

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1216 of 2012

Date of decision: May 19, 2015.

Morinda Sugar Mill Workers Union Regd.

... **Petitioner**

v.

Morinda Cooperative Sugar Mills Ltd.

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri Harit Sharma, Advocate, for
Shri Dharam Vir Sharma, Senior Advocate for the petitioner.

Shri Vikas Singh, Advocate for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Dismissal of application under Order XXI Rule 32 CPC of the decree holder – Workers Union vide order dated 20.9.2011 of the lower court, forms genesis of this revision petition.

2. It is claimed by the petitioner-decree holder that notwithstanding decree dated 8.4.1999 (Annexure P-2) of the Additional District Judge, Ropar in Civil Appeal No.RT 317/20.4.96, which was upheld upto the Hon'ble Supreme Court of India, the judgment debtor has not complied with the same. It is averred that an application under Order XXI Rule 32 CPC (Annexure P-5) was made to the lower court but vide the impugned order, the same was dismissed wrongly and illegally. It is claimed that the learned lower court has not only misread the facts as also the judgment and decree under execution but has also failed to consider the attending circumstances. It is claimed that the objection petition of the JD made under Order XXI read with Section 47 CPC was wrongly considered to be of merit and application under Order XXI Rule 32 CPC was sequelly

illegally dismissed.

3. Counsel for the respondent, on the other hand, has urged that the decree holder has neither been able to make out any ground manifesting default of the judgment debtor in execution of the decree nor there is any part of the decree which remains to be executed.

4. While perusing the paper book, Counsel for the parties have been heard. Attending circumstances have also been considered.

5. Before rival claims of the parties are considered, it would be appropriate to take stock of the facts, about which there is no dispute.

6. The plaintiff – Workers Union, petitioner herein, had brought a suit for declaration to the effect that members of the Workers Union are entitled to Variable Dearness Allowance (VDA) on the basis of wages plus fixed allowance, if any, in accordance with the provisions of the Third Wage Board. A consequential relief of permanent injunction restraining the defendant-employer, i.e., the Morinda Sugar Mills from withdrawing the payment of VDA on the interim fixed amount of Rs.150/-, which was being paid to the members of the Workers Union. The suit was contested by the employer.

7. After receiving evidence on the issues framed by the lower court on 7.4.1995 and providing hearing to the Counsel for the parties, the suit was dismissed on 30.1.1996. The decree had followed. An appeal was preferred against this judgment and decree by the Workers Union which was accepted on 8.4.1999. Setting aside the judgment and decree of the lower court of 30.1.1996, the following order, which subsequently formed part of the decree under execution, was made:-

“The suit of the plaintiff for declaration is decreed, as prayed for. However, it is clarified that the defendant is at liberty to pass a fresh order with regard to withdrawal of the variable dearness allowance on the fixed interim relief of Rs.150/- per month after affording an opportunity of hearing to the plaintiff and complying with the provisions of natural justice.”

8. Regular Second Appeal preferred by the employer against this judgment and decree of 8.4.1999 was dismissed by this Court on 14.8.2003.

Judgment and decree dated 8.4.1999 passed by the Additional District Judge, Rupnagar was upheld even upto the Supreme Court of India when Civil Appeal No.4488 of 2004 was dismissed by the Hon'ble Apex Court on 12.7.2006.

9. Complying with the decree, the employer-JD had called meeting of the Board on 23.1.2007 (Ex.R1). Yet another meeting of the Board was held on 25.5.2007 (Ex.R2). One more meeting of the Board was held on 28.9.2007(Ex.R3).

10. Counsel for the petitioner-DH has urged that the JD had no option but to grant VDA on the fixed interim relief of Rs.150/- per month which was being paid to the members of the Workers Union. Counsel for the respondent-JD, on the other hand, has urged that as per the decree under execution, the employer-JD had been granted liberty to pass a fresh order with regard to withdrawal of the VDA on the fixed interim relief, after affording an opportunity of hearing to the plaintiff-DH and complying with the provisions of the natural justice.

11. From the perusal of the impugned order, it is clear that in accordance with the terms of the decree, the Board of the JD had held several meeting and after hearing the decree holder-Union, had passed fresh order qua the VDA.

12. Stand of the JD is that the decree has already been complied with and all the benefits have already been granted to the decree holder by the JD. Counsel for the respondent-JD, seeking support from Full Bench decision of this Court reported as Parkash Chand v. Shri S.S. Grewal, IAS, Chief Secretary to Government Punjab and others, 1974(1) SLR 647 (P&H), has urged that mere inaction on the part of the JD *ipso-facto* will not amount to contempt of court unless such conduct shows that contemner willfully and deliberately refrained from giving effect to the decree. It was further held in this verdict that contempt proceedings cannot be used as a lever to obtain a relief in accordance with the decree.

13. In the present case, decree holder has not been able to show any

digression from the decree made by the JD so as to warrant an action in terms of Order XXI Rule 32 CPC. The lower court had granted adequate opportunity to the DH for producing evidence and to bring circumstances on record to show that the JD had violated the decree dated 8.4.1999. Despite availing this opportunity and taking sufficient time, no evidence or material could be brought on record to show non-compliance of the decree so as to warrant an action against the JD in terms of Order XXI Rule 32 CPC.

14. Counsel for the petitioner-DH, even in this petition, has not been able to pinpoint anything wrong either in facts or in law so as to warrant action in terms of Order XXI Rule 32 CPC by this Court.

15. No merit.

Dismissed.

[Dr. Bharat Bhushan Parsoon]
Judge

May 19, 2015.
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1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*