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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: April 20, 2009

Date of Order: July 13, 2009

+Ex.P. 187/2002

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Jawahar Singh

Through: Mr. Vikas Sharma, Advocate

Versus

Union of India

Through: Nemo

13.07.2009

...Decree Holder

...Judgment Debtor

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. In this execution petition, the decree holder has raised an issue that he was entitled to interest for the period from 4th April 2002 to 28th January 2008 as well.

2. Brief facts relevant for the purpose of deciding this question are that the in pursuance of an award passed by this Court, the decree holder was awarded a sum of Rs.6,97,899/- with interest thereon @ 12% per annum. Pursuant to this award, a cheque for Rs.9,82,010/-, after deducting TDS to the tune of Rs.23,11,81/- i.e. a total amount of Rs.10,05,128/-, as claimed by the decree holder inclusive of interest up to 27th August 2002 was paid by the JD to the decree holder on 10th January 2003. The decree holder executed a receipt of this amount and of receiving full and final payment in respect of this decree. However, a suit between Union of India i.e. Judgment debtor and decree holder being suit No.26287 of 2000 was pending before the District

Court, Delhi for recovery of outstanding dues and damages to the tune of Rs.4,96,839/-. The decree holder, who was defendant in the suit, was evading appearance before the District Court and the efforts to serve decree holder by the judgment debtor through normal process had failed. Judgment debtor, therefore, filed an application before the learned Additional District Judge, Delhi, where the suit was pending, under Section 151 CPC as well as under Order 38 Rule 5 Civil Procedure Code for attachment of the amount receivable by the decree holder from judgment debtor under this decree. This application was disposed of by the learned District Judge on 25th February 2003 and the learned District Judge observed that the reports of process serving agency clearly showed that the decree holder had managed to get a report that he was not living at the given address although he was very much living at the same address and he was evading service. On being informed by JD that decree holder was going to appear before the Railways Authority in Baroda House for the purpose of receiving a cheque of above Rs.10,00,000/-, the learned District Judge allowed the application under Order 38 Rule 5 CPC and directed attachment of Rs.4,96,839/- out of the amount received by the decree holder from JD through cheque. It is submitted by decree holder that due to this attachment order obtained by JD, the decree holder could not get the payment of the cheque and the decree remained unexecuted and after great efforts of decree holder ultimately a detailed order was passed by this Court on 21st August 2008 and the decree holder could get this amount from the Court. The decree holder wanted that he should be paid interest @ 18% per annum on the decretal amount from the date of attachment till 21st August 2008.

3. I consider that the decree holder is not entitled to any interest after handing over of cheque was made to the decree holder in full satisfaction of

the amount. The plea of the decree holder that unless the cheque was encashed and the amount was realized by him, the decree could not be said to be satisfied, is untenable in this case. The cheque issued to the decree holder was of Reserve Bank of India. Thus, there was no question of the cheque getting dishonoured or bounced. The cheque was as good as a bank draft. The moment cheque came into the hands of the decree holder and he executed a receipt of having received the same in full satisfaction of decree, the decree stood satisfied. It was because of the acts of the decree holder in not putting appearance in the Court, where he was facing another suit and evading service, that JD was compelled to take steps of attachment of amount in the hands of the decree holder under Order 38 Rule 5 CPC. It was the legal right of the JD to get this amount attached. The order passed by learned Additional District Judge, Delhi was a lawful order and was not passed in this case. There is no doubt that decree holder was deprived from encashing the cheque but it was because of the acts of decree holder himself who was evading his appearance in another Court. The decree of this case stood satisfied once the cheque of Reserve Bank of India was handed over to the decree holder and the decree holder accepted the same in full satisfaction of decree. The decree holder was therefore not entitled to any interest after receipt of this cheque by him.

4. I, therefore, find no force in the plea of decree holder that he was entitled to interest for the period from 4th April 2002 to 28th January 2008 as well. The question raised by the decree holder is decided accordingly. This execution petition stands disposed of.

July 13, 2009
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SHIV NARAYAN DHINGRA J.