

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3491 of 2017 (O&M)

Date of Decision: August 28, 2017

Parveen Kumar

..Petitioner

Versus

Santosh Kumari and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Sushil Bhardwaj, Advocate
for the petitioner.

REKHA MITTAL, J.

CM 16490 CII of 2017:

Heard.

Allowed as prayed for. Annexure P-7 is taken on record
subject to just exceptions.

Disposed of accordingly.

Main Case:

Present petition directs challenge against orders dated
13.01.2017 (Annexure P-3) and 11.04.2017 (Annexure P-6) whereby the
plaintiffs/decreed holders have been held entitled to amount of Rs.98,702/-
and application for recalling order dated 13th January 2017 has been
dismissed.

The legal representatives of Shri Ved Parkash filed a suit for recovery under Order XXXVII of the Code of Civil Procedure (hereinafter to be referred as the Code) that came to be decreed by the trial Court vide judgment and decree dated 06.09.2013 (Annexure P-1). The plaintiffs/decreed holders were held entitled to recover Rs.5,88,100/- (as principle sum adjudged up to 20.05.2011) along with future interest at the rate of 50 paisa percent per month from the date of filing of suit till realization.

The decree holders filed an application for execution of the decree wherein issue with regard to calculations was decided by the Court vide order dated 13.01.2017 and the decree holders were held entitled to balance amount of Rs.98,702/- after deducting an amount of Rs.6,50,000/- out of outstanding amount of Rs.7,48,702/-. The application filed by the petitioner for recalling the order dated 13.1.2017 did not find favour with the executing Court with the observation that there is no apparent illegality or irregularity in order dated 13.01.2017.

Counsel for the petitioner has submitted that the petitioner deposited an amount of Rs.6,50,000/- in pursuance of order dated 29.10.2014, passed by this Court in Civil Revision No.7311 of 2014 and the said amount was invested in a Fixed Deposit Receipt, payable to the successful party in terms of the aforesaid order of this Court. It is further argued that the executing Court has failed to adjust the interest accrued on Rs.6,50,000/- while making calculations and working out outstanding liability of the petitioner to the tune of Rs.98,702/-. It is argued with vehemence that as the rate of interest payable on the Fixed Deposit Receipt

was more than 6% per annum awarded in favour of the decree holders, the decree holders cannot be allowed interest at the rate of 6% per annum as per the decree as well as interest accrued on the Fixed Deposit Receipt of the relevant period. The last submission made by counsel is that executing Court has failed to examine the case in right perspective and committed a grave error by holding that still an amount of Rs.98,702/- is outstanding against the petitioner. In addition, it is argued that the petitioner is ready to pay the balance amount if any outstanding after adjustment of the amount of FDR of Rs.6,50,000/- plus interest accrued thereon which is to be paid to the decree holders qua their claim in terms of the judgment and decree dated 06.09.2013.

I have heard counsel for the petitioner, perused the paper book particularly the orders impugned.

The executing Court passed order dated 13.01.2017 at the back of petitioner who is stated to be *ex parte*. However, the Court has calculated outstanding liability of the petitioner/judgment debtor to the tune of Rs.7,48,702/- including cost up to 17.11.2014. The petitioner/judgment debtor deposited an amount of Rs.6,50,000/- which was invested by the executing Court in a Fixed Deposit Receipt in compliance with the directions of this Court. The Court while making calculations of outstanding liability of the petitioner/judgment debtor did not take into consideration the amount of interest accrued on Fixed Deposit Receipt of Rs.6,50,000/-. No reason has been assigned by the Court as to why the amount of interest that accrued on the FDR of Rs.6,50,000/- and payable to decree holders is not to be appropriated

towards outstanding liability of the judgment debtor in terms of decree dated 06.09.2013. That being so, the present petition stands disposed of with a direction to the executing Court to pass a fresh order with regard to outstanding liability of the petitioner/judgment debtor after providing an opportunity of hearing to the parties in accordance with law and thereafter to proceed with the execution in accordance with law.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondents/decreed holders in order to save them from unnecessary expense and inconvenience. In case the respondents would have any grievance to express, they would be at liberty to file an appropriate application before this Court.

Nothing recorded hereinbefore shall be construed as an expression of opinion on merits of contesting claims of the parties.

(REKHA MITTAL)
JUDGE

August 28, 2017
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No