

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 12.05.2016

% **Judgment delivered on: 17.05.2016**

+ **EX.P. 36/2016 and EX.APPL.(OS) 284/2016 & 323/2016**

SH AJAY JAIN Decree Holder

Through: Mr. M.A. Khan, Advocate.

versus

SH KARAN MEHRA & ANR Judgment Debtors

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. On 12.05.2016, after hearing learned counsel the following order had been passed:

*“ At the outset, learned counsel for the judgement debtor submits that the judgement debtor is willing to suffer costs of Rs.25,000/-. However, he submits that interest cannot be awarded by an Executing Court since the same has not been awarded in the decree itself. In this regard, he places reliance on **State of Punjab and Others Vs. Krishan Dayal Sharma**, AIR 1990 SC 2177. Accordingly, costs of Rs.25,000/- are awarded in favour of the decree holder. Let the costs be paid during the course of the day.*

Since the cheque of Rs.29 Lakhs tendered to the decree holder has been encashed, the attachment stands vacated.

So far as the claim of interest is concerned, on the said aspect, orders are reserved.

Dasti.”

2. By this order, I propose to deal with the submission of learned counsel for the judgment debtors that the Executing Court cannot grant interest on the amounts due in respect whereof there was no claim in the suit and no direction issued by the Court while passing the decree.

3. The submission of learned counsel for the judgment debtors, firstly, is that the decree holder, even in the present execution petition, has not sought that the amount of Rs.29 Lakhs, which was payable in terms of the decree passed by this Court on or before 15.11.2015, be released along with interest. Secondly, the submission of learned counsel for the judgment debtors is that a perusal of the decree would show that the Court did not decree any interest on the amount of Rs.29 Lakhs for any period, i.e. pre-suit, pendente lite, or post-decree. Learned counsel for the judgment debtors has placed reliance on ***Krishan Dayal Sharma*** (supra).

4. On the other hand, the submission of learned counsel for the decree holder is that since the amount was payable on or before 15.11.2015, and the payment of the said amount has been delayed by the judgment debtors the decree holder is entitled to interest on equitable considerations. It is argued that the interest is nothing but compensation to meet the inflation. Since the decree holder was entitled to the said amount by 15.11.2015, payment thereof after nearly six months tantamounts to non-payment of the decretal amount.

5. Though the decree holder may have a grievance on account of non-payment of the decretal amount on the due date, unfortunately for him, this Court cannot grant him interest, since this Court is merely executing the decree passed by the Court in the suit. The suit was decreed on a settlement, whereunder the judgment debtors had to make payment of Rs.29 Lakhs in full & final settlement of the claims of the plaintiff staggered up to 15.11.2015. The decree holder, at that stage, did not envisage and provide for the contingency of the payment not being made by the judgment debtors by 15.11.2015. It was for the decree holder to provide for the said eventuality. The decree holder was, therefore, satisfied with the judgment debtors making payment of Rs.29 Lakhs up to 15.11.2015, or even thereafter.

6. In ***Krishan Dayal Sharma*** (supra), the Supreme Court observed in paragraph 3 as follows:

“3. There is no dispute between the parties that the decree which was put to execution did not contain any order or direction for the payment of any interest on the amount which was payable to the decree-holder consequent to the declaration made by the court decreeing the respondent's suit. There is further no dispute that no relief for interest had been claimed by the respondent in the suit nor any such claim was discussed or awarded by the court decreeing the suit. In the absence of pleadings and directions in the judgment or decree which was under execution, it was not open to the executing court to award interest. The executing court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice. The right of the decree-holder to obtain relief is determined in accordance with the terms of the decree. The executing court has referred to a number of decisions where interest had been granted on the arrears of salary and

pension. The executing court failed to appreciate that in those decisions direction for payment of interest had been issued by the court while granting relief for reinstatement or payment of arrears of salary or pension. None of those decisions relate to the grant of interest by the executing court. No doubt the courts have power to award interest on the arrears of salary or pension or other amounts to which a government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the executing court in the absence of any direction in the decree.”

7. The aforesaid pronouncement of the Supreme Court is clear. As an Executing Court, it is not open to this Court to award interest on the decretal amount, on account of the payment of the decretal amount not being made by the date fixed.

8. Consequently, the submission of learned counsel for the judgment debtors, as aforesaid, is accepted and the claim of the decree holder for interest is rejected.

(VIPIN SANGHI)
JUDGE

MAY 17, 2016
B.S. Rohella