Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice Md. Ali Reza

Civil Revision No. 390 of 2021

Ganaswasthya Kendra ..... petitioner
-Versus-
Md. Harasat Ullah and others
.....opposite parties

with

Civil Revision No.1443 of 2020

Md. Harasat Ullah and others ..... petitioners
-Versus-
Ganaswasthya Kendra and others
.....opposite parties

with

Civil Revision No.889 of 2021

Md. Harasat Ullah and others ..... petitioners
-Versus-
Ganaswasthya Kendra and others
.....opposite parties

Mr. AKM Fakrul Islam with Mr. Md. Faruk Hossain and Ms. Saida Yesmin, Advocates
.....for the petitioners in Civil Revision Nos.390 of 2021 and opposite parties in Civil Revision Nos. 1443 of 2020 and 889 of 2021.

Ms. Rezina Mahmud with Mr. Md. Abdus Samad, Advocates
..... for the opposite parties in Civil Revision Nos.390 of 2021 and petitioners in Civil Revision Nos.1443 of 2020 and 889 of 2021.

Judgment on 14.12.2022

Bhishmadev Chakrabortty, J:

These Rules have arisen out from the orders passed in a single execution case. Since the parties thereto are same and similar points of fact and law are involved, these have been heard together and are being disposed of by this judgment.

Rule in Civil Revision No.390 of 2021 was issued calling upon the opposite parties to show cause as to why order dated 30.09.2020 passed by the Joint District Judge and Arbitration Court, Dhaka in Money Execution Case No.54 of 2008 being beyond scope of the decree should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper. At the time of issuing the Rule an *interim* order of stay of operation of the impugned order was passed which still subsists.

Rule in Civil Revision No.1443 of 2020 was issued calling upon opposite parties 1-4 (the petitioners of the previous revision) to show cause as to why the same order passed in the aforesaid money execution case giving no specific decision on the application dated 11.12.2020 filed by the petitioner for calculating interest of 18% on the decreetal amount from 01.12.2008 till its realization in compliance with the decision of superior Courts should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

Rule in Civil Revision No.889 of 2021 was issued calling upon opposite parties 1-4 to show cause as to why order No.200 dated 21.10.2020 passed by the selfsame Court in the same execution case should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

Facts relevant for disposal of the Rules, in brief, are that the defendant of the original suit Ganaswasthya Kendra and others entered into a contract with the plaintiffs to purchase lands and structures thereon including plaintiffs' share at a consideration of Taka 2.12 crore. On the strength of the aforesaid contract the defendants took over possession of the land with structures. They partly paid the amount but subsequently defaulted in making payment. The plaintiffs then instituted a money suit against the defendants which was transferred to the Court of the then Subordinate Judge and Commercial Court No.1, Dhaka and renumbered as Money Suit No.17 of 1992. The Court decreed the suit on 14.11.1995 on contest that the plaintiffs are entitled to Taka 1,60,69,750.00 up to 15.06.1989 and they will also get interest of 18% till its realization. The defendants then preferred First Appeal No.55 of 1996 before the High Court Division. The appeal was dismissed on 30.11.2005 and the judgment and decree passed by the trial Court was affirmed. Against which the defendants moved to the Appellate Division in Civil Petition for Leave to Appeal No.498 of 2006 which was also dismissed on 14.05.2008 and the judgment and decree passed by the trial Court were affirmed. The defendants finally unsuccessfully moved in Civil Review Petition No.129 of 2008 before the Appellate Division.

In the meantime, the decree holderd filed Money Execution Case No.01 of 1996 before the selfsame Court for realization of Taka

3,53,73,698.00. The decree holder filed an application therein on 26.07.2010 for amendment of the execution case praying for enhancing the amount from Taka 1,60,69,750.00 to 37,11,64,950.84 calculating compound interest stating reasons therein. The executing Court allowed the said application by order No.50 passed on 29.10.2010. The judgment debtors then filed an application according to the provisions of Or.26 r.11 of the Code of Civil Procedure for appointing a chartered accountant to calculate the due amount. The executing Court rejected the application while the judgment debtor moved in this Court and a rule was issued in Civil Revision No.2099 of 2014 and the execution case was stayed subject to some terms and conditions. In the rule the judgment debtors claimed that they paid decreetal amount of Taka 1,60,69,750.00 on 30.11.2008 and as such the decree holders will not get any interest upon unpaid amount of interest. However, as per order of the High Court Division passed in the aforesaid civil revision, a chartered accountant firm was appointed who after calculating interest found total Taka 1,47,26,47,057.07 due to the debtors. Against which the judgment debtors again moved in this Court in Civil Revision No.3750 of 2015 and the Rule issued therein was subsequently made absolute and the order passed by the trial Court calculating the interest by a chartered account was set aside with some observations and findings.

