

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5620 of 2016 (O&M)

Date of Decision: 27.09.2017

Sohan Singh

... Petitioner

Vs.

The Punjab State Civil Supplies Corporation Limited and another

... Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Akahsy Kumar Goel, Advocate
for the petitioner.

Mr. Sumer Singh Brar, Advocate
for the respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the order dated 12.10.2015 passed by the learned executing Court, whereby an amount of Rs.3,97,530/- lying undisbursed with the employer of the petitioner was directed to be disbursed in favour of the decree-holders, judgment-debtor has approached this Court by way of present civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

Respondents filed suit for recovery against the petitioner for an amount of Rs.12,50,929.14 on account of shortages in the stock under the

control of the petitioner. Finally, suit was decreed by the learned trial Court vide its decree dated 30.10.1996 for an amount of Rs.4,40,995.79 along with interest @12% per annum from the date of filing the suit till the date of decree and also future interest @6% per annum from the date of decree till realization of the decretal amount. Defendant filed his first appeal, which was dismissed. RSA No.35 of 2008 filed by the defendant is pending for regular hearing before this Court, but there is no interim order in favour of the petitioner/judgment-debtor. Similarly, RSA No.1794 of 2008 filed by the respondents is also pending before this Court.

In the interregnum, decree-holders filed execution application on 08.01.2009. The learned executing Court vide its order dated 25.08.2012 reproduced in para 5, at page 5 of the paper book, directed the department not to release the amount of salary and leave encashment in favour of the judgment-debtor till further orders. Order dated 25.08.2012 passed by the learned executing Court reads as under: -

“Original file received. Notice issued to the respondent received back unexecuted. Fresh be issued for 22.10.12. Dasti be given. Ld. counsel for the DH has stated that JD has retired from the department and his dues are still lying with the department and thus amount may not be released to him as the satisfaction of this decree is still pending. He also submitted copy of letter No.12/5535 showing detail of the amount. In view of this Court the amount of the gratuity withheld however the amount of salary can be attached till further orders. Thus, the department is directed not to release the amount of the salary and leave encashment amounting to

Rs.3,97,530/- till further orders.”

The abovesaid order passed by the learned executing Court was never challenged by the petitioner. The decree-holders moved an application for revival of the execution petition, which was consigned to the record vide order dated 24.05.2012. Finally, after hearing learned counsel for the parties, learned executing Court vide its impugned order dated 12.10.2015 directed the department i.e. employer of the petitioner to disburse the amount of Rs.3,97,530/- lying undisbursed on account of leave encashment of the petitioner in favour of the decree-holders. It is this order, which came to be challenged by the judgment-debtor by way of present civil revision petition.

Learned counsel for the petitioner places reliance on two Full Benches judgments of this Court in **Punjab State Civil Supplies Corporation Limited and others Vs. Pyare Lal, 2013 (1) PLR 36** and later judgment in that very case passed on 11.08.2014, to contend that the amount on account of leave encashment could not have been withheld. There is no dispute about the observations made by two Hon'ble Full Benches of this Court on the controversy involved in **Pyare Lal's** case (supra). However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner herein being distinguishable on facts.

It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundrao Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal**

Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan Vs. Ganeshi Lal, 2008 (2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a

question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact

situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e)

"One must not, of course, construe even a reserved judgment of

Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side

branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

When learned counsel for the petitioner was asked either refer to any provisions of law or any relevant judgment rendered by this Court or by any other Court to the effect that the amount on account of leave encashment cannot be withheld or utilized for the purpose of satisfying a civil Court decree, he had no answer and rightly so, it being a matter of record. Provisions of Section 60 of the Code of Civil Procedure have also not been found of any help to the petitioner, in view of the peculiar facts and circumstances of the case.

Further, learned counsel for the petitioner himself has pointed out to this Court that some amount was being deducted from the salary of the petitioner for the last about 12 years and he never objected to that. The said amount, out of the salary of the petitioner, was being deducted only to satisfy this very decree, which is subject matter of consideration before this Court in the instant revision petition. Having said that, this Court feels no hesitation to conclude that the learned executing Court committed no error of law, while passing the impugned order and the same deserves to be upheld.

Once there is no interim order in favour of the petitioner in his regular second appeal pending before this Court, the learned executing Court was bound to proceed further with the decree, so as to execute the same strictly in accordance with law and as per the judgment and decree of the learned trial Court. It goes without saying that the executing Court cannot go behind the decree. Since the petitioner has never denied his liability during all this period,

this seems to be the reason that he did not challenge the abovesaid order dated 25.08.2012 before any Court of law. No explanation is forthcoming in this regard. Under these undisputed facts and circumstances of the case, no fault can be found with the impugned order passed by the learned executing Court and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order passed by the learned executing Court has been found based on sound reasons and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality or perversity has been found in the impugned order, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

27.09.2017
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No