

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.3724 OF 2011

ORDER:

This civil revision petition is filed under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') challenging the order dated 05.07.2011 in E.P.No.8 of 2002 in O.P.No.70 of 1996 passed by the Senior Civil Judge, Mahabubnagar, accepting the Calculation Memo filed by the Decree Holder, specifying the reasons for such conclusion, raising several grounds more particularly on the ground of erroneous calculation of interest on solatium, in the absence of any direction in O.P. filed as per reference under Section 18 of the Land Acquisition Act.

During hearing, learned Government Pleader for Arbitration mainly contended that the Apex Court in **Gur Preet Singh v Union of India**¹ laid down certain guidelines for consideration at Para 44 as follows:

44. One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in Courts all over the country, we permitted counsel to address us on that question. That question is whether in the light of the decision in Sunder (supra), the awardee/decree holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the reference court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder (supra) on the ground that the execution court cannot go behind the decree. But if the award of the reference court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the reference court or the appellate court, and merely interest on compensation is awarded, then it would be open to the

¹ 2006 (Law Suit (SC) 899

execution court to apply the ratio of Sunder (supra) and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in Sunder (September 19, 2001) and not for any prior period. We also clarify that this will not entail any re-appropriation or fresh appropriation by the decree-holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question.

In view of the judgment of the Apex Court, this Court, while exercising jurisdiction under Section 115 C.P.C., cannot undertake the exercise of calculation. However, the executing Court is directed to follow the guidelines issued by the Apex Court in **Gur Preet Singh's** case supra at para 44 and decide the issue within a period of two months from the date of receipt of a copy of this order, after affording opportunity to both sides to file their calculation memos and pass appropriate orders in accordance with law.

With the above directions, the Civil Revision Petition is disposed of. There shall be no order as to costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

19.06.2017
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