

CASE NO.:
Appeal (civil) 4570 of 2006

PETITIONER:
Gurpreet Singh

RESPONDENT:
Union of India

DATE OF JUDGMENT: 19/10/2006

BENCH:
Y.K. SABHARWAL, K. G. BALAKRISHNAN & S. H. KAPADIA C. K. THAKKER P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(@ SPECIAL LEAVE PETITION (C) NO.8408 OF 2003)
WITH
CIVIL APPEAL NOS.4549,4548 and 4547 OF 2006
(@ SLP (C) No.19525 of 2003, 3429 of 2004 and 5609 of 2004]

P.K. BALASUBRAMANYAN, J.

1. What is the rule of appropriation in execution of money decrees? Is the rule the same in the case of an award decree under the Land Acquisition Act or, is there anything in the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act, Act 68 of 1984 making that rule inapplicable or not wholly applicable? These are the questions that arise for consideration in these Petitions for Special Leave to Appeal.

2. Leave granted.

3. In Prem Nath Kapur & Anr. Vs. National Fertilizers Corporation of India Ltd. & Ors. [(1995) Supp. 5 SCR 790], a three Judge Bench of this Court held that the expression 'compensation' under Section 23(1) of the Land Acquisition Act, 1894 as amended by Act 68 of 1984 (hereinafter referred to as, "the Act") read in the context of Section 28 or Section 34 thereof, by necessary implication excludes solatium and that no interest is payable on solatium or on the additional amount under Section 23(1)(A) of the Act. In other words, it was held that the liability to pay interest was only on the excess amount of compensation determined under Section 23(1) of the Act by the Civil Court either under Section 26 or on appeal under Section 54 of the Act over and above the amount awarded under Section 11 of the Act. It was also held that the normal rule of appropriation contained in Order XXI Rule 1 of the Code of Civil Procedure relating to execution of decrees for recovery of money, stands excluded by Sections 28 and 34 of the Act and the principles of Order XXI Rule 1 of the Code could not be extended to execution of award decrees under the Act. The view as regards the content of the expression 'compensation' occurring in Section 23(1) and Section 28 of the Act was overruled by a Constitution Bench in Sunder Vs. Union of India ((2001) Suppl. 3 SCR 176), wherein it was held that the expression 'compensation' awarded would include not only the total sum arrived at as per Section 23(1)

but also the sums under the remaining sub-sections of Section 23. Thus, one part of the decision in Prem Nath Kapur (supra) stood overruled, though the Constitution Bench did not say anything about the other aspect dealt with therein, namely, the mode of appropriation of the amount due under an award decree. When these cases came up before a bench of three Judges, this aspect was noticed. The learned Judges felt that the question whether this part of the judgment in Prem Nath Kapur (supra) would survive the reasoning in Sunder (supra) had to be reconsidered and even otherwise, the correctness of the view expressed therein required reconsideration at the hands of a Constitution Bench. It is thus that these Petitions for Special Leave to Appeal have come before us. The question for which the answer is sought from us is indicated by the order of reference in the following words:

"Having heard the learned counsel for the parties and having perused the aforesaid decisions, we are of the view that the normal rule that in case of a debt due with interest, any payment made by the debtor, in the first instance, is to be appropriated towards the satisfaction of interest and thereafter towards principal, subject to a contract to the contrary, is not excluded by the provisions of the Act. The normal principle is embedded on the basis of Section 60 of the Indian Contract Act, 1872. It is also indicated in Order XXI Rule 1(3)(c) of the Code. We may note that the decision in Prem Nath Kapur & Anr. (supra) though has been over-ruled by the Constitution Bench in Sunder Vs. Union of India [2001(7) SCC 211] but the Constitution Bench has not gone into the question of appropriation. The question of appropriation, in the decision in Prem Nath Kapur & Anr. (supra), requires to be re-considered."

Thus, the question that requires to be answered is whether the rule, of what may be called the different stages of appropriation, set out in Prem Nath Kapur (supra) is correct or whether the rule requires to be re-stated on the scheme of the Land Acquisition Act understood in the context of the general rules relating to appropriation and the rules relating to appropriation in execution of money decrees and mortgage decrees.

4. Appropriation is the act of setting apart or assigning a thing or substance to a particular use or person to the exclusion of others; application to a special use or purpose. There are three specialised meanings of the term,

i) In company accounting, it is the division of pre tax profits between corporation tax, company tax, company reserves and dividends to shareholders. The term works in the same sense in a partnership situation.

ii) In the shipping of produce, the appropriation is the document by which the seller identifies to the buyer the relevant unit in shipment.

iii) If a debtor makes a payment to a creditor and does not specify which debt the payment is in settlement of, the creditor may appropriate it to any of the debts outstanding on the debtor's account. This is often known as appropriation of payments.

(See P. Ramanatha Aiyar Advanced Law Lexicon, 3rd Edition, 2005 page 315)

5. We are concerned with the last of the specialized meanings assigned to the term.

6. The question in the sense in which we are concerned with it, arises when a debtor makes a payment which does not satisfy the full debt or, in other words, remains a part-payment. The general rule of appropriation is set out in Halsbury's Laws of England, Fourth Edition, thus,

"Where several distinct debts are owing by a debtor to his creditor, the debtor has the right when he makes a payment to appropriate the money to any of the debts that he pleases, and the creditor is bound if he takes the money, to apply it in the manner directed by the debtor. If the debtor does not make any appropriation at the time when he makes the payment, the right of appropriation devolves on the creditor.

