NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 1088 of 2015

1. Oriental Insurance Company Limited Through Divisional Office, Bilaspur (Chhattisgarh).....................Non Applicant No. 3

---- Petitioner

Versus

1. Roshan S/o Hilariyuj Kujur, Aged About 36 Years Caste Uraon, R/o Village Roopsera, Patratoli, Tahsil And District Jashpur (Chhattisgarh).......................(Claimant)
2. Magher Singh S/o Nikka Singh (R B R Transport), Super Road Lines, Tatibandh, Raipur (Chhattisgarh)...................(Defendant No. 1 (Owner)
3. Milkeet Singh S/o Nikka Singh (R B R Transport, Super Road Lines, Tatibandh, Raipur (Chhattisgarh)......................(Defendant No. 2 (Driver)

-- Respondents

For Petitioner : Shri Pankaj Agrawal, Advocate
Respondents not noticed.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI

Order on Board

04/01/2016

1. Heard on admission.

2. The petitioner has filed the instant Writ Petition (227) and prayed for quashment of the order of the executing Court to deposit the amount of TDS deducted as per relevant provisions of the Income Tax, 1961 (for short 'the Income Tax Act') at source of compensation; and the respondents be directed to refund the amount of Rs.30,007/- with interest and cost to the petitioner.

3. Facts in brief required for appreciation of the instant petition are that the petitioner/non-applicant No.3 while satisfying the award deducted

Rs.30,007/- as TDS and the executing Court directed to deposit the same. The same was deposited on 11.3.2015. It is submitted that deduction of TDS is as per provisions of Section 194-A (3) (ix) of the Income Tax Act. The order passed by the executing Court to deposit the amount so deducted for TDS is illegal and without any authority, hence, the petitioner prayed that the order passed by the executing Court in this respect be quashed and respondent No. 1 may be directed to return the said amount of Rs.30,007/- to the petitioner.

4. For the purposes of appreciation, the petition and documents annexed are perused. Also the application dated 11.3.2015 for deposit of Rs.30,007/- perused.

5. From perusal of the entire order sheet, it is observed that it is nowhere objected, submitted and prayed on behalf of the petitioner that the amount of Rs.30,007/- is deducted as TDS under the relevant provisions of Income Tax Act. Even in the application dated 11.3.2015, it is nowhere mentioned that the amount of Rs.30,007/- is the amount deducted as TDS. Though the petitioner had opportunity to raise the issue before the executing Court that they deducted the said amount as TDS under the provisions of Income Tax Act under their legal obligation, but in the entire order sheet there is no appreciation by the executing Court that on any objection in this behalf despite the deduction of TDS by the petitioner it is a requirement of law. They are required to deposit the same in the executing Court. As perused, even the application dated 11.3.2015 does not say so. On entire perusal nothing emerges as the petitioner had deducted the TDS and the same is deposited with the executing Court along with their objection. In the entire order sheet, deduction of TDS is never an issue before the executing Court. If the said amount is deducted and thereafter deposited, it was in connection with the TDS deduction. No one stopped the petitioner to mention all these facts before the executing Court and lastly also in the application dated 11.3.2015.

6. On due consideration it is apparent that the petitioner had failed to prove that Rs.30,007/- was deducted and along with their objection they have deposited the said amount with the executing Court for its disbursement to the claimant i.e. respondent No.1. The petitioner had failed to demonstrate the prima facie facts for admission of the instant petition.

7. Accordingly, the petition is dismissed at the motion stage itself

8. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE

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