Against the aforesaid judgment and order passed in Civil Revision No.3750 of 2015 both the parties, *i.e.,* the judgment debtors and decree holders moved to the Appellate Division in Civil Petition for Leave to Appeal No.4469 of 2017 and 3390 of 2018 respectively but the Appellate Division affirmed the judgment and order passed by this Division with the findings that in any execution matter the executing Court will calculate the interest due on the decreetal amount as has been found by the High Court Division and directed the trial Court to dispose of the execution case within 3(three) months. Thereafter, the decree holders filed an application in the executing Court on 11.03.2020 with a copy of the judgment and order of the Appellate Division. Due to pandemic situation the hearing of it was shifted finally to 24.08.2020. On that day the judgment debtors filed an application for correcting the arithmetical mistake and accidental slip of the learned Judge. It was heard on the same day and the date was fixed to 26.08.2020 for passing order. The learned Advocate for the debtors subsequently came to learn that it was rejected on 24.08.2020. Then he filed another application under section 152 of the Code for correction. In the meantime the debtors challenging the aforesaid order dated 24.08.2020 filed a revisional application in this Court upon which an order was passed in Civil Order No.1355 of 2020 on 04.10.2020. In the order the application was disposed of with some observations and directions, so far it was related to the word

‘ব্যাংক’ as has been found in the decree of Money Suit No.17 of 1992. The executing Court on the basis of the application and direction of the High Court Division as well as the Appellate Division took up all the applications of the parties for hearing. On calculation, it found that the total amount including interest payable by the judgment debtors stands at Taka 10,65,69,078.66, out of which they paid Taka 7,23,54,049.00 and as such they have to pay Taka 3,42,15,029.66 more to the decree holders. The Court directed the debtors to pay the amount to the decree holders immediately. It was further ordered that the decree holder would get 18% interest till its realization.

Being dissatisfied with the aforesaid judgment and order, the judgment debtors filed Civil Revision No.390 of 2021 on the ground that the interest was not calculated by the executing Court according to law. They have paid the decreetal amount long ago and the interest cannot be imposed upon interest. They have paid more than the amount claimed by the decree holders. But the Court calculated the amount wrongly which has no basis.

The decree holders being aggrieved by the same order approached this Court in Civil Revision No.1443 of 2020 contending that earlier in order No.50 the application of the decree holders was allowed and the execution case was amended. The liability of the judgment debtors was shown at Taka 37,11,64,950.84 which the executing Court cannot refix or decrease.

In Civil Revision No.889 of 2021 grievance of the decree holder was that the executing Court by order No.200 passed on 21.10.2020 allowed the prayer of the debtors to delete the word 'ব্যাংক' from the decree of Money Suit No.17 of 1992 holding that it has complied with this Court's order passed in Civil Order No.1355 of 2020. But practically no such order was passed and that the aforesaid order has been passed behind their back.

Mr. AKM Fakrul Islam, learned Advocate for the petitioners in Civil Revision No.390 of 2021 and opposite parties to the Rules issued in other two revisions submits that the judgment debtors complying with the order of this Division passed in Civil Revision No.2099 of 2014 deposited the decreetal amount of Taka 1,60,69,750.00 on 30.11.2008 and as such the executing Court cannot calculate interest upon due interest. When the debtors paid the decreetal principal amount, the decree holders cannot claim interest on the unpaid amount of interest which was also paid by the judgment debtor later on. In paragraph 12 of the revisional application they have shown the chart of interest at the rate of 18% calculated from 15.06.1999 to 31.12.2008 showing that they paid total interest of Taka 5,62,89,912.78/-. He further submits that the trial Court calculated interest upon the principle amount of Taka 1.27 crore at Taka 23,69,750.00 up to the delivery of judgment but wrongly calculated total Taka 1,60,69,750.00 which was actually at Taka 1,50,69,750.00.