An appropriation by the debtor need not be made in express terms, but must be communicated to the creditor or be capable of being inferred; it may be inferred where the nature of the transaction or the circumstances of the case are such as to show that there was an intention to appropriate."

7. The principle of appropriation is set out in Chitty on Contracts, 29th Edition, Volume I in paragraph 21-059,

"Where several separate debts are due from the debtor to the creditor, the debtor may, when making a payment, appropriate the money paid to a particular debt or debts, and if the creditor accepts the payment so appropriated, he must apply it in the manner directed by the debtor; if, however, the debtor makes no appropriation when making the payment, the creditor may do so".

Paragraph 21-061 deals with the creditor's right to appropriate. It is stated,

"where the debtor has not exercised his option, and the right to appropriate thereof devolved upon the creditor, he may exercise it at any time "up to the very last moment" or until something happens which makes it inequitable for him to exercise it."

The question of appropriation as between principal and interest is set out in paragraph 21-067 in the following words:

"Where there is no appropriation by either debtor or creditor in the case of a debt bearing interest, the law will (unless a contrary intention appears) apply the payment to discharge any interest due before applying it to the earliest items of principal."

The relevant provisions governing contractual dealings are found in Sections 59 to 61 of the Indian Contract Act. According to Pollock & Mulla, Indian Contract Act, 12th Edition, the underlying principle is that when several debts are due and owing to one person, any payment made by the debtor either with an express intimation or under circumstances from which an intimation may be implied must be applied to the discharge of the debt in the manner intimated or which can be implied from the circumstances. Mulla proceeds to observe,

"In England, 'it has been considered a general rule since Clayton's case that when a debtor makes a payment he may appropriate it to any debt he pleases, and the creditor must apply it accordingly'. Where several distinct debts are owing by a debtor to his creditor, the debtor has the right when he makes a payment to appropriate the money to any of the debts that he pleases, and the creditor is bound, if he takes the money, to apply it in the manner directed by the debtor. If the debtor does not make any appropriation at the time when he makes the payment, the right of appropriation devolves on the creditor."

8. The Rule of Appropriation as applied in India was summed up by Mr. Justice T.L. Venkatarama Aiyar (as he then was) in the Full Bench decision of the Madras High Court in Marimella Suryanarayana vs. Venkataraman Rao (AIR 1953 Madras 458). His Lordship stated:

"The principles governing appropriation of payments made by a debtor are under the general law well settled. When a debtor makes a payment, he has a right to have it appropriated in such manner as he decides and if the creditor accepts the payment, he is bound to make the appropriation in accordance with the directions of the debtor. This is what is known in England as the rule in 'Clayton's case' (1861) 1 Mar.572: 35E.R. 781 and it is embodied in Section 59, Contract Act. But when the debtor has not himself made any appropriation, the right devolves on the creditor who can exercise it at any time, vide 'Cory Bros. & Co. vs. Owners of the Turkish Steamship

'Mecca', (1897) A.C. 286; and even at the time of the trial : Vide \026 'Symore vs. Picket', (1905) 1 K.B. 715. That is Section 60, Contract Act. It is only when there is no appropriation either by the debtor or the creditor that the Court appropriates the payments as provided in Section 61, Contract Act."

9. It has to be noted that Sections 59 to 61 of the Contract Act get attracted only when more than one debt is due from a debtor to the creditor. The Sections would not get attracted when there is only one debt due. Nor have they any direct application in a case where the debt due has merged in a decree and the applicable rule then would be what is provided in the decree itself or the general rule applicable in execution of money decrees.

10. Now, we may consider the provisions in the Code of Civil Procedure, 1908 (hereinafter referred to as, "the Code") that have relevance to the issue. The rule of appropriation in respect of amounts deposited in court or in respect of payment into court, is contained in Order XXIV of the Code at the pre decreetal stage and in Order XXI Rule 1 at the post decreetal stage. Though, we are not directly concerned with it, we may notice that special provisions relating to mortgages are found in Order XXXIV of the Code. Under Order XXIV Rule 1, a defendant in a suit for recovery of a debt may at any stage of the suit deposit in court such sum of money as he considers a satisfaction in full of the claim in the plaint. Rule 2 thereof provides for issue of notice of deposit to the plaintiff through the court and for payment out of the amounts to the plaintiff if he applies for the same. Rule 3 specifically states that no interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of such deposit, whether the sum deposited is in full discharge of the claim or it falls short thereof. Rule 4 enables the plaintiff to accept the deposit as satisfaction in part and allows him to pursue his suit for what he claims to be the balance due, subject to the consequences provided for therein regarding costs. It also deals with the procedure when the plaintiff accepts the payment in full satisfaction of his claim.

11. Order XXI Rule 1 provides the modes of paying money under a decree. It stipulates that all monies payable under a decree shall be paid: (a) by deposit into the Court whose duty it is to execute the decree, or (b) out of court, to the decree holder in the manner provided, or (c) otherwise, as the court which made the decree directs. Sub-Rule (2) provides that where a payment is made by deposit into the court or as directed in the decree, the judgment debtor shall give notice thereof to the decree holder either through the court or directly to him by registered post acknowledgement due. On any amount paid by way of deposit into the court or as directed under the decree, interest, if any, shall cease to run from the date of the service of the notice referred to in sub-rule (2). Thus, Order XXI Rule 1 after its amendment in the year 1976 also contemplates the deposit of the decree amount into court and the giving of notice thereof to the decree holder and provides further for cessation of interest from the date of notice to the decree holder of such deposit.

