be returned to the applicants."*

24. These developments were part of the record, and the court was aware of them as a consequence of which the final order dated 18th July 2017, disposing of the civil appeals, noted these facts:

> *"...During the course of hearing of the appeals another interesting point came up for consideration. It has been brought to the notice of this Court that when the builder company, the appellant in the appeals arising out of SLP(C) Nos.10484-10485/2016, had taken the pay order from the Citibank on 30.04.2005, the amount of Rs.4,53,750/- covered by the pay order had actually been deducted from their current account. But at the same time, the amount had not been paid/received by the payee. In the instant case, the account bolder cancelled the pay order and requested for re-credit of the amount and, accordingly, it is seen that the Citibank has re-credited the amount to the account only on 22.06.2016. It is the contention of the account holder company that for the period the money was with the Bank, the account holder is entitled to interest and that can be the compensation if at all that can be paid to the appellant in Civil Appeal Nos.5032-33/2016 for the period after the cancellation of the allotment. We may, of course, take note of the submission of the builder that in terms of the principles of restitution under Section 144 C.P.C. and on the general principle of restitution, the builder cannot be put to unmerited injustice and the appellant should not take the undue advantage as held by this Court in Citibank N.A. v. Hiten P. Dalal and Others, (2016) 1 SCC 411, as canvassed by the learned counsel appearing for the builder.*
>
> *7. Learned counsel appearing for Citibank, inviting our reference to the additional affidavit contended that it is a fact that the money from the current account of the builder has been deducted on 30. 04. 2005 and it has not been paid to the payee. But, at the same time, it cannot be said that the money was enjoyed by the Bank, since being a pay order, at any moment the instrument is presented, the Bank was bound to honour the same and, therefore, only for the lapse on the part of either the payee or the account holder for encashing or cancelling the instrument, the Bank cannot be saddled with any interest. It is also submitted by the learned counsel appearing for the Bank that they are governed by the instructions issued by the Reserve Bank of India in that regard.*

> *8. We find from the order of the Tribunal that both the issues have not been gone into, apparently because these aspects have not been canvassed and obviously because the Citibank was not before the Tribunal."*

25. The counter affidavit filed by the complainant, to the developer's appeal presently before us, contains the following averments:

> *"It is reiterated that the said Pay Order was sent by the Appellant No.2 to Respondent No. 1 vide cancellation letter dated 30.04.2005. Thereafter, the same was returned by Respondent No. l to the Appellants vide legal notice dated 07.09.2005 following which the Appellants once again returned the same back to Respondent No. l vide their reply to the legal notice dated 26.09.2005. It is submitted that the Respondent No. 1 then filed a Complaint under section 36 of the MRTP Act before the Ld. MRTP Commission and deposited the said Pay Order dated 30.04.2005 in protest before the Ld. MRTP Commission along with the said Complaint."*

26. A consideration of the pleadings and other materials points to the fact that the complainant did not state anywhere, before the MRTP Commission, that the *original* Pay Order was *attached with the pleadings*. Interestingly, the index or cover page to the complaint was made part of the additional written submissions of the developer dated 12th February 2018 (before the NCLAT). This index to the pleadings in the complaint did not refer to the Pay Order. It cannot be for a moment disputed that the complainant was perhaps under a belief that filing such an *original* Pay Order established that she was not interested in receiving refund, but was interested only to secure possession of the flat. *Nevertheless, it was necessary for her to apply through counsel for an appropriate order to ensure that the amount was deposited in an interest-bearing account*. That step unfortunately was not taken – perhaps she was not advised to do so. It was only when for the first time when this was highlighted in the previous proceedings on 29th April 2016, that the developer sought and obtained permission to apply

to the COMPAT for revalidation. The order facilitating that step was made on 18th May 2016, and eventually the Pay Order was revalidated on 22nd June 2016.

27. From the impugned order, it is evident that the Tribunal accepted the explanation of Citibank that since the Pay Order in question had become stale, its proceeds / funds were moved to its 'Unclaimed Sundry Account', and did not attract any interest in terms of the RBI directions. The bank had also deposed that the Pay Order was cancelled on the request of the developer through its letter dated 26th May 2016 and that the funds were credited back to the account of the developer on 16th June 2016. It was further noticed that the amount for issuing the Pay Order was deducted from the current account of the developer. After noticing these facts, the Tribunal appears to have been swayed by the circumstance that the developer was held liable for unfair trade practice, and directed to pay compensation (in terms of the previous orders of the COMPAT) affirmed by this court, i.e., 15% compound interest on ₹ 4,53,750/-.

