

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 17.12.2018

1. CR No.8366 of 2018(O&M)

Sudhir Mehra	Petitioner
Versus	
Union of India and others	Respondents

2. CR No.8367 of 2018(O&M)

Sudhir Mehra	Petitioner
Versus	
Union of India and others	Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. B.D. Sharma, Advocate
for the petitioner.

Mr. Deepak Nayyar ,Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Vide this common order, CR No.8366 of 2018 titled '*Sudhir Mehra Vs. Union of India and others*' and CR No.8367 of 2018 titled '*Sudhir Mehra Vs. Union of India and others*' are being disposed of.

[2]. In CR No.8366 of 2018, petitioner has challenged the order dated 20.07.2013 passed by Additional District Judge,

Amritsar disposing the earlier execution application filed by the father of the petitioner as fully satisfied and order dated 05.02.2018 passed by Additional District Judge, Amritsar, whereby subsequent execution application filed by the petitioner was dismissed.

[3]. In CR No.8367 of 2018, petitioner is aggrieved of order dated 05.02.2018 passed by Additional District Judge, Amritsar whereby execution application filed by the petitioner was held to be not maintainable in view of interim order dated 28.10.2002 passed by the High Court in RFA No.1578 of 2002 titled Union of India Vs. Sudhir Mehra and others.

[4]. On 10.12.2018 while issuing notice of motion following order was passed by this Court:-

“Learned counsel for the petitioner contends that RFA No.1578 of 2002 titled 'Union of India vs. Sudhir Mehra and others' is still pending in the High Court where interim order of depositing 50% of the amount was ordered. Remaining 50% of the compensation was ordered to be deposited in the State Bank of Patiala, High Court Branch Chandigarh. At the time of deciding first execution petition on 20.07.2013, factum of stay order could not be brought to the notice of the executing Court. In the second execution, the executing Court has observed that since the execution of award passed by the reference Court has been stayed by the High Court, therefore, execution is not

maintainable.

Learned counsel further contends that order dated 20.07.2013 passed by the executing Court may not be read as an impediment for realisation of remaining amount of 50% after dismissal of the said RFA No.1578 of 2002 by the High Court.

Notice of motion.

At this stage, Mr. Deepak Nayyar, Advocate accepts notice on behalf of the respondents.

List on 13.12.2018.”

[5]. Learned counsel for the respondents submitted that despite his repeated communications, respondent No.1 has not responded to instruct him with relevant instructions.

[6]. At this stage, nature of controversy can be appreciated in the light of stay order granted on 28.10.2002 by the High Court and its implication on the execution of award to be done by the Additional District Judge, Amritsar. Order dated 28.10.2002 passed by the High Court in RFA No.1548 of 2002 reads as under:-

“Notice of motion for 07.02.2003.

It shall be in the interest of all that the enhancement granted by the learned Additional District Judge is allowed to be disbursed to the claimants.

It is directed that the applicant-appellant shall calculate the total amount by taking into consideration the solatium and interest statutorily payable and calculable and thereafter, the amount which has been paid in pursuant to

the award of the Land Acquisition Collector shall be deducted therefrom and that 50% of the said balance amount shall be deposited in the reference Court within a period of two months from today. The claimants shall be entitled to file an application for disbursement of the said amount without furnishing any security. However, notice upon the said application shall be issued to the appellant and thereafter the said application be disposed of accordingly. The balance 50% by calculating the resultant effect of solatium and interest upto the date of deposit be made and the said amount be deposited with the State Bank of Patiala, High Court Branch, Chandigarh through Registrar of this Court within one month after the expiry of the above said period of two months. The bank is directed to convert the said amount into FDR for the period where it shall earn maximum rate of interest. If the appeal is not decided within the said period, the FDR shall be renewed accordingly. The amount so deposited shall be subject to the decision of the appeal.

It is made clear that if the appeal is dismissed the shortfall of the interest whatsoever shall be calculated while keeping into consideration the statutorily payable interest and the solatium accordingly. The said amount shall be paid by the appellant in pursuant to the order passed in the appeal. In view of above, the execution of award of the Reference Court shall remain stayed till further order. However the claimants shall be entitled to seek variation of this order as per circumstances divulged.”

[7]. The first execution was filed by the petitioner which was disposed of by the Additional District Judge, Amritsar vide order dated 20.07.2013. The fatum of stay order could not be brought

to the notice of the executing Court by either of the parties and in view thereof, execution petition was disposed of as fully satisfied. Following order was passed by the executing Court on 20.07.2013:-

“Present:Shri Y.P. Seth, Advocate for the DH.

Shri J.S. Pannu, Advocate for the JD.

As per order dated 28.09.2012 passed by Shri Jasvir Singh Kang, Learned Additional District Judge, Amritsar my predecessor an amount of `93,880/- has already ordered to be disbursed to the decree holder. In view of the matter, refund voucher is ordered to be issued in favour of Decree holder as per order dated 28.09.2012. Present execution stands disposed off as fully satisfied. Thereafter, file is ordered to be consigned to record room.”

Announced

*(Kuldip Singh)
Additional District Judge,
Amritsar/20.07.2013”*

[8]. Thereafter, on coming to know about the stay order, second execution was filed and the same was held to be not maintainable in view of stay order granted by the High Court.

[9]. Learned counsel for the petitioner submitted that while passing the impugned order dated 05.02.2018, executing Court has not ensured whether terms and conditions of order dated 28.10.2002 have been complied with or not by the respondents. In fact, the terms and conditions have not been complied with and without ascertaining the same, the impugned order was

passed thereby holding the execution to be not maintainable. Secondly, learned counsel contended that 50% of the award has been stayed and the same was ordered to be deposited in the State Bank of Patiala, High Court Branch, Chandigarh.

[10]. In the event of dismissal of RFA, the said amount has to be disbursed to the rightful claimants, therefore, instead of dismissing the execution, the same should have been kept in abeyance till the time RFA is decided by the High Court. In case, RFA is allowed, the executing Court would be left with an inquiry as to whether terms and conditions of interim order dated 28.10.2002 were complied with or not. In case RFA is dismissed, the remaining amount deposited in the Bank would be required to be disbursed amongst the rightful claimants. The aforesaid facts have not been taken into consideration by the Additional District Judge, Amritsar.

[11]. In view of above, I deem it appropriate to set aside the impugned orders passed by the Additional District Judge and remand these cases to the said Court with a direction to re-visit the orders in view of facts and circumstances of the cases and pass afresh order in accordance with law.

17.12.2018

Prince

**Whether reasoned/speaking
Whether reportable**

**(RAJ MOHAN SINGH)
JUDGE**

**Yes/No
Yes/No**