IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) CR No.3630 of 2010.
Decided on:-May 28th, 2015.

Ram Gopal and others .........Petitioners.

Versus

State of Haryana. .........Respondent.

(2) CR No.3867 of 2010.

Sucha Singh and others .........Petitioners.

Versus

State of Haryana. .........Respondent.

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

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Argued by:- Mr. Jagdish Manchanda, Advocate
for the petitioners.

Mr. D.R. Singla, DAG, Haryana and
Mr. Ramesh Kumar, AAG, Haryana
for the respondent.

***Dr. Bharat Bhushan Parsoon, J*.**

In CR No.3630 of 2010 vide impugned order dated 6.5.2010 (Annexure P-9), the executing court held the decree-holder liable to refund

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excess amount of Rs.5,64,442.20 Ps. alongwith interest @ 15% per annum to the judgment-debtor while in CR No.3867 of 2010, the executing court vide order of the same date (Annexure P-6), held the decree-holder liable to refund excess amount of Rs.2,57,459.8 Ps. alongwith interest @ 15% per annum besides Rs.11,23,009/- deposited by the judgment-debtor on 13.9.2010 by way of demand draft to the judgment-debtor. By invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India, the petitioners have sought quashing of aforesaid orders passed by Additional District Judge, Faridabad.

2. Since common questions of law are involved in both the petitions, the same are being decided by this common order in CR No.3630 of 2010. For convenience and clarity, facts have also been taken from CR No.3630 of 2010.

3. The dispute involved in the execution petition was with regard to calculation of the amount payable to the decree-holders. According to latest calculations filed on 17.3.2010, the decree-holders have staked their claim that amount of Rs.56,25,244/- is still payable to them whereas judgment-debtor filed calculations on 7.4.2010 according to which the decree-holders had already received excess amount of Rs.1,90,638/- which they are liable to refund.

4. Land of the decree-holders was acquired vide Award dated 30.11.1981 of the Land Acquisition Collector for the purpose of carving out of Sector-3, Faridabad. Initially, market value of the acquired land was assessed @ Rs.4/- per square yard which on a reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), was enhanced to Rs.12.50 per square yard vide Award dated 18.10.1983 passed in LAC No.100 of 1982. The claimants were held entitled to solatium @ 15% per annum. In an appeal i.e. RFA No.1402 of 1983 filed before this Court, market value of the said acquired land was enhanced to Rs.21/- per

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square yard besides additional amount of solatium and interest under statutory provisions of the Act. It was vide judgment dated 17.7.1986.

5. The execution was filed by the decree-holders on 20.4.1988. They claimed that Rs.14,42,257.41 Ps. was lying unpaid after adjusting amount which had already been paid. However, exact details of the payments received earlier or particular of previous executions were not given in the execution petition. But it was only mentioned that Rs.29,95,337.52 Ps. was received earlier.

6. Vide order dated 22.9.1989, the executing court observed that exact details of payments received earlier, are to be given in the execution petition. During the execution proceedings dispute arose as to how the amount paid from time to time was to be appropriated. However, in the present case, in absence of details of the amount already paid, the amount could be appropriated as per discretion of the creditor. Vide order dated 29.4.2002 the amount paid earlier was directed to be appropriated firstly towards the principal and then towards the interest. The operation of the said order was stayed by this Court on 11.3.2003 in CR No.3527 of 2002. Later on, the said civil revision petition was disposed of with the direction to the executing court to consider adjustment of the amount of compensation paid by the State for the purpose of calculations of interest in terms of judgment of Hon'ble Supreme Court titled as ***Gurpreet Singh Versus Union of India 2006 (8) SCC 457***. After taking into consideration the judgment of Hon'ble Supreme Court in ***Gurpreet Singh's case (supra)***, the executing court had held the decree-holders liable to refund the excess amount to the judgment-debtor vide the impugned orders.

7. Hearing has been provided to the counsel for the parties while going through the paper books.

8. Merely because excess payment has already been made, ipso

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facto cannot be a circumstance to be construed to debar the JD for claiming its refund. Attack of the decree holder on calculations made by the Executing Court is also misfounded. Rather, calculations made by the Executing Court depicted in detail, do not suffer from any fault. At this stage, it would be relevant to refer to para 44 of ***Gurpreet Singh's case (supra)*** wherein after discussing various case laws, the proposition of law with regard, interalia, to leviability of interest, has been clarified as under:

> *"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/decree 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*

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*multiplicity of litigation on this question*."

9. A close look on this adjudication by the Hon'ble Apex Court reveals that it is qua those references which had been finalised prior to 19.9.2001 i.e. the date of pronouncement of judgment in ***Sunder Versus Union of India AIR 2001 SC 3516***.

