IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CR No.3135 of 2007 (O&M)
Decided on:-13.03.2015.

Punjab State through its Secretary Punjab and another

............Petitioners.

Versus

Ashwani Kumar

.........Respondent.

(2) CR No.4331 of 2007

Ashwani Kumar

............Petitioners.

Versus

State of Punjab through Secretary and another

.........Respondent.

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

Present:- Mr. Rahul Verma, AAG, Punjab.

Mr. Vishal Gupta, Advocate,
for the respondent.

Dr. Bharat Bhushan Parsoon, J (Oral)

Genesis of these two revision petitions is found in order dated 08.03.2007 of the lower court whereby execution application filed by the decree holder was partly allowed. One revision petition has been preferred by the judgment debtors urging that interest allowed by the Executing Court is exorbitant. It is urged that even otherwise there is no date given in the award for commencement of the levy of interest and that arbitrary fixing of the date by the Executing Court for calculating of interest is wrong.

2. So far as CR No.4331 of 2007 is concerned, the decree holder has claimed that the Executing Court could not have appropriated the payments made by the JDs towards principal amount but in fact such payments were to be adjusted firstly towards the interest and only then towards the principal. It is thus claimed that the impugned order whereby the Executing Court had allowed the payments to be adjusted towards the principal amount, is wrong.

3. During the course of arguments, it has not been denied that award dated 30.11.1995 (Annexure-P3) has become final. The Executing Court could not have gone beyond the award under execution. Finding of the Arbitrator regarding permissibility of interest on the amount due, is to the following effect:-

> *"The interest @ 12% per annum (simple) shall continue to accrue on the total sum awarded, in case the payment of the award is not made within 90 days after the date of award."*

4. It is wroth mentioning that interest @ 24% per annum on an amount of Rs.68,93,510.94/- from the date of actual completion of work i.e. from 31.12.1992 till date calculated to be Rs.29,41,074/-, was claimed. The Aarbitrator, however, allowed interest only @ 12% per annum (simple) and that too on an amount of Rs.26,35,000/-.

5. From perusal of the paper books, it is found that at the time of making payments, the JDs had never made any specific appropriation thereof towards the principal amount. When the JDs had not made payments specifically mentioning therein that those are to be adjusted against the principal amount, it is urged by the decree holder that the Executing Court

could not have allowed such appropriation towards the principal amount.

6. In support of his claim, counsel for the decree holder relying on ***Bharat Heavy Electricals Ltd. Versus R.S. Avtar Singh and Co. 2013(1) SCC 243 (SC),*** has urged that in absence of any directions contained in the award executed as a decree, adjustment of payment is to be made firstly towards payment of interest and cost and only thereafter towards payment of the principal amount subject of course to any agreement between the parties. Para 24 (a) of this judgment referred to by counsel for the decree holder is reproduced as below:-

> "*The general rule of appropriation towards a decretal 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 directions, adjustments be made firstly towards payment of interest and cost and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.*"

To the same effect is ***M/s Industrial Credit and Development Syndicate now called I.C.D.S. Ltd., Versus Smt. Smithaben H. Patel and others AIR 1999 SUPREME COURT 1036 (SC).***

7. So far as the revision petition preferred by the JDs is concerned, the same has no merit in view of clear stipulation made in the award that payment of the awarded amount was to be made within 90 days after the date of award and in case of non payment, interest @ 12% per annum (simple) was to continue to accrue till payment. Since concedingly payment was not made by the JDs within the stipulated time fixed by the Arbitrator, the executing Court was right in allowing 12% per annum interest (simple) in terms of the award under execution. It is clear from the award that in absence of any agreement to the contrary between the parties and their being no stipulation in the award that the amount deposited by the JDs was firstly

to be adjusted in the principal amount, the general principal was to follow.

8. Clearly enough the impugned order of the Executing Court has not considered the entire aspect in the interface of law on the subject.

9. Consequently, order to the extent it allows adjustments of payments made by the JDs towards the principal amount rather than towards interest and costs, is neither factually nor legally correct and thus is set aside. The case is remitted to the Executing Court to re-calculate the amount due to the decree holder after following the recitals of the arbitration award and the law on the point as has been cited by counsel for the decree holder. If any law contrary to this is cited by counsel for the JDs, the same would also be considered by the Court below at the time of arriving at an amount due towards DH.

10. Hence CR No.3135 of 2007 is dismissed and CR No.4331 of 2007 is allowed to the extent above. Parties/counsel are directed to appear before the Executing Court on 20.04.2015.

(Dr. Bharat Bhushan Parsoon)
Judge

March 13, 2015
prince rana