28. In the opinion of this court, the impugned order has not rested its findings on any principle of law, much less any statutory provision. The Tribunal appears to have been completely swayed by the complainant's plight. In doing so, it did not give due consideration to the fact that ₹ 4,53,750/- was *debited* from the account of the developer. The complainant, for reasons best known to her, filed the *original* Pay Order due to perhaps lack of proper advice or instruction. Apparently, no order contemporaneously was sought from the MRTP Commission, which would have protected the interests of the complainant with

respect to the money received even while ensuring that her contentions on the merits with respect to entitlement towards the flat were preserved. Many avenues / alternatives were available. *Firstly*, the complainant could have sought for a deposit of the proceeds of the Pay Order in an account, to be maintained by the Registrar of the Commission. *Secondly*, she could have sought for a 'without prejudice' order enabling her to encash the amount, and at the same time ensure that her claim was not defeated on that score. *Thirdly*, equally, she could have sought for appropriate orders that the amount be maintained by the developer, who could, in the event it became necessary, be directed to pay the principal along with such interest as the Commission or the Tribunal deemed appropriate and in the interests of justice. Since none of these choices were opted for, and also having regard to the fact that the amount in question was undoubtedly debited from the developer's current account, there ought to have been a discussion of what was the applicable legal provision which fastened any liability upon the developer. This was more important because the Tribunal in the present case has accepted Citibank's explanation regarding interest (or rather, its absence of liability, even though the amount was undoubtedly with the bank for about 11 years).

29. This court, in *Gurpreet Singh* (supra), observed in the context of Order XXI of CPC[8] (which deals with modes of payment under decrees and also stipulates when interest shall cease to "run" (i.e., not be payable)) as follows:

[8] ***ORDER XXI Execution of Decrees and Orders Payment under Decree***

"Thus, in cases of execution of money decrees or award decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree holder and there is no question of the decree holder claiming a re-appropriation when it is found that more amounts are due to him and the same is also deposited by the judgment debtor. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.

As an illustration, we can take the following situation. Suppose, a decree is passed for a sum of Rs. 5,000/- by the trial court along with interest and costs and the judgment debtor deposits the same and gives notice to the decree holder either by approaching the executing court under Order XXI Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order XXI Rule 1 of the Code. The decree holder is not satisfied with the decree of the trial court. He goes up in appeal and the appellate court enhances the decree amount to Rs. 10,000/- with interest and costs. The rule in terms of Order XXI Rule 1, as it now stands, in the background of Order XXIV would clearly be, that the further obligation of the judgment debtor is only to deposit the additional amount of Rs. 5,000/- decreed by the

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1. Modes of paying money under decree.— (1) All money, payable under a decree shall be paid as follows, namely:—
(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or
(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or
(c) otherwise, as the Court which made the decree, directs.
(2) Where any payments is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.
(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:—
(a) the number of the original suit;
(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;
(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;
(d) the number of the execution case of the Court, where such case is pending; and
(e) the name and address of the payer.
(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).
(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:
Provided that, where the decree-holder refuses to aceept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be."

> *appellate court with interest thereon from the date the interest is held due and the costs of the appeal. The decree holder would not be entitled to say that he can get further interest even on the sum of Rs. 5,000/- decreed by the trial court and deposited by the judgment debtor even before the enhancement of the amount by the appellate court or that he can re-open the transaction and make a re-appropriation of interest first on Rs. 10,000/-, costs and then the principal and claim interest on the whole of the balance sum again. Certainly, at both stages, if there is short-fall in deposit, the decree holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment debtor would still be liable for interest on the whole of the principal amount in case the appellate court enhances the same and awards interest on the enhanced amount."*

30. The rule was explained in another decision of this court, in *V. Kala Bharathi & Ors. vs The Oriental Insurance Company Ltd:*[9]

