

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

**CR No.3708 of 2015 (O&M)
Date of Decision: 29.07.2016**

**Amar Singh (now deceased) through LRs
.....Petitioner(s)**

Vs

**Subhash Chander Verma and others
.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Varun Sharma, Advocate for the petitioner(s).

Mr. B.D. Sharma, Advocate for the respondents.

RAJ MOHAN SINGH, J.

CM No.11673-CII of 2015

Applicant-petitioner seeks impleadment of legal representatives of deceased Amar Singh who died on 27.12.2013 during pendency of the appeal before the lower Appellate Court.

For the reasons mentioned in the application, the application is allowed. Legal representatives of petitioner-Amar Singh as shown in para No.2 of the application are ordered to be brought on record subject to all just exceptions.

CM stands disposed of.

CR No.3708 of 2015

[1]. The petitioner through his legal representatives has assailed the order dated 24.12.2014 passed by Additional District Judge, Jalandhar whereby appeal of the decree holder was partly allowed and the order vide which decree holder was directed to refund the amount of Rs.1,62,830/- to the respondent was set aside.

[2]. Two applications were filed before Additional Civil Judge (Senior Division), Nakodar. Application under Section 144 CPC was to the effect that the judgment debtor was a retired pensioner being employee of the National Institute of Health and Family Welfare, Munirka, New Delhi. In execution of petition filed by the decree holder, pension of the judgment debtor was attached to the tune of Rs.4285/- per month. As a consequence of such attachment, the department started deducting the said amount of Rs.4285/- per month from the pension of the judgment debtor. The amount so deducted was being remitted to the Court from 01.01.2007 to February, 2010 i.e. for 38 months. The judgment debtor alleged that the pension in the hands of the retired employee was exempted from attachment in view of Section 60 CPC and the pension so attached was required to be released from attachment.

[3]. Trial Court vide order dated 22.04.2010 while relying

upon Section 60(1) (g) CPC allowed the application and pension of the judgment debtor was ordered to be released from attachment with immediate effect. With the release of pension, the judgment debtor contended that as a consequence of release of pension from attachment, provision in terms of Section 144 CPC for restitution would come into play and the amount so deducted from the pension of the judgment debtor and remitted to the Court was liable to be refunded to the judgment debtor.

[4]. Prayer was made for restitution of the amount so deducted from the pension of the judgment debtor. The prayer was opposed by the decree holder on the ground that the original decree dated 25.10.2005 was final and was never set aside, modified or reversed and the order dated 22.04.2010 passed by the trial Court was to be read in prospectivity and the amount already recovered could not be refunded to the judgment debtor.

[5]. The second application was moved by decree holder for issuance of refund voucher in his favour for the amount of Rs.42,850/- received in the Court from employer of the judgment debtor after deduction from the pension. It was contended that since the amount was received towards satisfaction of the decree holder, therefore, decree holder was entitled to it. The

said prayer was opposed by the judgment debtor on the ground that the attachment could not be effected in respect of his pension.

[6]. Trial Court passed the order dated 10.05.2012 thereby holding that the amount deducted from the pension of the judgment debtor was refundable to him as a consequence of attachment being modified. The application filed by the decree holder for release of amount of Rs.42,850/- deducted from the pension of judgment debtor was dismissed. The said amount was ordered to be refunded to the judgment debtor. The decree holder was directed to refund the amount so released by him within a period of one month. The prayer of the judgment debtor for granting interest on the deducted amount was however declined.

[7]. Against the order dated 10.05.2012, appeal was filed by the decree holder before the Additional District Judge, Jalandhar which was partly allowed by the lower Appellate Court to the extent of setting aside the direction issued to the decree holder for refund of the amount of Rs.1,62,830/- to the judgment debtor.

[8]. Judgment debtor come to this Court by way of present revision petition, seeking quashing of order dated 24.12.2014 passed by the lower Appellate Court.

[9]. Learned counsel for the petitioner(s) contended that against the order passed under Section 144 CPC, the appeal was not maintainable before the lower Appellate Court in terms of Order 43 Rule 1 CPC and only a revision was maintainable. As against this, learned counsel for the respondent submitted that even though order passed under Section 144 CPC was not appealable under Order 43 rule 1 CPC, but still the order passed under the said provision would fall under the ambit of Section 2(2) CPC which reads as under:-

“(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;”

[10]. Considering the situation in entirety, interference in the revision petition is called for inasmuch as that the decree is the formal expression of the adjudication, determining rights of the parties with regard to the controversy and decree included rejection of plaint and determination of any question within Section 144 CPC. In view of interpretation given in terms of Section 2(2) CPC, this Court does not feel like to endorse in the contention so raised by learned counsel for the appellant that appeal was not maintainable before lower Appellate Court.

[11]. During pendency of the present revision petition, the judgment debtor has expired. Concededly, the pension portion could not be attached in terms of Section 61(g) CPC. The amount of Rs.1,62,830/- was already paid to the decree holder and the remaining amount of Rs.42,850/- which was lying deposited with the Court has since been returned to the judgment debtor. The lower Appellate Court has directed that the amount of Rs.1,62,830/- may not be refunded to the judgment debtor as the same was paid in execution of decree which was to the tune of Rs.12 lacs with 12 % interest *pendente lite* and 6 % future interest. The judgment debtor has already died and his legal representatives have been impleaded, therefore, the amount has lost character of pension in the hands of legal representatives, which otherwise they can claim as an

amount towards loss of estate.

[12]. Since the amount of Rs.42,850/- has already been returned to the judgment debtor, keeping in view all the intending circumstances, it would be just and expedient to maintain the order dated 24.12.2014 passed by Additional District Judge, Jalandhar. Consequently, this revision petition is dismissed.

29.07.2016

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**(RAJ MOHAN SINGH)
JUDGE**