

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6820 of 2014

Date of decision:27.02.2015

State of Punjab

....Petitioner

Versus

M/s Shivalik Engineers & others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Neeraj Sharma, AAG, Punjab, for the petitioner.

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**G.S.Sandhawalia J.(Oral)**

Challenge in the present revision petition, filed by the State of Punjab, is to the order dated 15.05.2014 (Annexure P1) whereby the Civil Judge (Sr.Divn.) Rupnagar has dismissed the execution application by holding that the same has been filed beyond the expiry of 12 years from the date of decree dated 18.08.1993 and therefore, it was barred by limitation.

The facts in the present case are that an Arbitrator was appointed on 08.02.1991 by the Sub Judge, 1<sup>st</sup> Class, Chandigarh, to adjudicate upon the dispute arising out of the contract agreement with the State and respondent No.1. The award was to be made within 4 months from entering into the reference. The award of ₹2,72,575.56, on account of excess payment made, was pronounced on 18.08.1993 (Annexure P3) and was made rule of Court on 07.03.1994 (Annexure P4), on account of no objection having been filed.

The contractor filed an appeal against the order dated 08.02.1991, whereby the Arbitrator had been appointed, which was upheld on 06.06.1996 (Annexure P5). On 16.09.2002, an application for transferring the decree, whereby the award had been made rule of Court on 07.03.1994, was filed

(Annexure P6) was accepted and the decree was sent to the Civil Judge (Sr.Divn.) Ropar, by the Civil Judge (Jr.Divn.) Chandigarh.

An execution application dated 09.04.2003 (Annexure P8) was filed which was dismissed under Order 9 Rule 3 CPC, on account of the correct address having not filed for the last 5 dates, on 08.10.2005 (Annexure P7). The said execution application was never got restored by the State and a fresh execution application was filed on 07.06.2008, which has now been dismissed vide the impugned order.

From the above facts, it would be clear that what was being sought to be executed was the award passed on 18.08.1993, which was made rule of Court on 07.03.1994. Once the earlier execution application had been dismissed on 08.10.2005 and the same not having been restored and the fresh execution application having been filed only on 07.06.2008, admittedly, beyond the period of 12 years from the date it was made rule of Court, is patently time barred. Article 136 of the Limitation Act, 1963 provides that for filing the execution application, the period of limitation is 12 years. The same reads as under:

“Art. 136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.

Twelve Years [when] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, take place: Provided that an application for the enforcement or execution of a decree granting in perpetual injunction shall not be subject to any period of limitation.”

In such circumstances, a fresh application, which has been filed, is patently time barred and therefore, no objection, as such, can be raised to the

order passed by the Executing Court at Ropar. The State has let the right accrue to the respondent-contractor and the provisions of the Limitation Act, 1963 has to be reasonably construed. The right of the State has become time barred and once the judgment debtor has got a right which has flowed on account of the lapse of the State, the impugned order is not liable to be interfered with.

Resultantly, keeping in view the above discussion, this Court is of the opinion that there is no scope for interference in the impugned order. Consequently, the present revision petition is, hereby, dismissed.

27.02.2015  
**sailesh**

(G.S.SANDHAWALIA)  
JUDGE