12. Even before the amendment to the Code, in the year 1976, the view had been taken that the indication given by Rule 3 of Order XXIV of the Code providing for cessation of the running of interest on notice of the deposit being given pending a suit, can be extended to execution of decrees. In *Mt. Amtul Habib vs. Mohammad Yusuf* (ILR 40 Allahabad 125), it was held that where money was paid into court by the judgment debtor in satisfaction of a decree, interest on the decree will cease from the date of payment in proportion to the amount paid, although such amount may not in fact be the whole amount due under the decree. In that case, towards the decree amount which included the principal, interest and costs, the judgment debtors deposited three-fourth of the principal with interest and costs thereon, on a plea that one-fourth of the principal belonged to themselves, a plea that was overruled by the High Court compelling the judgment debtors to deposit the balance one-fourth amount also. The question arose in execution whether the decree holder was entitled to interest on the full amount of the decree until after the decision of the High Court holding that the entire amount must be deposited or whether interest should not be charged on the whole amount but it should be charged only on the difference between the amount which they had deposited in court and the full amount of the decree. In other words, the question was whether the judgment debtors should be relieved from the obligation of paying interest on so much of the amount as they had deposited, from the date of that deposit. The courts below upheld the plea that interest should not be charged on the whole amount. In an appeal by the decree-holder, the Division Bench held,

"The matter is not altogether free from difficulty. Order XXIV, rules (1), (2) and (3), provide that in the case of a suit the defendant may pay into court such sum of money as he considers as satisfaction in full of the claim. Notice of the deposit is given to the plaintiff, who is entitled to draw the money out, whether he takes it in full discharge or not, and no interest is allowed to the plaintiff upon the amount of the deposit. There is no corresponding provision as to payment out of court and the cessation of interest in execution matters, but there does not seem to be any reason why the same thing should not happen in execution proceedings as in the case of suits."

After referring to the facts and the position that the court could have ordered the money to be paid over to the decree holder in partial discharge of the decree debt soon after the amount was deposited, the court stated,

"We think that in this case we ought to apply the analogy of the rules which relate to payment into court of money by the defendant in a suit, and that in this view the decisions of the courts below were correct and should be affirmed."

The same view was taken by the Patna High Court in *Gopalje vs. Sumrit Mandar* (AIR 1933 Patna 89). After

referring with approval to the view expressed in the above Allahabad case, their Lordships held that the above decision clearly implied that even if a portion of the decretal amount was paid, it would be a valid payment. In Varki Ouseph vs. Narayanan Parameswara Panicker (AIR 1956 Travancore-Cochin 46) a Division Bench of the Travancore \026Cochin High Court after referring to the decisions of the Allahabad and Patna High Courts, referred to above, and the relevant portions of the commentaries from Mulla on the Code of Civil Procedure, held that in the case of a decree which awards interest on the principal, interest ceases to run on the amount deposited in the court under Order XXI rule 1(a) from the date the decree holder has notice of the deposit. In Mulla's commentary on the Code of Civil Procedure 15th Edition Vol. III dealing with Rule 3 of Order XXIV it is stated: "the principle of this rule applies to proceedings in execution; therefore, if money is paid into Court by a judgment-debtor, no interest should be allowed to the decree holder on the amount so paid, although such amount may not in fact be the whole amount due under the decree."

The decision of the Allahabad High Court in Amtul vs. Muhammad (ILR 40 Allahabad 125) is relied on. We see no reason not to accept the principle thus enunciated.

13. While dealing with the effect of the deposit made by a judgment debtor (mortgagor) towards the decree debt in terms of Order XXI Rule 1 of the Code as it stood prior to its amendment by Act 104 of 1976, this Court in Meghraj and others vs. Mst. Bayabai and others (1969 (2) SCC 274) held:

"Unless the mortgagees were informed that the mortgagors had deposited the amount towards the principal, and not towards the interest, and the mortgagees agreed to withdraw money from the court accepting the conditional deposit: the normal rule that the amounts deposited in court should first be applied towards satisfaction of the interest and costs and thereafter towards the principal would apply.

In Venkatadri Appa Row and others vs. Parthasarathi Appa Row (LR 17 IA 150) the Judicial Committee of the Privy Council observed that upon taking an account of principal and interest due, the ordinary rule with regard to payments by the debtor unappropriated either to principal or interest is that they are first to be applied to the discharge of interest. Lord Buckmaster delivering the judgment of the Board observed:

'There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of

interest and then when that is satisfied in payment of the capital. That rule is referred to by Rigby, L.J., in the case of Parr's Banking Co. vs. Yates, (1898 (2) QB 460) in these words:

"The defendant's counsel relied on the old rule that does, no doubt, apply to many cases, namely, that where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract.'

Learned counsel for the appellant contended that in Venkatadri Appa Row's case (supra) there was no specific appropriation by the debtor, whereas in the present case there is specific direction by the debtor. But the normal rule is that in the case of a debt due with interest any payment made by the debtor is in the first instance to be applied towards satisfaction of interest and thereafter to the principal. It was for the mortgagors to plead and prove an agreement that the amounts which were deposited in Court by the mortgagors were accepted by the mortgagees subject to a condition imposed by the mortgagors."