10. In short, proposition of law emerging from the earlier quoted paragraph 44 of ***Gurpreet Singh's case (supra)*** is as under:

(1) Executing court cannot go behind the decree and so, if interest on solatium is negated, expressly or impliedly in the Award, then claim for interest on solatium is to be rejected;

(2) In the Award, interest on solatium is not refused expressly or impliedly and merely interest on compensation is awarded, then executing court can apply ratio of Sunder's case and in that eventuality, executing court can direct payment of interest on solatium also but not otherwise;

(3) However, it is necessary to mention that:

(a) interest on solatium can be claimed only in pending executions and not in closed executions;

(b) recovery of interest on solatium can be permitted only from the date of judgment in Sunder's case i.e. 19.9.2001 and not for any prior period; and,

(c) re-appropriation or fresh appropriation is not permissible.

11. It, thus, emerges that interest on additional amount is allowable only w.e.f. 19.9.2001 and not for the period prior to that.

12. In the present case, the JD had made payments in driblets and sequelly, solatium and additional charges already stood liquidated prior to 19.9.2001. It, thus, follows that in such a situation, the decree holder cannot claim interest on the components of solatium and additional charges even after 19.9.2001.

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13. There is no dispute that the decree holder is entitled to solatium and additional amount but the cut off date is 19.9.2001. No interest is payable prior to this date. Award in this case was pronounced by the reference court on 18.10.1983. RFA preferred by the respondents was decided by this Court on 17.7.1986. This decision thus was much earlier to decision in ***Sunder's case (supra)***.

14. When the reference was answered much prior to ***Sunder's case (supra)***, the decree holder was entitled to interest on 'solatium' and 'additional amount' only for the period w.e.f. 19.9.2001 and not for any prior period. It follows that if some amount of interest has been paid in excess of the permissibility, to avoid undue enrichment and on the first principles of law, the same is liable to be returned or adjusted towards future entitlements of the decree holder.

15. In ***Prem Nath Versus N.F.C.I. (1995) Suppl. 5 SCR 790***, it was held by the Supreme Court that question of appropriation of the awarded amount would be at different stages and that the decree holder would not be liable to re-open the entire transaction to claim re-appropriation of the amounts already received by him and appropriated at that particular stage. It was further held that when the JD makes a deposit alongwith calculations appropriating different 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. It was further held that 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.

16. Para Nos.51 and 53 of ***Gurpreet Singh's case (supra)*** are reproduced as is given on the next page:

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*"51. 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.*

*x* *x* *x*

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> *53. 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.*"

17. In ***Sunder's case (supra)***, Hon'ble Supreme Court held that solatium and additional charges formed part of the petition and so interest was payable on the compensation also. In ***Gurpreet Singh's case (supra)*** the Hon'ble Apex Court held that interest on solatium can be claimed only in pending execution petitions and not in closed execution petitions and that executing court is entitled to permit its recovery only from the date of judgment in ***Sunder's case (supra)*** i.e. 19.9.2001 and not for any period prior to that.

18. In view of the aforesaid legal position, the decree-holders can be allowed interest on the components of solatium and additional charges only w.e.f. 19.9.2001 and not for any period earlier to that.

19. In the present case, this Court determining the market value @ Rs.21/- per square yard rendered the Award much before ***Sunder's case (supra)*** as at that time, execution was pending. The executing court had rightly held that the amount paid on 24.4.1987 is liable to be appropriated firstly towards interest component.

20. The executing court has rightly adjusted an amount of Rs.9,49,960/- and balance has been worked out to be Rs.6,22,204.23 Ps. Further, adjusting the amount paid on 5.4.1988, balance has been worked out as Rs.5,22,482.30 Ps. which improved enhanced compensation as part of solatium and additional charges.

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21. Learned counsel for the petitioners has failed to point out any deficiency in calculating the excess amount payable by the decree-holder to the judgment-debtor. As such, the executing court has rightly held the decree holder liable to refund Rs.5,64,442.20 Ps. besides interest @ 15% per annum from the date they received the excess amount till date of refund. In CR No.3867 of 2010, the executing court has also rightly held the decree holder liable to refund the excess amount of Rs.2,57,459.80 Ps. alongwith interest @ 15% per annum to the judgment debtor from the date they received the excess amount till date of refund and also Rs.11,23,009/- otherwise deposited by the judgment-debtor.

22. Keeping in view the facts and circumstances as mentioned earlier, there is no infirmity in the impugned orders dated 6.5.2010 passed by the court below. Affirming the same, both these revision petitions, being devoid of any merit, are dismissed.

**(Dr. Bharat Bhushan Parsoon)**
**Judge**

**May 28th, 2015**
'Yag Dutt'

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

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