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

**Civil Revision No.7918 of 2016
Date of Decision: 12.07.2018**

LAKHWINDER KAUR

.....Petitioner

Vs

SENIOR SUPDT. OF POLICE BATALA & ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Arun Kaundal, D.A.G., Punjab.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 30.07.2016 passed by the Civil Judge (Sr. Divn.) Gurdaspur vide which application under Section 144 read with Section 151 CPC filed by respondents No.1 to 3 was allowed and respondents No.1 to 3 were held entitled to recover an amount of Rs.1,36,553/- along with interest @ 6% per annum.

[2]. At the time of issuance of notice of motion on 23.11.2016, following order was passed by this Court:-

“Learned counsel for the petitioner contends that restitution has been granted by the trial Court thereby allowing the defendants to recover an amount of

Rs.1,36,553/- along with interest @ 6% per annum, solely on the ground that the petitioner has not co-operated with the Department in supplying the necessary documents of house construction loan availed by her husband during his life time. Learned counsel submitted that the objections filed by the defendants on this very ground were rejected by the trial Court in para No.4 of the order dated 07.04.2008. The impugned order runs counter to the aforesaid order.

Notice of motion for 19.12.2016.

Till the next date of hearing, operation of impugned order shall remain stayed.”

[3]. Brief facts are that husband of the petitioner was employed in the Punjab Police Department. After the death of her husband, the petitioner/plaintiff filed a suit for declaration to the effect that she is entitled to get death-cum-gratuity amount to the tune of Rs.70,548/- along with requisite interest. The suit was decreed vide judgment and decree dated 04.03.2005 and the plaintiff/petitioner was held entitled to get death-cum-gratuity amount of Rs.70,548/ of her late husband. Respondents No.1 to 3 were directed to release the amount within two months, failing which interest @ 6% per annum was to be payable from the date of decision till its realization.

[4]. Against the decree passed by the trial Court, two appeals were filed. Civil Appeal No.53 of 2005 filed by the State of Punjab was dismissed whereas the appeal i.e. Civil Appeal

No.70 of 2005 filed by the petitioner was accepted with a direction to the State that the case regarding loan of Joginder Singh (deceased) be sent again to the Director General of Police, Punjab after completing necessary formalities within a period of three months to pass fresh order to write off the house building advance as per instructions of the Punjab Government. The petitioner was directed to complete all necessary formalities so that the loan amount could be write off. For the sake of clarity, relevant relief clause of judgment dated 04.12.2006 is reproduced hereasunder:

“13. In view of all discussed above, appeal No.53 of 2005 filed by Punjab State is dismissed whereas appeal no.70 of 2005 filed by Lakhwinder Kaur is accepted with direction to the State that case of Joginder Singh deceased be against sent to the Director General of Police, Punjab, Chandigarh, Accounts Branch after completing necessary formalities within three months to pass fresh order to write off the house building advance as per instructions of the Government. Lakhwinder Kaur is directed to complete necessary formalities so that case of Joginder Singh is sent to the concerned office to write off the loan. In case order is passed by the competent authority to write off the entire house building advance i.e. Rs.1,36,553/- obtained by the deceased then death-cum-gratuity of late constable Joginder Singh is to be paid with interest @ 12% p.a. from the date of death till payment. In case order is passed by the competent authority to write off some of the loan amount due from constable Joginder Singh deceased then

after adjusting that amount, remaining death-cum-gratuity of late constable Joginder Singh is to be paid with interest as ordered earlier. Parties are left to bear their own costs. Decree sheet be prepared. Lower court record be returned. Appeal file be consigned to the record room.”

[5]. Perusal of the aforesaid order would show that the payment of gratuity was contingent upon the requirement of completing necessary formalities by the petitioner.

[6]. Learned counsel for the petitioner submitted that the gratuity amount has already been paid by the respondents along with requisite interest, but the amount towards loan was not waived off.

[7]. I have considered the submissions made by learned counsel for the parties.

[8]. Petitioner filed execution of the civil Court decree in which objections were filed by the respondents on 07.11.2007. The objections were dismissed vide order dated 07.04.2008 wherein it was specifically noticed that the documents were already supplied to the Department at the time of availing loan. Para no.4 of the said judgment reads as under:

“4. I have given careful perusal to the pleadings and documents on the file. It is admitted by the JDs that the judgment and decree dated 4.3.2005 is there in favour of the applicant. The JDs are laying emphasis on the documents qua the house loan etc. but the court does not accept their plea that the Jds could advance any loan

without their satisfaction at the time of advancement of loan to constable Joginder Singh, the husband of applicant Lakhwinder Kaur. The said constable Joginder Singh has already died. The court is satisfied that the respondents are delaying the execution of the decree without any logical ground with them. Hence the objection petition dated 7.11.2007 is hereby dismissed. The warrant of attachment of property of JDs on supply of list etc. be issued for realization of the decretal amount in favour of the applicant/decreet-holder.”

[9]. Thereafter an application under Section 144 CPC read with Section 151 CPC regarding recovery of Rs.1,36,533/- with 12% interest came to be filed after more than four years from the date of payment of gratuity. The application has been allowed primarily on the ground that the plaintiff/petitioner did not provide necessary documents for waiving off the loan as per policy of the State Government.

[10]. In my considered opinion the impugned action of the respondents is illegal inasmuch as that the decree passed by the lower Appellate Court was contingent upon requirement of completing necessary formalities by the petitioner. While dismissing the objections on 07.04.2008, it was specifically observed by the executing Court in para no.4 of its judgment that the documents qua the house loan were available with the Department as without their satisfaction at the time of advancement of loan, the loan could not have been sanctioned

to the husband of petitioner.

[11]. It appears that after the death of husband of the petitioner, respondent-Department is keeping indifferent attitude towards widow in not granting concession of waiver of the loan as per Government policy. Existence of one policy to write off the loan is not denied, rather in the decree passed by the lower Appellate Court it was specifically observed that on completing necessary formalities, the Department shall pass fresh order to write off the house building advance as per instructions of the government. Now the intended effort of the Department to recover the loan amount in my considered opinion is not legally sustainable.

[12]. In view of above, impugned dated 30.07.2016 passed by the Civil Judge (Sr. Divn.) Gurdaspur is set aside. This revision petition is allowed. Respondents No.1 to 3 are directed to complete follow up action in accordance with law within three months from the date of receipt of certified copy of this order.

July 12, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No