14. In Industrial Credit & Development Syndicate Now Called I.C.D.S. Ltd. vs. Smithaben H. Patel (Smt.) and others ((1999) 1 SCR 555], this Court considered the question whether Sections 59 to 61 of the Contract Act would apply to a debt that has merged in a decree. This Court held that Sections 59 and 60 of the Contract Act would be applicable only at pre-decreetal stage and not thereafter, since post decreetal payments are to be made either in terms of the decree or in terms of the agreement arrived at between the parties, though on the general principle as mentioned Sections 59 and 60 of the Contract Act. It was also held that the general rule of appropriation towards a decreetal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount, subject of course, to any agreement between the parties.

15. We may now advert to Order XXXIV of the Code, dealing also with the execution of mortgage decrees. Rule 10 of Order XXXIV provides for costs of the mortgagee subsequent to the decree and enables the court to permit the mortgagee to add to the mortgage money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary

decree for foreclosure, sale or redemption up to the time of actual payment. Under Rule 11, where interest is legally recoverable, the court may order payment of interest to the mortgagee as provided in that Rule. Rule 12 deals with sale of property subject to prior mortgage and provides for payment out of the said proceeds to the prior mortgagee the same interest in the proceeds of the sale as he had in the property sold. Under Rule 13, after the proceeds are brought into court, the rule of application of the funds is set out. The amount must be applied first in payment of all expenses incident to the sale or properly incurred in any attempted sale; secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith; thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made; fourthly, in payment of the principal money due on account of that mortgage; and lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt. Under sub-Rule (2) it is made clear that nothing in that Rule or Rule 12 shall affect the powers conferred by Section 57 of the Transfer of Property Act.

16. A Full Bench of the Lahore High Court in *Jai Ram vs. Sulakhan Mal* [AIR 1941 LAHORE 386] considered the position in detail. That was a case where the property had been sold in execution of a mortgage decree and the question was about the appropriation of the sale proceeds brought to court. The question was referred to the Full Bench in view of the conflict of decisions in that Court on the mode of appropriation. The Full Bench held that Sections 59 to 61 of the Contract Act embody the general rules as to appropriation of payments in cases where a debtor owes several distinct debts to one person and voluntarily makes payment to him. The Sections do not deal with cases in which principal and interest are due on a single debt, or where a decree has been passed on such a debt, carrying interest on the sum adjudged to be due under the decree. After thus finding that Sections 59 to 61 of the Contract Act had no application, the Full Bench proceeded to hold that the general rule of appropriation of payments towards a debt was that in the absence of a specific indication to the contrary by the debtor, the money is first applied in payment of the interest and then when that is satisfied, in payment of the capital. That principle applied even to the sale proceeds of the properties sold in execution of a mortgage decree. Therefore, in the absence of a direction to the contrary in the decree, the sale proceeds of the properties sold in execution of a mortgage decree must be applied first in payment of subsequent interest and costs, and thereafter the balance, to discharge the principal sum declared as payable in the decree. Referring to Rules 12 and 13 of Order XXXIV of the Code, it was stated:

"It will be seen that in the case dealt with in this rule, after the prior mortgagee has been paid off in full, the balance is to be applied first in payment of the interest due on the mortgage, in consequence of which the property was sold, and the costs, and the balance in payment of the principal. This is in accord with the

general rule and there seems no reason why a different principle should be adopted when the property is not subject to a prior mortgage."

17. Order XXXIV of the Code contains a scheme of appropriation in a case where Rules 12 and 13 of that Order apply and there is a prior mortgage that remains to be satisfied. The view taken by the Lahore High Court as well as by the Madras High Court in the decision referred to in the judgment of the Full Bench of the Lahore High Court was that, in the absence of a distinct order to the contrary, the Court must normally follow the rule of law applicable to the case in handing over the sale proceeds to the decree holder and the rule of appropriation as referred to in the decision followed. But the question is whether the same principle can be extended in view of the specific provision contained in Rule 1 of Order XXI of the Code especially after its amendment by Act 104 of 1976. That Rule provides for the modes of paying money under a decree. The modes are: (a) by deposit into the Court whose duty it is to execute the decree, or (b) out of Court, to the decree holder in the manner provided, or (c) otherwise, as the Court which made the decree, directs. Sub-rules (4) and (5) seem to be relevant for our purpose. They read:

"(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 accept 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."

18. These sub-rules are seen to be consistent with the scheme of Order XXIV of the Code dealing with payment into court pending the suit, especially Rule 3 thereof, which provides that, no interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of notice of the deposit, whether the sum deposited was in full of the claim or falls short of it.

19. In the objects and reasons for amendment of Order XXI Rule 1, it was set out as follows:

"The Committee note that there is no

provision in the Code in relation to cessation of interest on the money paid under a decree, out of Court, to a decree-holder, by postal money order or through a bank or by any other mode wherein payment is evidenced in writing. The Committee are of the view that, in such a case, the interest should cease to run from the date of such payment. In case the decree-holder refuses to accept the postal money order or payment through a bank, interest should cease to run from the date on which the money was tendered to him in ordinary course of business of the postal authorities or the bank. Sub-rule (5) in rule 1 of Order XXI has been inserted accordingly"

The legislative intent in enacting sub-Rules (4) and (5) is therefore clear and it is that interest should cease on the deposit being made and notice given or on the amount being tendered outside the court in the manner provided. Mulla in his commentary on the Code 15th Edition Vol. II at page 1583 has set out the effect of the rules as follows:

"Normal rule with respect to money decree is (i) the appropriation of payments towards satisfaction of interest in the first instance, and (ii) then towards principal amount. But this became inoperative, after the amendment of Rule 1 of Order 21, C.P.C. Section 60 of the Contract Act cannot be invoked for the application of the aforesaid normal rule."

