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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **EX.F.A. 39/2018**

UMA DEVI

..... Appellant

Through: Mr. Pankaj Kumar Singh, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.09.2018

CM No.40119/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

EX.F.A. 39/2018, CM No.40117/2018 (for condonation of delay of 19 days in filing the appeal) & CM No.40118/2018 (for permission to file additional documents)

3. This Execution First Appeal invoking Order XXI Rule 58 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 4th May, 2018 in Execution No.5583/2016 of the Court of Additional District Judge-05, New Delhi] of disposal as satisfied of the application filed by the appellant for execution as a decree of an award of the Central Government Industrial Tribunal.
4. It was the plea of the appellant / decree-holder that an amount of Rs.6,37,985/- was still to be paid by the respondents / judgment-debtors under the award / decree. On the contrary, it was the contention of the respondents / judgment-debtors, that total amount payable under the award was Rs.6,20,594/- and which had already been paid.

5. The Executing Court disposed of the Execution as satisfied, reasoning that (i) vide the award, the decree-holder was held entitled to be paid the salary as well as all consequential benefits to which she was otherwise entitled; (ii) the respondents / judgment-debtors had placed on record the guidelines following which the amount of Rs.6,20,594/- had been computed and paid to the appellant / decree-holder; (iii) the respondents / judgment-debtors had also placed on record the calculation sheet for arriving at the figure of Rs.6,20,594/- paid to the appellant / decree-holder; (iv) the calculation sheet submitted by the appellant / decree-holder referred to pay fixation with effect from January, 2001 upto 31st December, 2015 and also included a sum of Rs.50,000/- towards harassment; (v) however no amount of Rs.50,000/- towards harassment had been awarded by the Industrial Tribunal; and, (vi) the appellant / decree-holder was entitled only to payment from the date she was released from her service i.e. March, 2011, till her superannuation on attaining 60 years of age i.e. 31st December, 2015 and the computation submitted by the appellant / decree-holder was not in accordance with the award / decree.

6. The counsel for the appellant / decree-holder at the outset only contends that the appellant / decree-holder was wrong in claiming Rs.50,000/- which had not been awarded. He however contends that only that amount of Rs.50,000/- should have been excluded and the Executing Court should have got recovered the balance amount as claimed by the appellant / decree-holder and the Executing Court did not determine the balance amount due.

7. I have enquired from the counsel for the appellant / decree-holder, how Order XXI Rule 58 of the CPC, invoking which this appeal is filed, applies. Order XXI Rule 58 of the CPC provides for adjudication of claims to or objections to attachment of property and Sub-Rule (4) thereof provides that where any claim or objection has been adjudicated thereunder, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it was a decree. The impugned order does not adjudicate any claim or objection as to attachment of property.

8. The counsel for the appellant / decree-holder states that in fact he had invoked Section 104 of the CPC but upon objection being raised by the Registry, the appeal was filed invoking Order XXI Rule 58 of the CPC.

9. If the Registry raises any objection, it is the duty of the advocates to satisfy the Registry citing law, of the maintainability of the appeal and the advocates are not to be guided by the Registry.

10. Be that as it may, it has been enquired from the counsel as to how an appeal under Section 104 of the CPC lies.

11. The counsel for the appellant / decree-holder has gone through Order XLIII Rule 1 of the CPC but which also does not provide for an appeal against the order as the impugned order.

12. I have in *Arjun Thapan Vs. Anita Thapan* 2018 SCC OnLine Del 10105, *Gautam Modi Vs. Pravin Chandra Modi* 2018 SCC OnLine Del 11197 and *Sumeet Saluja Vs. A.K. Hab Europe* 2018 SCC OnLine Del 10072 dealt in detail with the subject and have held that though prior to the amendment of the CPC of the year 1976 all orders in execution were

appealable but vide the said amendment, the remedy of appeal against orders in execution is confined to a few provisions only and which do not include an order as the order impugned in this appeal.

13. The appeal is thus rejected.

14. Needless to state, the appellant shall have liberty in accordance with law.

Dasti.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 28, 2018

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