

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-2412-2018 (O&M)

Date of Decision:19.04.2018

The Chief Engineer, Municipal
Corporation, Chandigarh and others

.....Petitioners

Versus

Malarkuri and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Suvir Sehgal, Senior Standing Counsel,
U.T., Chandigarh, with
Mr. Vikas Bali, Advocate,
for the petitioners.

HARI PAL VERMA, J.(Oral)

Petitioners-The Chief Engineer, Municipal Corporation, Chandigarh and others (for short “the Corporation”) have filed the present revision petition under Article 227 of the Constitution of India, impugning the order dated 26.02.2018 (Annexure P-8) passed by learned executing court, whereby on an execution application filed by respondent No.1-decree holder, the executing court has ordered to put the attached property on auction as per the schedule given in the order. Now the auction of the property as attached by the executing court is scheduled to be held on 20.04.2018.

Respondent No.1-decree holder is a widow of Sh. Ganapathi, who was working as a Mali, a Class-IV post with the Municipal

Corporation, Chandigarh. He died on 07.12.2002. Respondent No.1-decree holder is entitled for 40% share out of the retiral benefits of deceased-Ganapathi, in terms of the judgment dated 29.08.2014. The relevant part of the order dated 29.08.2014 reads as under:-

“In view of the state of the parties, the appeal of the applicant is partly allowed and the judgment and decree of the trial court is modified to the extent that the appellant Malarkuri shall be entitled to 40% share and respondents No.5 to 7 shall be entitled to 60% share, out of the entire amount to be disposed on the account of death benefits of deceased Ganpati and further that pension if any shall be drawn by the appellant Malarkuri, further the amount already disbursed to respondent No.4 shall be deducted from the total amount of 60% share payable to them and she shall receive the 60% of the total amount payable minus the amount already received by her and her children. It is further ordered that the respondent No.1 is directed to disperse death benefits to the parties in terms of the compromise as detailed above. Decree sheet be drawn accordingly. Trial court record be returned and file of this court be consigned to record room.”

It is the aforesaid order dated 29.08.2014, which is subject matter of the execution proceedings pending before the court below.

Learned counsel for the petitioners has argued that in fact the Corporation has already paid the retiral benefits of Sh. Ganapathi to his first wife, namely, Kanda Jyoti-respondent No.2 and virtually the decree has been satisfied in that manner. The Corporation is short of finances as well. This Court does not find any illegality in the order dated 26.02.2018 passed by learned executing court, but considering the arguments of the counsel

that the Corporation is facing financial hardship, some more time is granted

to the Corporation, so as to satisfy the decree passed in favour of decree-holder.

I have heard Mr. Suvir Sehgal, Ld. Senior Standing Counsel for U.T.

So far as the plea of the learned counsel for the petitioners that the earlier wife has been disbursed all the retiral benefits, cannot be accepted for the reason that vide judgment dated 29.08.2014, the learned Additional District Judge has already modified the decree of the trial court entitling the respondent No.1-decree holder to have 40% share out of the retiral benefits of the deceased. The plea of the learned counsel for the petitioners that the Corporation is facing financial hardship is no ground to interfere with the order and cannot be accepted. The Corporation is under legal obligation to satisfy the decree. But still in order to meet the ends of justice, the Corporation is granted 10 days' more time to satisfy the decree and till then, the schedule of auction i.e. auction at the spot which is fixed for 20.04.2018, is deferred for a period of 10 days only.

In case, payment is not released to the decree holder within the aforesaid extended period, the order passed by the learned executing court shall revive automatically without any further reference and no prayer for extension of time would be entertained.

The present revision petition is disposed of at this stage, without issuing notice to the respondent-decree holder as it would further delay the proceedings.

April 19, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No