> *"A bare perusal of the aforesaid provisions makes it amply clear that the scope of Order XXI Rule 1 of the Code of Civil Procedure is that the judgment debtor is required to pay the decretal amount in one of the modes specified in Sub-rule (1) thereof. Sub-rule (2) of Rule 1 provides that once payment is made Under Sub-rule (1), it is the duty of the judgment debtor to give notice to the decree-holder through the Court or directly to him by registered post acknowledgement due. Sub-rule (3) of Rule 1 merely indicates that in case money is paid by postal money order or through a bank under Clause (a) or Clause (b) of Sub-rule (1) thereof, certain particulars are required to be accurately incorporated while making such payment. Sub-rules (4) and (5) of Rule 1 states from which date, interest shall cease to run-in case amount is paid under Clause (a) or (c) of Sub-rule (1), interest shall cease to run from the date of service of notice as indicated Under Sub-rule (2); while in case of out of court payment to the decree-holder by way of any of the modes mentioned under Clause (b) of Sub-rule (1), interest shall cease to run from the date of such payment."*

31. The provisions of Order XXI are applicable to decrees of civil court. However, they embody a sound policy principle, that if the amount is deposited, or paid to the decree holder or person entitled to it, the person entitled to the amount cannot later seek interest on it. This is a rule of prudence, inasmuch as the debtor, or person required to pay or refund the amount, is under an obligation

[9] *V. Kala Bharathi & Ors. vs The Oriental Insurance Company Ltd*., 2014 (5) SCC 577, dated 1st April 1947.

to ensure that the amount payable is placed at the disposal of the person entitled to receive it. Once that is complete (in the form of payment, through different modes, including tendering a Banker's Cheque, or Pay Order or Demand Draft, all of which require the account holder / debtor to pay the bank, which would then issue the instrument) the tender, or 'payment' is complete.

32. In the present case, the complainant was aware that the Pay Order had been tendered by the developer to her; nevertheless she filed the *original* Pay Order with her complaint, and did not seek any order from the MRTP Commission at the relevant time. The pleadings in the complaint did not disclose that the Pay Order was filed in the Commission, to enable the developer to respond appropriately. In these circumstances, the developer's argument that the rule embodied in Order XXI, Rule 4 CPC, is applicable, is merited. The developer cannot be fastened with any legal liability to pay interest on the sum of ₹ 4,53,750/- after 30th April 2005.

33. This court is also of the opinion that the complainant's argument that on account of the omission of the developer, she was wronged, and was thus entitled to receive interest, cannot prevail. The records nowhere disclose any fault on the part of the developer; on the other hand, the complainant did not take steps to protect her interests. It has been held by this court, in *Sailen Krishna Majumdar v Malik Labhu Masih*[10] that in such cases, even if equities are equal, the court should not intervene:

[10] *Sailen Krishna Majumdar vs. Malik Labhu Masih*, 1989 (1) SCR 817, dated 21st February 1989.

> *"Equity is being claimed by both the parties. Under the circumstances we have no other alternative but to let the loss lie where it falls. As the maxim is, 'in aequali jure melior est conditio possidentis'. Where the equities are equal, the law should prevail. The respondent's right to purchase must, therefore, prevail."*

In the present case too, the complainant cannot claim interest from the developer, who had returned the Pay Order. As discussed, at the time of filing of the complaint, she could have chosen one among the various options to ensure that the amount presented to her was kept in an interest-bearing account, without prejudice to her rights to claim interest later. In these circumstances, no equities can be extended to her aid.

34. As regards the complainant's appeal, the contention is that the impugned order is in error, because the Tribunal ought to have directed that the developer ought to have been directed to pay interest on the sum of ₹ 4,53,750/- from 4th October 1993 till the date of its realization i.e., 7th May 2016. This plea is plainly untenable, because the interest payable for the past period was concluded in the previous proceedings. The complainant did not point to any rule or binding legal principle which obliged the developer to pay such interest, or justify the direction in the impugned order, by showing how such liability arose in the facts and circumstances of this case.

35. Before parting with this case, this court is of the opinion that all courts and judicial forums should frame guidelines in cases where amounts are deposited with the office / registry of the court / tribunal, that such amounts should *mandatorily be deposited in a bank or some financial institution*, to ensure that no loss is caused in the future. Such guidelines should also cover situations

where the concerned litigant merely files the instrument (Pay Order, Demand Draft, Banker's Cheque, etc.) *without seeking any order*, so as to avoid situations like the present case. These guidelines should be embodied in the form of appropriate rules, or regulations of each court, tribunal, commission, authority, agency, etc. exercising adjudicatory power.

36. In view of the above discussion, the developer's appeal, i.e., C.A. No. 1401 of 2019 is allowed. The impugned order is hereby set aside. The complainant's appeal, i.e., C.A. No. 4530 of 2019, is dismissed. There shall be no order on costs.

.....J.
[M.R. SHAH]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI,
JANUARY 31, 2023.