An amount of Taka 10,00,000.00 has been calculated more wrongly. However, he advanced his argument on the point that no interest should be calculated upon interest and they have paid more than the amount due to the decree holders, and as such impugned order passed by the executing Court cannot be sustained in law. The executing Court committed error of law resulting in an error in such order occasioning failure of justice which is required to be interfered with in revision.

In Civil Revision No.889 of 2021 Mr. Islam submits that this is a money suit by private party and the provisions of banking law shall not apply here. The insertion of word in the decree 'ব্যাংক' is an accidental mistake committed by the trial Court at the time of drawing up the decree and it bears no meaning. Although in Civil Order No.1355 of 2020 this Division did not directly ordered the executing Court to delete the word but considering the view of the High Court Division it rightly deleted the word 'ব্যাংক' from the decree. In passing such order the Court committed no error of law and as such it may not be called into question. Therefore, the Rules issued in Civil Revision No.1443 of 2020 and 889 of 2021 would be discharged.

Ms. Rezina Mahmud, learned Advocate for the petitioners in Civil Revision Nos.1443 of 2020 and 889 of 2021 and opposite parties to Civil Revision No.390 of 2021 submits that the application of the decree holders for amendment of the decree by calculating interest

was allowed by the executing Court by order No.50 dated 29.10.2010 and accordingly the execution case was corrected. The judgment debtors' due to the decree holders stood at Taka 37,11,64,950.84. Although, the judgment debtors approached before the High Court Divison in Civil Revision No.3750 of 2015 challenging the order passed by the executing Court on a report of a chartered accountant calculating Taka 1,47,26,47,057.07 but they did not challenge the aforesaid order where total payable amount was fixed at Taka 37,11,64,950.84, therefore, the calculation of executing Court and the impugned order is totally wrong. In Civil Revision No.3750 of 2015 the judgment debtors tried to make out a case in this or that way that they challenged that order but the said submission was not accepted there by this Division. The order dated 29.10.2010 has its force till today and the judgment debtors are bound to pay the aforesaid amount. But by the impugned order dated 30.09.2020 the Executing Court calculated interest bypassing its own order passed on 29.10.2010 and as such it requires to be interfered with. The executing Court cannot revise its own order *suo motu*. Therefore, the Rule issued in Civil Revision No.1443 of 2020 should be made absolute and the Rule issued in Civil Revision No.390 of 2021 be discharged. In Civil Revision No.889 of 2021 Ms. Mahmud, submits that the executing Court failed to understand the meaning of order passed on 04.10.2020 in Civil Order No.1355 of 2020 and *suo motu* deleted the

word ‘ব্যাংক’ from the decree to which it was not authorized by law to do. The rule, therefore, issued in the aforesaid revision should be made absolute.

We have considered the submissions of both the sides and gone through the materials on record. It appears that the original suit was filed on 15.06.1989. The suit was subsequently transferred on 28.09.1992 to the Subordinate Judge and Commercial Court No.1, Dhaka and renumbered as Money Suit No.17 of 1992 which was decreed on 14.11.1995. The trial Court decreed the suit against the defendants as under-

> “*অত্র মোকদ্দমা দোতরফাসূত্রে প্রতিদ্বন্দ্বি বিবাদীদের বিরুদ্ধে খরচের আদেশ সহ ডিক্রী হয়। বাদী পক্ষ ১-৪ নং বিবাদীদের নিকট ১৪.০৬.১৯৮৯ ইং তারিখ পর্যন্ত ১,৬০,৬৯,৭৫০/- টাকার প্রাপক সাব্যস্ত হয়। ১-৪ নং বিবাদীগণকে ১৪.০৬.১৯৮৯ ইং তারিখ পর্যন্ত ১,৬০,৬৯,৭৫০/- টাকা এবং ১৫.০৬.১৯৮৯ ইং তারিখ হইতে উক্ত পরিমাণ টাকা আদায় পর্যন্ত বার্ষিক ১৮% হারে ক্ষতিপূরণ/সুদ সহ আগামী ৯০ দিনের মধ্যে বাদী পক্ষে পরিশোধ করিতে নির্দেশ দেওয়া গেল। অন্যথায় বাদী পক্ষ আইন অনুযায়ী উক্ত টাকা আদায় করিয়া হইতে পারিবে।*” (*emphasis supplied*)

