

Civil Revision No. 3221 of 2011 (O&M)

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

214

Civil Revision No. 3221 of 2011 (O&M)

Date of Decision: August 02, 2016

LAJWANTI

-PETITIONER

VS

PSEB PATIALA AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Sandeep Punchhi, Advocate
for the petitioner.

Ms.Jarnail Kaur Dhaliwal, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

{1}. Petitioner has assailed order dated 25.08.2008 passed by
Civil Judge (Sr. Divn), Patiala dismissing the execution filed by the
petitioner to be fully satisfied.

{2}. Petitioner being widow of Mehar Chand has come up in

this revision petition with the allegations that her husband filed a suit for declaration and permanent injunction against the department in the context of office order for recovery of Rs.2,13,720.07 paise. The recovery was claimed to be illegal, null and void and against the principles of natural justice.

{3}. Restraint order was also sought against the defendants not to recover the amount in question from gratuity and leave encashment of the plaintiff (now husband of the present petitioner).

{4}. Said suit was contested by the defendants on all counts. Both the parties went to trial on certain issues and, thereafter led evidence. The trial Court vide judgment and decree dated 11.10.2000 decreed the suit of the plaintiff with costs for declaration that the order No.32 dated 30.01.1997 passed by defendant No.2 was illegal, null and void. Further restraint order was passed qua recovery from gratuity and leave encashment of the plaintiff. However, liberty was given to the defendant to pass fresh order after taking into account the material on record. If such an order was passed within six months from the date of passing of decree, the amount could have been recovered from the plaintiff.

{5}. For ready reference, the relief clause of the judgment and decree dated 11.10.2000 is reproduced hereunder:-

“In view of the findings under issues no.1&2 suit of the plaintiff succeeds and the same is hereby decreed with costs against the defendants for declaration that order no.32 dated 30.1.97 Ex.P1 passed by defendant no.2 is illegal null and void and defendants are restrained from effecting any recovery from the gratuity and leave encashment any recovery amount of the plaintiff. However defendants are at liberty to pass a fresh order after taking into account the material returned by the plaintiff if such an order is passed within 6 months from today and some amount is to be recovered from the plaintiff then defendants would be at liberty to recover the said amount from the gratuity and leave encashment amount of the plaintiff. ”

{6}. Admittedly, no fresh assessment was made by the department pursuant to aforesaid judgment and decree dated

11.10.2000. In the meanwhile, Mehar Chand-plaintiff died in the year 2004. In pending execution, a settlement was allegedly done with the legal representatives of Mehar Chand by the department wherein an amount of Rs.9,98,523.87 paise was shown recoverable from the decree holder as against an amount of Rs.5,69,595/- calculated towards dues of the decree holder. Ultimately, the amount was warded off towards liability of the department and it was observed that the decree was fully satisfied and attachment effected vide order dated 21.07.2006 was released in favour of judgment debtor.

{7}. I have heard arguments of learned counsel for both the parties.

{8}. Apparently in the suit for declaration and permanent injunction, contemplated action of the department in recovering an amount of Rs.2,13,720.07 paise was challenged by the plaintiff. The claim of the plaintiff was acceded to and suit was decreed thereby declaring the action of the department to be null and void. However, liberty was given to the department to assess loss, if any, within a period of six months from the passing of decree and to proceed thereafter against the plaintiff for recovery from gratuity and amount

of leave encashment. Needful was not done within the period prescribed. The plaintiff Mehar Chand died in the year 2004. After expiry of about 5 years, the department thought it appropriate to settle the issue with the legal representatives of decree holder and entered into final settlement of accounts in the manner not known to a man of ordinary prudence. An amount of Rs.9,98,527.87 paise came to be recorded as the entitlement of the judgment debtor. How this amount was assessed, particularly when the contemplated amount of recovery to the tune of Rs.2,13,720.70 paise was specifically set aside by the Civil Court and the judgment and decree ultimately attained finality. The connecting evidence remained conspicuous by its absence. The entitlement of the deceased-plaintiff to the tune of Rs.5,69,595/- was illegally warded off against non-existing amount of Rs.9,98,529.87 paise. The Executing Court was not required to go beyond the decree dated 11.10.2000 passed by the competent Court particularly when liberty granted thereunder was not availed of by the department.

{9}. Having adverted to the facts and material on record, this Court feels that the impugned order is not legally sustainable and is

hereby set-aside and the present revision petition is allowed.

{10}. As a result of aforesaid observation, the dues of the plaintiff-decree holder be made good to the legal representatives of Mehar Chand within a period of six months from the date of receipt of certified copy of this order.

02.08.2016

(RAJ MOHAN SINGH)

jyoti Y.

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No