

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

**Civil Revision No.6468 of 2017
Date of decision:17.11.2017**

Block Development and Panchayat Officer,
Nahad, District Rewari

...Petitioner

Vs.

Hari Ram Gupta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S. Kharb, Advocate
for the petitioner.

Mr. M.S.Randhawa, Advocate
for respondent No.1.

AMIT RAWAL J.

Petitioner/defendant/JD No.7 has preferred the revision petition against the impugned order dated 19.04.2017 (Annexure P-6), whereby, the objections to the second execution application, have been dismissed and order dated 03.08.2017 (Annexure P-7), vide which the attachment of salary of BDPO, Nahad had been ordered.

Mr.S.S.Kharb, learned counsel for the petitioner/defendant submitted that respondent No.1/plaintiff, who retired as Peon on 31.07.2007, filed a suit for declaration with consequential relief of mandatory injunction for fixation of his salary as per the recommendation of 6th Pay Commission as well as gratuity, leave encashment, pension and 3rd ACP. Vide judgment and decree dated 06.04.2013 (Annexure P-1), the trial Court decreed the suit, whereby, following decree was passed:-

“It is ordered that the suit of the plaintiff is hereby decreed with cost and the plaintiff Hari Ram is hereby entitled to get the benefit of 3rd ACP w.e.f.1.1.2006 and also all the consequential benefits over the same with an interest @ 12% per annum.”

Though the amount, which, respondent No.1 was entitled to as per the decree, had been paid but yet preferred an execution application dated 27.03.2014 (Annexure P-2) under Order 21 Rule 11 CPC claiming higher pension than the revised one. All the dues paid to respondent No.1 have been enumerated in para 4 of the petition.

In view of such fact, the trial Court, vide order dated 27.05.2015 (Annexure P-3) dismissed the execution application being satisfied. The relevant portion of the order reads thus:-

“Hari Ram decree holder has appeared in person and had got a statement recorded that he has received an amount of Rs.10,946/- in the present execution petition from the judgment debtors and now he does not intend to pursue further with the present execution and the same be dismissed as withdrawn. He has also prayed for release of the property of the JDs attached for securing compliance of the decree.

In view of the statement the present execution petition stands dismissed as satisfied. The property of the JD so attached in the instant execution petition is ordered to be released from the attachment. File be consigned to record room after due compliance.”

After having remained silent for almost one year and 8 months, respondent No.1 preferred another execution application dated 31.01.2017 [Annexure P-4 (collectively)] seeking an amount of Rs.36,975/- alongwith interest @12% by attaching the calculations. The aforesaid application was objected to by filing cross-objections [Annexure P-5(collectively)], but the Executing Court, without any basis or yardsticks, dismissed the objections and ordered for payment of the amount as claimed by attaching the salary of BDPO which is totally contrary and erroneous to the settled provisions of law, much less beyond the decree. The whole approach of the trial Court is illegal and based upon non-appreciation of the import of the decree. He, thus, urged this Court for setting aside the impugned orders aforesaid.

Mr.M.S.Randhawa, learned counsel for respondent No.1 submitted that the petitioner/judgment debtor did not comply with the decree in its letter and spirit and the calculations submitted alongwith second execution application had not been controverted with any cogent material. In view of such situation, the objections have correctly been dismissed. He further submitted that there is no illegality and perversity in the impugned orders and the same cannot be said to have been passed by the trial Court by exceeding its jurisdiction.

I have heard learned counsel for the parties and appraised the paper book.

The details of the amount paid to respondent No.1/plaintiff as enumerated in para 4 of the petition in pursuance to the judgment and decree read thus:-

“i) *Rs.11,000/- in cash vide receipt dated 27.05.15.*

ii) *Rs.2300/- as ACP arrears vide cheque no.921802 dated 04.09.15.*

iii) *Counsel fee Rs.5500/- in cash on 06.4.16 from BDPO, Nahad.*

iv) *Gratuity of Rs.6728/- along with interest i.e. Rs.17440/- vide Cheque No.922983 received on 16.09.16, on account of revised pension from Rs.4422/- to Rs.4485/-."*

From a cumulative reading of the extraction of the payment made as well as order dated 27.05.2015 satisfying the decree, it appears that the impugned orders are bereft of the reasoning in rejecting the objections of the petitioner. The trial Court has not assigned any reasons for rejecting the objections of the petitioner and thus, exceeded its jurisdiction in attaching the salary of BDPO Nahad. Once the decree had already been satisfied, if at all there was an error in the calculation, the matter should have been referred to the accounts branch of the department by submitting their respective calculations, i.e., with regard to the calculation and the amount already paid but not in the slipshod manner as has been done.

For the reasons aforementioned, I am of the view that the impugned orders are not sustainable in the eyes of law. The same are hereby set aside and the matter is remitted back to the Executing Court for deciding the objections in its correct perspective, letter and spirit and by adopting a pragmatic approach as the procedure for calculations of the outstanding dues in pursuance to the decree is in the domain of the Accountant General, ANE, Haryana and not of any other department.

In my view, the trial Court should have called for the comments

of the Accountant General, which, according to the learned counsel for the petitioner were as per its own calculation.

Be that as it may, the matter has to be re-visited, if there was any short fall in the satisfaction of the decree.

Resultantly, the revision petition stands disposed of.

Parties through their counsel are directed to appear before the Executing Court on 18.12.2017.

(AMIT RAWAL)
JUDGE

November 17, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No