

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 429 OF 2015**

The New India Assurance Co. Ltd.
Having its office at
Division Office, Star Trade Centre,
2nd Floor, Sodawala Lane,
Boriwali (w), Mumbai 4000092 ... Petitioner

Versus

1. Shri Mono Janu Gaonkar,
s/o late Janu Gaonkar,
54 years of age, labour.
2. Smt. Laximin Mono Gaonkar,
w/o Mono Gaonkar,
50 years of age, housewife,
both resident of H.No.111/2,
Barcem, Quepem, Goa.
3. Shri Vijay Kumar Vishwakarma,
r/o N.S.S. Road, Narayan Nagar,
Hill No.2, Ghatkopar, (West), Mumbai.
4. Shri Rahat H. Choudhary,
R/o A-101, Bldg. No.A/2,
A.G. Nagar, B-wing, Plot No.76,
Phase No.2, Kashi Mira,
Thane, Maharashtra, 400601. ... Respondents

Shri Amey Kakodkar, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 19th September, 2016

ORAL JUDGMENT :

On 30/09/2015, a notice for final disposal was issued in this case. The respondent nos.1 &

2, who are the original claimants and the only contesting respondents are absent though served.

2. On hearing the learned Counsel for the petitioner, the petition is being disposed off finally.

3. The petitioner is the Judgment Debtor No.3 having suffered an award of Rs.10,86,856/- along with interest in Claim Petition No.108/2009. Indisputably, the petitioner has made the payment of the amount of the award after deducting tax at source. The Executing Court by the impugned order dated 5/03/2014 has found that the petitioner had made the deduction at source illegally and, as such, the petitioner is liable to pay the said amount to the Decree Holders. However, after noticing the fact that the amount of tax so deducted has been remitted to the Income Tax Department, the Executing Court has directed that necessary TDS certificate shall be issued by the petitioner

upon which the respondent nos.1 & 2 shall apply for its refund in accordance with law. At the same time, it has been held that this however will not absolve the petitioner from paying interest on the said amount at the rate of 9% per annum. The petitioner has thus been directed to pay interest at the rate of 9% per annum. to the decree holders from the date the amount was remitted to the income tax department till the date of its payment. Feeling aggrieved by this part of the order, the petitioner is before this Court.

4. The learned Counsel for the petitioner has pointed out that the impugned order is based on the judgment of the Division Bench of this Court in ***Gauri Deepak Patel & Ors. V/s. New India Assurance Co. Ltd. & anr.*** reported in ***2010 (5) Bom.C.R. 249.*** The learned Counsel points out that the said decision is rendered on 17/12/2009 while Section 145-A of the Income Tax Act was amended w.e.f. 1/04/2010, which is subsequent to

the passing of the said judgment. The learned Counsel has pointed out to clause (b) of Section 145-A which provides that the interest received by an Assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received. It is submitted that the impugned order does not consider the effect of the amended provisions of Section 145-A. He, therefore, submits that the matter may be remitted back to the Executing Court.

5. Having heard the learned Counsel for the petitioner, I find that the impugned order does not refer to the amended provisions of Section 145-A of the Income Tax Act and in such circumstances it would be appropriate for the Executing Court to reconsider the matter and decide the same afresh after hearing the parties.

6. In the result, the following order is passed:

O R D E R

(i) The petition is partly allowed.

(ii) The impugned order dated 5/03/2014, to the extent it directs the petitioner to pay interest at the rate of 9% per annum on the amount of the tax deducted at source, is hereby set aside.

(iii) The matter is remitted back to the Executing Court which shall decide the same afresh in accordance with law.

(iv) Rule is made partly absolute in the aforesaid terms, with no order as to costs.

(v) The parties to appear before the Executing Court on 7/10/2016 at 10.00 a.m.

C. V. BHADANG, J.

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