20. 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.

21. 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 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. This position regarding execution of money decrees has now become clear in the light of the amendments to Order XXI Rule 1 by Act 104 of 1976. The argument that what is awarded by the appellate court is the amount that should have been awarded by the trial court and so looked at, until the entire principal is paid, the decree holder would be entitled to interest on the amount awarded by the appellate court and therefore he can seek to make a re-appropriation by first crediting the amount deposited by the judgment debtor pursuant to the decree of the trial court towards the cost in both the courts, towards the interest due on the entire amount and only thereafter towards the principal, is not justified on the scheme of Order XXI Rule 1 understood in the context of Order XXIV Rules 1 to 4 of the Code. The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment debtor to pay interest on that part of the principal which he has already paid or deposited.

22. Going by this principle and for the moment keeping out the scheme of the Land Acquisition Act, it appears to us that on payment or deposit of the amount awarded by the Collector in terms of Section 11 read with Section 31 of the Act, the claimant cannot thereafter claim any interest on that part of the compensation paid to him or deposited for the payment to him once notice of deposit is given to him. Thereafter, when the reference court enhances the compensation with consequential enhancement in solatium and interest under Section 23(1A) of the Act and further awards interest on the enhanced compensation in terms of Section 28 of the Act, the claimant/decreed holder can seek an appropriation of the amounts deposited pursuant to that award decree, only towards the enhanced amount so awarded by the reference court. While making the appropriation, he can apply the amount deposited, first towards the satisfaction of his claim towards interest on the enhanced amount, the costs, if any, awarded and the balance towards the land value, solatium and the payment under Sections 23 (1A) of the Act and if,

there is a shortfall, claim that part of the compensation with interest thereon as provided in Section 28 of the Act and as covered by the award decree. Once the sum enhanced by the reference court, along with the interest is deposited by the State, there will be no occasion for the claimant/awardee to seek a reopening of the amount awarded by the Collector, substituted by the amount awarded by the reference court and seek to have a re-appropriation of the amount towards what is due. Same would be the position in a case where the amount awarded by the reference court, including the interest is deposited, but the amount is further enhanced in appeal by the High Court. Again, the same principle would apply. The principle would continue to apply when the Supreme Court awards further enhancement in a further appeal to that Court. But if after the award by the reference court the amount is not deposited by the State, interest would run on the compensation in terms of Section 28 of the Act on that amount as provided in Section 28. The same would be the position regarding the enhancement given in appeal by the High Court and in the enhancement given in appeal by the Supreme Court. The mandate of Section 34 and Section 28 that interest would run from the date the Collector takes possession till the particular amount is deposited as provided in those sections ensures that the claimant is recompensed adequately. Section 28 ensures such recompense at each stage of enhancement of compensation.

23. Let us now consider the scheme of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act 68 of 1984. After the publication of the preliminary notification under Section 4 of the Act and after hearing of objections, a declaration has to be made under Section 6 of the Act. The Collector is then to take the order for acquisition from the Appropriate Government or the officer authorized in that behalf by the Government. After completing the formalities contemplated and the enquiry made in terms of Section 11 of the Act, the Collector has to make an award indicating the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the compensation among the persons known or believed to be interested in the land. In making the award, the Collector shall be guided by Sections 23 and 24 dealing with matters to be considered in determining the compensation and matters to be excluded in determining the compensation as enjoined by Section 15 of the Act. Under Section 12 of the Act, the award becomes final as between the Collector and the persons interested and the Collector is to give notice of his award to persons interested. On making the award, the Collector may take possession of the land in terms of Section 16 of the Act. Under Section 31, on making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by the contingencies referred to in Section 31 itself. Under Section 34 of the Act, when the amount of compensation awarded is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of taking possession till it shall have been paid or deposited. But if the compensation or any part thereof is not paid within a period of one year from the date on which possession is taken, interest is

payable at the rate of fifteen per cent per annum from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. It is relevant to notice that on payment of the amounts thus due, the award made by the Collector stands satisfied.

24. A person interested, who is not satisfied with the amount of compensation awarded by the Collector is entitled to receive the amount under protest and could apply to the Collector requiring him to refer the matter to the Court in terms of Section 18 of the Act. The Collector is then to make a statement to the Court and the Court is entitled to fix the compensation subject to Section 25 of the Act which provides that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11 of the Act. In fixing the compensation, the Court shall have regard to the matters referred to in Sections 23 and 24 of the Act. Under Section 26, every award shall be deemed to be a decree within the meaning of Section 2(2) of the Code of Civil Procedure and every reasoned award shall be deemed to be a judgment as defined in Section 2(9) of the Code of Civil Procedure. Under Section 27 of the Act, every award made by the Court shall also contain directions regarding the costs incurred in the proceedings in Court, the costs of the claimant found entitled to enhancement, normally to be borne by the Collector. Under Section 28 of the Act, the Court which has awarded compensation in excess of the sum which the Collector did award as compensation, may direct that the Collector shall pay interest on such excess at the rate of nine per cent per annum from the date on which he took possession of the land to the date of payment of such excess into Court. The proviso enjoins the Court to direct that where such excess or any part thereof is paid into Court after the expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum, shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court after the date of such expiry. Two aspects require to be noted. One is that the interest is payable only on the excess amount of compensation awarded by the reference court and the second is that interest on the enhanced amount awarded is payable from the date of taking possession at the rate of 9% per annum for the first year after taking possession and thereafter at 15% per annum till the deposit of the excess is made. This clearly indicates that there is no scope for the re-opening of the appropriation already made pursuant to the award. The other significant factor is that the award should specify the amount awarded as market value of the land separately and the other amount, if any, awarded under other heads of Section 23(1).