Subsequently, decree was signed by the learned Judge on 18.11.1995. The decree was drawn in the following manner-

> “*এই মোকদ্দমা অদ্য চূড়ান্ত নিস্পত্তির জন্য জনাব আব্দুল কুদ্দুস মিয়া, সাবজজ, বাণিজ্যিক আদালত নং-১, ঢাকা এর সম্মুখে বাদী পক্ষে জনাব সৈয়দ শহীদ হোসেন, এডভোকেট এর উপস্থিতিতে এবং বিবাদী পক্ষে (১) এম, এ রহিম, (২) মুকুন্দ চন্দ্র দেবনাথ, এডভোকেট সাক্ষাতে উপস্থিত হইয়া হুকুম হইল যে,*
>
> *আদেশ হয় যে,*

অত্র মোকদ্দমা দোতরফাসূত্রে প্রতিদ্বন্দ্বি বিবাদীদের রিরুদ্ধে খরচের আদেশ সহ ডিক্রী হয়। বাদী পক্ষ ১-৪ নং বিবাদীদের নিকট ১৪.০৬.১৯৮৯ ইং পর্যন্ত ১,৬০,৬৯,৭৫০/- টাকার প্রাপক সাবস্ত হয়। ১-৪ নং বিবাদীগণকে ১৪.০৬.১৯৮৯ ইং তারিখ পর্যন্ত ১,৬০,৬৯,৭৫০/- টাকা এবং ১৫.০৬.১৯৮৯ ইং তারিখ হইতে উক্ত পরিমাণ টাকা আদায় পর্যন্ত ১৮% হারে ক্ষতিপূরণ/সুদ সহ আগামী ৯০ দিনের মধ্যে বাদী পক্ষে পরিশোধ করিতে নির্দেশ দেওয়া গেল। অন্যথায় বাদী 'ব্যাংক' আইন অনুযায়ী উক্ত টাকা আদায় করিয়া লইতে পারিবে।" (*emphasis supplied*)

The aforesaid judgment and decree was affirmed up to the Appellate Division. In the meantime, the decree holder filed Execution Case No.01 of 1996 which was subsequently renumbered as Money Execution Case No.54 of 2008. Against some orders of the aforesaid execution case, the debtors moved several times in the High Court Division on different reasons. They appeared before this Court for stay of the execution case challenging the report of calculating interest of the chartered accountant and for correction of arithmetical mistakes *et cetera*. In one occasion at the time of disposal of Civil Revision No.2099 of 2014 this Court directed the debtors to make payment of total dues of Taka 5,62,84,299.38 in three installments. Thereafter, the debtors paid Taka 2,00,00,000.00 (two crore) on 17.09.2014 Taka1,00,00,000.00 (one crore) on 29.03.2015 and Taka 2,62,84,299.38 on 29.04.2017 which is admitted by the decree holders. It appears that the judgment debtors did not pay the installment within the time prescribed by this Division but ultimately they paid the amount.

In Civil Revision No.3750 of 2015 which had been preferred by the judgment debtors against the calculation of the decreetal amount by a chartered accountant, the High Court Division made the Rule absolute and held that the interest in a suit between the private parties would fall under section 34 of the Code. It has been further held there that unless and until it is provided expressly in the agrement or contract that the interest should be calculated in compound figure, it must be simple. Therefore, in the instant execution case there could be no reason to calculate compound interest. On going through the amendment application (annexure E in Civil Revision No.1443 of 2020) filed by the decree holders in the executing Court upon which Order No.50 dated 29.10.2010 was passed and the execution case was amended, we find that the decree holders calculated and claimed compound interest upon the decreetal amount and the Court simply allowed it. The said calculation and claim of compound interest cannot be accepted as per the provisions of section 34 of the Code and consistent view of our Apex Court. This is an error of the executing Court which is apparent on the face of the record. The submission of the learned Advocate for the decree holders that the said order was not challenged before higher Court is correct, but such cannot be allowed to continue because it was passed violating the settled law. The executing Court has the authority to correct its own order. We find that by the impugned order which has been challenged in Civil

Revision Nos.390 of 2021 and 889 of 2021 the executing Court calculated simple interest on the decreetal amount and fixed the liability of the judgment debtors and thus the earlier order dated 29.10.2010 has been merged with the impugned order under challenge in the above revisions. Under the provisions of section 34 of the Code and view taken by this Court in Civil Revision No.3750 of 2015, we find that the executing Court is empowered to do so and it did it correctly according to law.

