

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 186 of 2013 (O&M)
Date of decision: May 25, 2015

Bhagwant Rai

...Petitioner

Versus

Poonam Jain and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. KVS Kang, Advocate,
for the petitioner.

Mr. GC Dhuriwala, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The judgment-debtor Bhagwant Rai is father-in-law and grand father respectively of the decree-holders. The daughter-in-law is the widow of the pre-deceased son of the judgment debtor. He is aggrieved about the order passed by the executing court for assessment of certain sums as due and payable under the award of an arbitrator that was made a rule of the court. There are three heads of claim which the arbitral award address (i) ₹1 lac rupees to be deposited with a nationalized bank for a term of 15 years and the interested accrued thereon shall be realized by the widowed mother for educational expenses of her children; (ii) ₹1200/- shall be paid from the date of the award with 10% escalation every three years towards maintenance of the widow and the children; (iii) a residential accommodation shall be made by the judgment debtor at his own expenses

to the widowed daughter-in law; and (iv) the dowry articles such as furniture, gold etc. will be handed over to the daughter-in-law. The decree passed already making the award as rule of the court was brought to challenge by the judgment debtor before the High Court in CR No. 1946 of 2002. The High Court repulsed the challenge and gave liberty to the decree-holder to execute the award, if the direction in the award has not been complied with within a period of one month from the date of the order, namely 19.8.2004. There had been no compliance and hence the execution petition.

2. The grievance is that ₹1 lac directed to be deposited with the bank had not complied with since the date of the award on 28.3.1998. The interest is, therefore, not being paid. The maintenance amount has not been given. The judgment debtor did not provide for a residence at Rama Mandi or Bathinda and the widow had, therefore, perforce to stay in her own parents' house and would, therefore, estimate the rent which would have become payable if rent were to be assessed for her accommodation of her parents' house @ ₹5,000/- per month. During the pendency of the proceedings, the judgment debtor had paid ₹3.15 lac towards part satisfaction of the decree. The court, while passing an order, has determined the claims as follows, after allowing the parties to give their oral evidence. One, it has calculated interest on deposit if it had been taken by the judgment debtor as directed @ 12% per annum for the first three years from the date of the award and for the subsequent period of three years @ 10% and for the subsequent period @ 12%. It has found the maintenance amount with 10% escalation in three years to aggregate to ₹4,19,216 upto 31.10.2012 and after making a deduction of ₹3.15 lac the balance has been

directed to be paid. Under the second head of claim, namely ₹1 lac which was to be put in FDR on 1.7.1991, which admittedly has not been done, the interest has been calculated, except for a period of three years @ 10%, for the remaining years @ 12% and has assessed an amount of ₹7, 86,605/-. Since 15 years period has already expired, it has added the principal sum of ₹ 1 lac and has found ₹8,86,605/- as payable. Under the third head of claim for the provision for residence, the court has held that it would be appropriate that the rent payable would have been ₹1500/- per month with 10% increase every three years and arrived at sum of ₹5,35,212 upto 31.10.2012.

3. The only argument that was made by the learned counsel appearing for the father-in-law is that without actually incurring expenditure for rent when she was actually living in her father's house, the provision for residence cannot be claimed. I reject the argument as untenable. The maintenance is not charity. The provision for residence is part of maintenance. The father-in-law's duty was not merely moral but legally obligated through an award, which was made a rule of court. If there was direction that the father-in-law must provide for residence and the parties had been permitted to give evidence on the rent that became payable and the court was making an assessment of what would have been reasonable requirement, there can be no defence by the father-in-law that since the daughter-in-law was residing in her father's house, the provision for residence in its financial equivalent need not be paid. It has been elicited in evidence that the father-in-law is one of the richest persons having property of several crores in Rama Mandi town. The assessment for provision for residence at ₹1500/- for the son's widow, for herself and her children with

the provision for increase at 10% every three years was surely keeping in with the status of the parties and the requisite requirement of the widow and the children. The court below has correctly considered all the relevant heads and has rejected the objection filed by the judgment debtor.

4. Two decades and more have gone and the widow has still not secured all the benefits. On 11.12.2013, this court had allowed for ₹10,00,000/- to be remitted to the executing court with liberty to the widow to secure release of ₹5,00,000/- and ₹5,00,000/- to be deposited in the FDR in the names of respondents No. 1 and 2 equally. The FD may be handed over for realization by the children. The remaining 5,00,000/- rupees which is still lying to the credit of the case is ordered to be withdrawn by the decree-holders. For any further sums, which are due and payable, the decree-holders will be entitled to take suitable steps for recovery. I find the conduct of the judgment debtor to be grossly unfair in challenging the order, which was most equitable. There is simply no bonafides on the part of the judgment debtor to come up in revision at every turn of the litigation from the time when the award was passed by the arbitrator. While a right of access to courts ought to be available at all times without any fetter, it must be for redressal of grievances which would require genuinely disputed questions. There is simply nothing to dispute for the judgment debtor of a straightforward claim for maintenance.

5. The revision petition is dismissed with cost of ₹5,000/- as costs of the revision petition and ₹3500/- as exemplary costs of the executing court and another 3500/- as exemplary costs in the revision petition.

May 25, 2015

prem

PREM SINGH
2015.05.26 11:26
I attest to the accuracy and
integrity of this document

(K.KANNAN)
JUDGE