25. Under Section 54 of the Act, a person, still not satisfied with the decree of enhancement in his favour on the reference under Section 18 of the Act, has a right to file an appeal to the High Court and from the decision of the High Court in such an appeal, an appeal to the Supreme Court. If one were to go by the definition of 'Court' occurring in Section 3(d) of the Act, Section 28 providing for payment of interest on excess compensation may not apply to an appeal under Section 54 of the Act on the excess, if any

awarded by the High Court or in subsequent appeal by the Supreme Court. But when in an appeal under Section 54 of the Act, the appellate court further enhances the compensation, it awards the compensation that the reference court ought to have awarded and so understood, Section 28 of the Act may be applied at the appellate stage. If the expression 'Court' used in Section 28 of the Act is understood in the generic sense, (on the basis that the context otherwise requires it), the result would be the same. The other provision relevant to be noted is Section 53 of the Act which makes the Code of Civil Procedure applicable to all proceedings before the Court under the Act save in so far as the provisions of the Code are found to be inconsistent with anything contained in the Act. Section 54 also does not keep out the Code, but makes the appeal under it subject to the provisions of the Code applicable to appeals from original decrees.

26. On the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Section 23(1) of the Act, Section 23(1A) of the Act, Section 23(2) of the Act and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under Section 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

27. The second stage occurs on a reference under Section 18 of the Act. When the reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

28. The third stage occurs, when in appeal, the High Court enhances the compensation as indicated already. That enhanced compensation would also bear interest on the enhanced portion of the compensation, when Section 28 is applied. The enhanced amount thus calculated will have to be deposited in addition to the amount awarded by the reference Court if it had not already been deposited.

29. The fourth stage may be when the Supreme Court enhances the compensation and at that stage too, the same rule would apply.

30. Can a claimant or decree holder who has received the entire amount awarded by the reference court or who had notice of the deposit of the entire amount so awarded, claim interest on the amount he has already received merely because the appellate court has enhanced the compensation and has made payable additional compensation? We have already referred to Order XXI and Order XXIV of the Code to point out that such a blanket re-opening of the transaction is not warranted even in respect of a money decree. Section 28 of the Act indicates that the award of interest is confined to the excess compensation awarded and it is to be paid from the date of dispossession. This is in consonance with the position that a fresh re-appropriation is not contemplated or warranted by the scheme of the Act. But if there is any shortfall at any stage, the claimant or decree holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and costs and then towards the principal, unless the decree otherwise directs.

31. In *Sunder Vs. Union of India* [2001 Suppl. (3) S.C.R. 176], this Court posed the question, what is meant by "the compensation" awarded. The Court concluded,

"We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-Section (1) of Section 23 but the remaining sub-Sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-Sections thereof."

This shows that there is no distinction made between land value and solatium on the one hand and the interest awardable on the other, under Section 23(1A) of the Act. It is on this sum that the interest under Section 34 of the Act is awarded and if it were a reference, awarded under Section 28 of the Act, in addition to costs, if any. Thus, the award by the Collector and the deemed decree passed on reference contain the components of compensation and interest in the first and interest and costs in the second.

32. *Mathunni Mathai vs. Hindustan Organic Chemicals Ltd. & Ors.* [(1995) 3 SCR 765] was a case of execution of an award decree under the Land Acquisition Act. The question that was involved in that case was whether interest ceased to run on the amount under the award decree being deposited even without notice of deposit being issued to the decree holder. The High Court had held in that case that where deposit was made in pursuance of the order passed by the Court, it was not necessary for the judgment debtor to specify the manner in which the amount should be appropriated. Notice of deposit was also not mandatory. This Court while considering Order XXI Rule 1 of the Code, as it existed prior to the amendment by Act 104 of 1976, after referring to the decisions of the Privy Council, held that interest will cease to run only on notice of the deposit being given and not from the date of the deposit. This Court further held that after the amendment of Order

XXI Rule 1 of the Code by Act 104 of 1976, this position that only upon service of notice interest would cease to run, got reinforced and that the High Court was in error in rejecting the argument that in the absence of notice of deposit being given, there was no cessation of the running of interest. This Court specifically did not decide any other question.

For, this Court stated,

"It is not necessary for purposes of this case to decide whether the creditor was bound to appropriate the amount towards principal once it was deposited in court and intimation of the deposit was served on the decree holder as it does not appear that respondent ever served any notice on the appellant about the deposit."

There was no contention in that case based on the scheme of the Land Acquisition Act and the Court also did not consider the question whether there was any deviation from the normal rules of appropriation by virtue of the provisions of the Land Acquisition Act. In fact, that case was concerned more with the question whether notice of deposit was necessary before interest ceased to run, rather than the mode or manner in which the amount deposited was to be appropriated even though this Court did observe that in the absence of any intimation as required by sub-Rule (2) of Order XXI Rule 1 of the Code and indication of the manner of appropriation, the payment could not be deemed to have been appropriated towards principal unless the decree holder admits it to be so.