It further appears that the judgment debtors claimed here that since they have paid the decreetal amount on 30.11.2008 and at that time the remaining amount to be paid by them to the decree holders was the interest and it cannot be increased counting further interest upon it. If this argument is accepted that the decree holder will not be entitled to interest imposed thereon, then what would be the result if a debtor after adjusting the decreetal amount wilfully kept the other amount (interest due) unpaid for unlimited period, should it remain as it was after expiry of years together? The answer would be in the negative. It appears that although the judgment debtors paid the decreetal amount on 30.11.2008 amounting to Taka 1,60,69,70,60/- as per execution case, but it is to be adjusted as a part of total payable amount at the material time. In the premises, the decree holders are entitled to get the interest upon the amount which was due to the bank after deduction of Taka 1,60,69,70,50/- on 30.11.2008.

Considering the above aspects, we find that the executing Court rightly calculated the amount of the debtors to be paid to the decree holders. The learned Judge has calculated the interest upon the decreetal amount then he added it with the decreetal amount and fixed the liability of the judgment debtors to the tune of Taka 10,65,69,078.66. The judgment debtors paid them total Taka 7,23,54,049.00 and they are to pay still Taka 3,42,15,029.66. We find nothing wrong in the impugned order and as such the Rules issued in Civil Revision Nos.390 of 2021 and 1443 of 2020 are to be discharged.

In respect of the other revision, we find that decree has been defined in section 2 of the Code as 'formal expression of adjudication'. The decree bears the substance or concise form of the judgment. Without judgment there could be no decree. Here the learned Judge specifically ordered in the judgment of Money Suit No.17 of 1992 that the plaintiffs are entitled to get Taka 1,60,60,750.00 up to 14.06.1989 and they will be entitled to the interest from 15.06.1989 at the rate of 18% till its realization, failing which the plaintiffs may proceed according to law. But in the decree singed by the same Judge the word 'বাদী ব্যাংক' has been written instead of 'বাদীপক্ষ' as written in the ordering part of the judgment. We do not find that the word 'ব্যাংক' as written in the decree has been written correctly. It appears that at the time of preparing and signing the

decree inadvertently the word ‘ব্যাংক’ has been written instead of ‘পক্ষ’. May be looking the caption of the suit as ‘Money Suit’ it was written wrongly ‘ব্যাংক’, but here the word ‘ব্যাংক’ does not make any sense. There is nothing in the agreement between the parties that the plaintiff will get interest on the amount as per banking law. For the sake of argument if it is kept as it is, the decree holders cannot claim compound interest on its basis in a money suit between two private individuals. We, therefore, hold that although the executing Court without notifying the decree holders on misconception of the direction of this Court deleted the said word ‘ব্যাংক’ from the decree but by that order no error has been committed and it need not be interfered with.

It is found that the judgment debtors from very beginning were unwilling to repay the amount due as per contract. They moved in both the Divisions of this Court and spent years together. The conduct of the decree holders are also not fair. Taking the advantage of order No.50 dated 29.10.2010 passed by the executing Court as well as the very insertion of the word ‘ব্যাংক’ in the decree they became ambitious to get huge money. The conduct of both parties are unwanted.

In view of the aforesaid discussion we find no merit in the Rules. Consequently, the Rules are discharged. However, there will be no order as to costs. The judgment and orders passed by the executing Court are hereby upheld and affirmed.

The order of stay stands vacated.

However, the judgment debtors are directed to pay the amount as calculated by the executing Court without making any further delay, otherwise the law will take its own course.

Communicate the judgment and send down the lower Court's record.

Md. Ali Reza, J:

I agree.