CASE NO.:
Appeal (civil) 6274 of 2004

PETITIONER:
M/S NANDI INVESTENTS & ENTERPRISES

RESPONDENT:
L.M. SARAVAMANGALA

DATE OF JUDGMENT: 24/09/2004

BENCH:
Arijit Pasayat & C.K. Thakker

JUDGMENT:
J U D G M E N T

(Arising from Special Leave Petition (civil) No. 12737 of 2003)

Thakker, J.

Leave granted.

Heard the learned counsel for the parties.

The present appeal is filed against the judgment and order passed by the High Court of Karnataka in Review Petition No. 804 of 2002 on 26th March, 2003 partly reviewing the order dated July 5, 2002 in C.R.P. No. 4299 of 2001.

The case has a chequered history. On September 14, 1987, the respondent herein filed a suit being O.S. No. 460 of 1987 in the Court of the Civil Judge at Mysore against the appellant-firm and its partners for recovery of a sum of Rs.2,20,000/- with interest. On June 23, 1989, the Court of the IInd Additional Civil Judge, Mysore passed a judgment in the said suit based on admission. However, before the decree was drawn up, the parties to the said suit filed a Joint Memo praying that the judgment be confirmed only to the Principal amount of Rs.2,20,000/- and that other matters be left open for final adjudication. Accordingly on January 6, 1990, the Court of IInd Additional Civil Judge, Mysore passed a partial decree for the principal amount of Rs.2,20,000/-. The II Additional City Civil Judge, Mysore, after trial, passed a judgment on February 2, 1993 on the rest of the issues and a decree was accordingly drawn up.

On October 5, 1993, the respondent herein filed Execution Case No.1514 of 1993 in the Court of the City Civil Judge at Bangalore against the appellant firm and its partners claiming even the suit amount with interest payable as on the date of the Execution Case to be Rs.4,22,269.5 ps. (i.e. Rs. 2,20,000/- towards principal and Rs.2,02,269.05 towards interest @ 12% p.a. from June 30, 1979 to September 14, 1987, after deducting Rs.14,430.95 as per the decree). In the course of the execution proceedings, it is stated that the appellant paid Rs.6,54,566/- to the respondent. On January 23, 1999, the respondent filed a Memo of Calculation in Execution Case No. 1514 of 1993 claiming that as on that date a sum of Rs.3,72,204.10 was still payable by the appellant towards satisfaction of the decree. In the said Memo, contended the appellant, that the respondent claimed Rs.4,15,767.25 in excess by adding interest twice on the principal amount of Rs.2,20,000/- from June 30, 1979 to September 14, 1987 and also adding interest on the interest. The Executing Court passed an order on April 16, 1999 accepting the Memo of Calculation

of the respondent. Aggrieved thereby, the appellant filed Civil Revision Petition No.1572 of 1999 in the High Court of Karnataka at Bangalore. The High Court granted interim stay of execution proceedings on July 7, 1999 subject to the appellant depositing Rs.50,000/- in the Executing Court which was complied with by the appellant. The respondent-decree-holder withdrew the said amount of Rs.50,000/- taking the total payment made by the appellant/judgment-debtor to the respondent/decree-holder in the execution proceedings to Rs.7,04,566/-. On July 7, 1999, the High Court disposed of the C.R.P. No.1572 of 1999 with a direction to the Executing Court to calculate the amounts afresh. Accordingly, the Executing Court prepared a Memo of Calculation which showed Rs.3,97,380.81 as balance amount payable by the appellant to the respondent.

It is alleged by the appellant that in the Memo of Calculation, a claim of Rs.4,15,767.25 at serial Nos. 2 and 3 were also included, despite the payment made by the appellant and in spite of objection of the appellant in that regard. It was also alleged that as per the direction of the High Court, the amount of Rs.50,000/- had already been paid by the appellant to the respondent on August 27, 1997 which had not been taken into consideration. Hence, on November 8, 1999, the appellant filed written arguments in Execution Case No.1514 of 1993 along with a Memo of Calculation showing the excess liability of the appellant under the decree.

The Executing Court, by an order dated September 14, 2001, accepted the Memo of Calculation prepared by its office and held that a sum of Rs.3,97,380.81 was still payable by the appellant to the respondent. Aggrieved thereby, the appellant preferred a Civil Revision Petition before the High Court being C.R.P. No. 4299 of 2001. The High Court dismissed the said C.R.P. vide order dated July 5, 2002. Pursuant to the dismissal of the said C.R.P., the Executing Court passed an order dated August 29, 2002 for attachment of the movables of the appellant in Execution Case No.1514 of 1993. Against the order dated July 5, 2002 passed by the High Court in C.R.P. No. 4299 of 2001, the appellant approached this Court by filing Special Leave Petition (Civil) NO.12737 of 2003 which was dismissed as withdrawn with liberty to move the High Court. Thereupon the appellant filed Review Petition No.804 of 2002 in C.R.P. No.4299 of 2001 before the High Court.

Appellant’s grievance was that:-
(1) interest on the principal was added twice.
(2) Interest on interest was added, and
(3) Rs.58,300/- paid towards income-tax had not been deducted.

By the impugned order dated March 26, 2003, the High Court partly allowed the Review Petition. With regard to calculation of interest, the Court held that the same was in accordance with the judgment and decree, therefore, the Executing Court could not have gone beyond it. So far as the amount paid towards Income Tax was concerned, the decree-holder conceded before the Court to give deduction to the same from the decretal amount. Hence, the appellant has preferred the present appeal by special leave.
We have heard the learned counsel for the parties.
The learned counsel for the appellant submitted that when specific contentions have been raised before the High Court after an order passed by this Court by which the appellant was allowed to withdraw the Special Leave Petition with a view to approach the High Court, the High Court ought to have considered the contentions raised before it. It was submitted that it was specific case of the appellant that interest on the principal amount was added twice; interest on interest was also added and Rs.58,300/- paid towards income tax had not been adjusted. It is true, submitted the counsel, that adjustment of

Rs.58,300/- had been taken into account while deciding Review Petition, but in respect of the remaining two items, no relief was granted by the High Court inter alia observing that an order was passed by the Executing Court which was legal and valid and was confirmed in Civil Revision Petition by the High Court. The counsel urged that in view of the order passed by this Court permitting withdrawal of Special Leave Petition, it was incumbent on the High Court to consider the submission also and to record a finding as to whether the contentions raised by the petitioner-judgment-debtor were well founded.

The learned counsel for the respondent, on the other hand, submitted that the scope of review was limited and the High Court did not commit any error of law or of jurisdiction in rejecting it. The order passed by the High Court was proper and in accordance with law which is clear from the fact that adjustment in respect of an amount paid towards income tax had been deducted.

Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. An adjustment of Rs.58,300/- was granted to the appellant-judgment debtor. But, when the assertion of the appellant-petitioner before the High Court was that interest on principal was added twice and that interest on interest was also added, the High Court should have considered the fact and should not have disposed of the Review Petition merely by observing that the Executing Court had passed the order and it could not go behind the decree. In our opinion, the learned counsel for the appellant is also right in submitting that when the appellant withdrew the Special Leave Petition with a view to approach the High Court by filing Review Petition, the High Court ought to have recorded a finding whether or not the interest on principal was added twice and whether interest on interest was claimed by the plaintiff-decree-holder.

For the foregoing reasons, in our opinion, the appeal deserves to be partly allowed and is allowed by setting aside the order passed by the High Court to the extent that it has rejected the claim of the appellant. The matter is remitted to the High Court for fresh decision in accordance with law. In the facts and circumstances of the case, however, there shall be no order as to costs.