33. The question of appropriation in the context of the Land Acquisition Act and the relevant provisions therein specifically came up before a Bench of three Judges of this Court in Prem Nath Kapur & Anr. Vs. National Fertilizers Corporation of India Ltd. & Ors. (supra), In that case, on the award being made, the Collector had paid the compensation including solatium and interest determined under the award. When the High Court enhanced the compensation, the enhanced compensation also was deposited. When some further amounts were awarded by the High Court on the basis of damages for severance and subsequently, it enhanced the solatium and interest and the additional amount payable under Section 23(2), 28 and 23(1-A) as amended, the decree holder laid execution, firstly, after appropriating the amount received towards costs, then towards interest on the total compensation and solatium and then towards the land value. Though the executing court allowed the claim, the High Court set aside that order and remanded the execution case for fresh disposal according to the directions contained in that order. The directions issued by the High Court were challenged in the appeal before this Court.

34. When the appeal came up, it was argued on behalf of the decree holder that the question involved had been decided in Mathunni Mathai vs. Hindustan Organic Chemicals Ltd. & Ors. (supra) and that nothing remained to be decided. It was contended that the decree holder was entitled to appropriate the costs from the principal amount of compensation, as also the interest on the total amount of compensation from the date of taking possession till date of payment as determined by the Collector as well as, as

determined by the High Court. The judgment creditor was entitled to appropriate the principal amount deposited by the Collector in the first instance towards the costs, then towards interest on the total amount and the balance amount and interest accrued thereon, and recover the balance in execution. The High Court was therefore not right in interfering with the order of the executing court. This Court did not accede to the submission that the question was concluded by the decision in Mathunni Mathai vs. Hindustan Organic Chemicals Ltd. & Ors. (supra). This Court posed two questions. When does the liability of the State to pay interest cease? Whether the owner of the land is entitled to appropriate from the amount deposited, the amounts towards costs first and then towards interest and then towards the principal amount and again claim interest on the total amount?

35. This Court made a detailed survey of the relevant provisions of the Land Acquisition Act and after summing up the position held:-

"A reading of the above provisions would establish that the award consists of (a) the compensation determined under Section 23(1), (b) solatium on the market value determined under Section 23(2), as additional sum for compulsory nature of acquisition, and (c) payment of interest on the amount of compensation under Section 11, on excess or part thereof under Section 26 awarded by court from the date of taking possession till date of payment or deposit into the court at the rates specified under the respective provisions of Sections 34 and 28. Under Section 23(1-A), additional amount at 12 per centum per annum shall be paid or deposited from the date of notification under Section 4(1) till date of award or taking possession of land, whichever is earlier. The additional amount under Section 23 (1-A) and solatium under Section 23(2) are in addition to the compensation under Section 11 and excess amount determined under Section 23(1) read with Section 26 or Section 54. Equally, under Section 26 of the Act award is deemed to be a decree under Section 2(2) of the CPC for the excess amount determined by the Court; this would be so proprio vigore, when the appellate court under Section 54 has further enhanced the compensation."

Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation determined under Section 23(1) with interest from the date of taking possession till date of payment or deposit into the court to which reference under Section 18 would be made. On determination of the excess amount of compensation, Section 28 empowers the court, if it was enhancing the compensation awarded by the Collector, to award interest on the sum in excess of what the Collector had awarded as compensation. The award of the court may also direct the

observations made therein could not govern a case of execution of an award decree under the Land Acquisition Act.

37. On the scheme of the Act, the above conclusions, with respect, are justified. But, it is argued that when a reference court or the appellate court awards enhanced compensation, the operative award is that of the court and going by the doctrine of merger also, the operative decree is that of the appellate court. Thus, the award of the ultimate Court, in the given case, would be the amount payable for acquisition and it is open to the decree holder to proceed to calculate the amount due to him on that basis and seek a re-appropriation based on such a calculation and reckoning the payment or payments already made. In other words, it is contended that a recalculation and adjustment would be called for every time there is an enhancement. In answer, it is contended that the Act provides for determination of compensation at different stages, the stage of the award, the stage of reference and the stage of appeal and provides for payment of interest and solatium based on the award and thereafter, only on the excess compensation awarded and in such a situation, a re-opening of the satisfaction recorded at the earlier stage is not contemplated or warranted. It is submitted that the ratio of Prem Nath Kapur & Anr. Vs. National Fertilizers Corporation of India Ltd. & Ors. (supra) also supports this position and that in the context of the relevant provisions, the position adopted in that decision on this aspect deserves acceptance.

38. We may say with respect that the decision in Mathunni Mathai (supra) does not answer the question. That case was concerned with the question of the point of time of cessation of interest, whether it would be the date of deposit or whether the date of notice of the deposit. It did not specifically refer to the relevant sections of the Act and did not consider their possible impact on the question, Prem Nath Kapur (supra) dealt with this aspect to the extent of holding that the Act provides for a mode of appropriation not consistent with that in Order XXI Rule 1 of the Code or the general law and to that extent, the scheme of the Act would prevail.

