

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.51 of 2014

Order reserved on: 29-9-2016

Order delivered on: 3-10-2016

M/s Sinha Enterprises, Head Office: Bhagat Singh Colony, Singrauli, Post Singrauli, District Singrauli (M.P.), through Shri D.K. Sinha (Dinesh Kumar Sinha), aged about 50 years, S/o Shri Rameshwar Prasad Sinha, R/o Bhagat Singh Colony, Singrauli, Post Singrauli, District Singrauli (M.P.)

---- Applicant
(Decree Holder)

Versus

South Eastern Coalfields Limited, Head Office Seepat Road, Bilaspur, District Bilaspur, through its Chief General Manager, SECL, Kusmunda Project, Kusmunda, District Korba (C.G.)

---- Respondent
(Judgment Debtor)

For Petitioner:	Mr. Manish Nigam, Advocate.
For Respondent:	Mr. R.K. Gupta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Adjudicating the dispute between the parties arising out the contract, the Arbitrator appointed by the parties passed an award of Rs.55,62,991-67 ps. with 12% interest per annum from 28-1-2007. The execution petition was levied claiming total amount of Rs.80,78,155-40 ps. along with interest. During the pendency of the execution petition, an agreement was entered into between the parties to make payment of Rs.55,62,991-67 ps. with interest at the rate of 9.5% per

annum which comes to Rs.76,04,647-32 ps.. The amount was payable within one week from the date of withdrawal of the execution proceeding. It is the case of the judgment debtor / SECL that the amount as agreed i.e. Rs.69,10,209-32 ps. by way of transfer and Rs.6,94,438/- by way of TDS was paid to the decree holder / petitioner herein and since there is a delay of 67 days in making payment, an amount of Rs.86,116-99 ps. was paid to the petitioner herein on 12-11-2008 as interest for delayed payment of 67 days.

2. The decree holder / petitioner herein feeling aggrieved in not making payment right in time filed the second execution on 2-8-2008 for recovery of Rs.14,63,351-17 ps.. Reply was filed by the judgment debtor / SECL. The objection was rejected by order dated 7-1-2013 against which C.R.No.60/2013 was filed by the judgment debtor / SECL. This Court by order dated 27-1-2014 disposed of the said civil revision directing the District Judge, Korba to decide the objection raised by the SECL. By order dated 2-4-2014, the executing court dismissed the execution petition holding that the decree has been satisfied against which this revision has been filed by the decree holder.
3. Mr. Manish Nigam, learned counsel appearing for the petitioner / decree holder, would submit that the executing court is absolutely unjustified in rejecting the execution petition as though Rs.76,04,647-32 ps. was paid to the

petitioner herein / decree holder, the petitioner herein is further entitled for Rs.14,63,351-17 ps., as there is delay of 67 days in making payment and since out of court compromise has not been under Order 21 Rule 2 of the CPC, the entire amount has become executable and the petitioner herein is entitled for Rs.80,78,155-40 ps..

4. On the other hand, Mr. R.K. Gupta, learned counsel appearing for the judgment debtor / SECL, would submit that though there is delay of 67 days in making payment of Rs.76,04,647-32 ps., but on 12-11-2008, the SECL had already paid Rs.86,116-99 ps. as interest for delayed payment. Therefore, the execution petition has rightly been dismissed and no interference is required in exercise of jurisdiction under Section 115 of the CPC. He relied upon the decision of the Supreme Court in the matter of **Deep Chand and others v. Mohan Lal**¹, as the decree holder has reaped the fruits of decree and even the compensation amount has also been accepted and therefore at this stage, he cannot claim the advantage of Order 21 Rule 2 of the CPC.
5. I have heard learned counsel for the parties, given thoughtful consideration to the facts of the present case, perused the award impugned and also gone through the records with utmost circumspection.

¹ (2000) 6 SCC 259

6. In order to consider the plea, it would be appropriate to notice the provisions contained in Order 21 Rule 2 of the CPC which reads as follows: -

"2. Payment out of Court to decree-holder.-(1)

Where any money payable under a decree of any kind is paid out of Court, or the decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor or any person who has become surety for the judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(2-A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless--

(a) the payment is made in the manner, provided in Rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of Rule 1, or before the Court.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree."

7. In the case in hand, arbitration award was passed on 27-10-2007 and as per the arbitration award, the total amount

payable was Rs.80,78,155-40 ps.. First execution petition was filed under Order 21 Rule 11 of the CPC read with Section 36 of the Arbitration and Conciliation Act, 1996 in which the decree-holder made an application before the executing court on 9-5-2008 under Section 32 of the Arbitration and Conciliation Act, 1996 and made a prayer for closing of the case on the basis of compromise entered into between the parties. The judgment-debtor also not made objection, as the matter has been compromised out of the court. The said I.A.No.2 was allowed and the execution case was closed. Thereafter, the decree-holder again filed an application for execution under Section 36 of the Arbitration and Conciliation Act, 1996 read with Order 21 Rule 11 read with Section 151 of the CPC claiming an amount of Rs.14,63,351-17 ps. which was opposed by the other side by filing an application and ultimately, upon the direction given by this Court to consider that application, now, the executing court has dismissed the execution petition.

8. The fact remains that admittedly, parties have agreed to settle the dispute by making payment of Rs.76,04,647-32 ps. within one week from the date of withdrawal of the execution proceeding but the amount was paid after delay of 67 days, however, an additional amount of Rs.86,116-99 ps. was paid towards interest for delay of payment of 67 days.
9. As per clauses (b) and (c) of sub-rule (2-A) of Rule 2 of Order

21 of the CPC, since the decree-holder himself has admitted the receipt of payment of Rs.76,04,647-32 ps. and he has accepted the interest for delayed payment out of the court settlement admittedly, the trial Court is justified in holding that the decree has been satisfied in which I do not any jurisdictional error.

10. Consequently, the instant revision is dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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