

In the High Court of Punjab and Haryana at Chandigarh

244

CR No.3950 of 2016

Date of decision: 27.10.2017

NIRMAL SINGH

.....petitioner

Versus

STATE OF PUNJAB & ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.D.R.Bansal, Advocate,
for the petitioner.

Mr.Charanpreet Singh, AAG, Punjab.

RAJ MOHAN SINGH, J (oral)

Petitioner has assailed the order dated 31.3.2016 passed by Civil Judge (Jr.Divn.) Patiala, vide which execution petition filed by the decree-holder was held to be premature.

Petitioner filed a civil suit for declaration, mandatory injunction and permanent injunction challenging the order dated 19.5.2005 being illegal, null and void. The trial Court decreed the suit vide judgment/ decree dated 13.11.2010 by granting the following relief:-

“In view of my findings on above issues, suit of the plaintiff is hereby decreed with the directions to the defendants to withdraw the order dated 19.5.2005 as

being illegal, null and void and beyond the authority of the defendants and releasing the two annual increments earned by the defendant in the year 2002 and 2003 and also awarding the benefits of two years of service forfeited by the said order, further to the effect that the recovery sought by the defendants from the plaintiff @ ₹ 1,00,000/- out of unutilized earned leave and ₹ 24,000/- out of gratuity is also illegal, arbitrary null and void and against the service rules. Defendants are further directed to release the pensionary benefits with 10% interest per month from the date of filing of suit till its realization and refixing his salary, reassessing the seniority and for refixing the annual increments earned by the plaintiff during his service. Defendants are further directed to pay ₹ 1,00,000/- as damages on account of agony, harassment financial hardship caused to the plaintiff in the hands of defendants. However, parties are left to bear their own costs. Decree sheet be prepared. File be consigned to the record room.”

Defendants filed an appeal before the lower Appellate Court against the aforesaid judgment/ decree dated 13.11.2010 and the appeal was allowed. The judgment/decreed passed by

the trial Court was set aside vide judgment/ decree dated 10.2.2014. Petitioner filed RSA No. 2216 of 2014, which was admitted. Operation of the impugned judgment/ decree was stayed on 25.5.2015. The defendant-department even filed an application for vacation of interim order whereby, operation of the impugned judgment/ decree was stayed, but the said application i.e. CM No.9730-C-2015 was dismissed on 24.8.2015 by passing the following order:-

“It is not disputed that it is consequent to hearing both the parties that operation of the impugned judgment and decree dated 10.2.2014 was stayed by this Court on 25.5.2015. Learned counsel for the State is unable to point out any fresh circumstance which has come to fore in the interregnum to warrant vacation of stay granted vide order dated 25.5.2015.

Accordingly, this application being devoid of any merit is dismissed.”

Apparently, the operation of the judgment/ decree passed by the lower Appellate Court was stayed in the High Court. Once the operation of the impugned decree was stayed, it has to be taken as if no judgment/ decree was passed by the lower Appellate Court.

In view of above, judgment and decree of the trial Court stood revived and execution in respect of said decree is maintainable. The Executing Court has erred in dismissing the execution by labelling the same to be premature.

In view of above, this revision petition is allowed. Impugned order dated 31.3.2016 is set aside. The Executing Court is directed to proceed with the execution in accordance with law.

**(RAJ MOHAN SINGH)
JUDGE**

October 27, 2017

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Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No