39. Though, a decree holder may have the right to appropriate the payments made by the judgment-debtor, it could only be as provided in the decree \026 if there is provision in that behalf in the decree \026 or, as contemplated by Order XXI Rule 1 of the Code as explained by us above. The Code or the general rules do not contemplate payment of further interest by a judgment debtor on the portion of the principal he has already paid. His obligation is only to pay interest on the balance principal remaining unpaid as adjudged either by the court of first instance or in the court of appeal. On the pretext that the amount adjudged by the appellate court is the real amount due, the decree-holder cannot claim interest on that part of the principal already paid to him. Of course, as indicated, out of what is paid he can adjust the interest and costs first and the balance towards the principal, if there is a shortfall in deposit. But, beyond that, the decree-holder cannot seek to re-open the entire transaction and proceed to recalculate the interest on the whole amount and seek a re-appropriation as a whole in the light of the

appellate decree.

40. It is true that the understanding of the expression "compensation awarded" for the purpose of Section 28 of the Act in Prem Nath Kapur (supra) was modified. To that extent one strand of reasoning in Prem Nath Kapur (supra) also stands discredited. But as we see it, on the question of appropriation, the decision in Sunder (supra) does not have such an impact as to compel us to jettison the reasoning adopted in Prem Nath Kapur (supra). Slightly deviating from the reasoning in Prem Nath Kapur (supra) we have indicated earlier that even going by Order XXI Rule 1 of the Code, the position would be as envisaged in Prem Nath Kapur (supra). That apart, we are inclined to respectfully agree with the reasoning in Prem Nath Kapur (supra) that on the wording of Section 34 and Section 28 of the Act read with and understood in the light of the stages of the award of compensation, the question of appropriation would be at different stages and a decree holder would not be entitled to reopen the entire transaction to claim a reappropriation of the amounts already received by him and appropriated at that particular stage. The reliance on the doctrine of merger does not enable the decree-holder to get over the scheme adopted by the Act.

41. Prem Nath Kapur (supra) also indicates that when an award-decree is passed specifying the amounts under different heads like the amount under Section 23(1), the amount under Section 23(2), the amount under Section 23(1A) and the interest under Section 28 and the judgment debtor makes a deposit of specified sums under these different heads, it will amount to the judgment debtor intimating the decree holder as to how the sum deposited is to be applied in discharge of the obligation of the judgment debtor. Once a decree holder receives the payment of the sums thus deposited, he would be accepting the appropriation made by the judgment debtor under the award decree on the scheme of the Land Acquisition Act. This part of the reasoning in Prem Nath Kapur (supra) is, of course, also based on the reasoning that there is some inconsistency in Order XXI Rule 1 of the Code and the scheme of the Act. Prem Nath Kapur (supra) also indicates that when the decree itself specifies the amount payable under different heads (the decree has to do so under Section 26 of the Act) and amounts are deposited towards those different heads, the appropriation would be on the basis of the direction under the decree which must be taken to be one for crediting the various sums paid under particular heads. On the scheme of the Act, especially the wording of Section 34 and Section 28 of the Act it is not possible to say that the said approach made in Prem Nath Kapur (supra) is erroneous or is unreasonable or is not a line of approach that is not warranted. Therefore, when the judgment debtor State makes a deposit along with the calculation appropriating distinct sums towards various heads of compensation as awarded by the reference court or by the appellate court in the appellate decree, and the amount is received by the decree holder, the decree holder must be taken to be not entitled to seek an appropriation as if the judgment debtor has not made any intimation and that he is entitled to appropriate at his volition. Considering the scheme of compensation under the Act in the context of the specific nature of the items specifically referred to in Section

23 of the Act, we are of the view that the approach adopted in Prem Nath Kapur (supra) is justified. A reappropriation by seeking to reopen the satisfaction already rendered might result in interest being made payable even on that part of the principal amount that had already been deposited and received by the decree holder and that would be in the realm of unjust enrichment.

42. What is to happen when a part of the amount awarded by the reference court or by the appellate court is deposited pursuant to an interim order of the appellate court or of the further appellate court and the awardee is given the liberty to withdraw that amount? In such a case, the amount would be received by the decree holder on the strength of the interim order and the appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein. In such a case, if the appeal is disposed of in his favour, the decree holder would be entitled to appropriate the amount already received by him pursuant to the interim order first towards interest then towards costs and the balance towards principal as on date of the withdrawal of the amount and claim interest on the balance amount of enhanced compensation by levying execution. But on that part appropriated towards the principal, the interest would cease from the date on which the amount is received by the awardee. Of course, if while passing the interim order, the court had indicated as to how the deposited amount is to be appropriated, that direction will prevail and the appropriation could only be done on the basis of that direction.

43. Thus, on the whole, we are satisfied that the essential ratio in the Prem Nath Kapur (supra) on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee decree holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment debtor while making the deposit intimating the decree-holder of his intention. We, thus, approve the ratio of Prem Nath Kapur (supra) on the aspect of appropriation.

44. One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in Courts all over the country, we permitted counsel to address us on that question. That question is whether in the light of the decision in Sunder (supra), the awardee/decreed holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the reference court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder (supra) on the ground that the execution court cannot go behind the decree. But if the award of the reference court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the reference court or the appellate court, and merely interest on compensation

is awarded, then it would be open to the execution court to apply the ratio of Sunder (supra) and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in Sunder (September 19, 2001) and not for any prior period. We also clarify that this will not entail any re-appropriation or fresh appropriation by the decree-holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question.

45. The appeals will now be placed before the appropriate Bench for being disposed of in the light of the answers given by us.