

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 632 of 2016**

1. Ramji Kuldeep, aged about 50 years, S/o Chainsingh Kuldeep,
2. Smt. Rameshwari Kuldeep, aged about 45 years, W/o Ramji Kuldeep

Both by Caste Ganda, R/o Village Puttarvahi, Thana and
Tahsil Bhanupratappur, Distt. U.B. Kanker (C.G.).

.....Claimants

---- Petitioners

Versus

1. Smt. Shanti Bai Sahu, aged about 55 years, W/o Jagdishram Sahu, By caste Teli, R/o Village Bhiragaon, Thana and Tahsil Bhanupratappur, Distt. Uttar Bastar, Kanker Owner
2. Iffco Tokyo General Insurance Com. Ltd. Through its Branch Manager, 205 IInd Floor MM Silver Plaza, Infront of Udyog Bhawan, Near Mining Office, Ring Road No.1, Distt. Raipur (C.G.) Insurer

---- Respondents

For Petitioners : Mr. Parag Kotecha, Advocate.
For Respondent No.1 : Mr. P.P. Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****20/02/2017**

(1) The Claims Tribunal, by its order dated 27.04.2016, passed an award in favour of the petitioners/claimants granting compensation to the tune of Rs.3,08,000/- along with 6% interest against the respondent No.1/owner of the vehicle. Thereafter, the respondent No.1/owner of the vehicle made an application for

payment of decretal award amount in installment.

(2) Learned Claims Tribunal, by its impugned order dated 24.08.2016, has allowed the said application and directed for payment of decretal amount in installment i.e. quarterly installment of Rs. 40,000/-, against which the instant writ petition under Article 227 of the Constitution of India has been filed questioning the same.

(3) Shri Parag Kotecha, learned counsel appearing for the petitioners would submit that by virtue of Order 20 Rule 11 (2) of the CPC, the executing court has no power to grant installments without the consent of the decree holder and, as such, the order of installment is unsustainable and bad in law.

(4) Per contra, learned counsel for respondent No.1/owner would submit that the owner is not able to make payment in one go, therefore, on his application, the Claims Tribunal has rightly allowed the application of respondent No.1 directing payment of decretal amount in installment, which need not be interfered with in exercise of jurisdiction under Article 227 of the Constitution of India.

(5) I have heard learned counsel appearing for the parties and also considered their rival submissions made therein and gone through the record with utmost circumspection.

(6) It is not in dispute that Order 20 of the CPC has been made applicable to the proceedings under Section 166 of the Motor Vehicles Act, 1988 by virtue of Rule 240 of the MP/CG Motor

Vehicles Rules, 1994

(7) Order 20, Rule 11 (2) of the CPC states as under:-

“ 11. **Decree may direct payment by increments.-**

(1).....

(2) **Order, after decree, for payment by installments.** - After the passing of any such decree the Court may, on the application of a judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

(8) A careful perusal of the Order 20, Rule 2 sub-rule 2(2) of the CPC would show that the Executing Court can direct the installment only when the consent is given by the decree holder to give such installment. Otherwise, without consent of the decree holder no such installment can be granted.

(9) In the matter of ***Guna Yerrannaidu Vs. Guna Venkanna***¹, their High Court of Andhra Pradesh has clearly held that the executing court has no power to grant instalments since it will amount to converting the money decree, which is already made by the court, into an installment decree at the stage of execution which is not permissible in law.

1 AIR 2002 AP 37

(10) Likewise, in the matter of ***Sher Alam v. United Bank of India***², High Court of Guwahati have clearly held that in a suit for realization of money by sale of mortgaged property Court is not competent to allow the defendant to pay the mortgage amount in installments.

(11) I am in respectful agreement with the view expressed by High Court of Andhra Pradesh in ***Guna Yerrannaidu*** (supra) & High Court of Guwahati in ***Sher Alam*** (supra) and it is held that the Executing Court has no jurisdiction to grant installment without the consent of the decree holder, as such, the impugned order granting payment of decretal amount by installment runs contrary to the provisions contained in Order Order 22 Rule sub-rule¹¹ (2) of the CPC, therefore, the impugned order dated 24.08.2016 deserves to be and is hereby set aside. Accordingly, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own cost (s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-