IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.3468 of 2019
Shirinbai Foundation & Anr. Vs. Sanjay Choudhary
&
Writ Petition No.3469 of 2019
Shirinbai Foundation & Anr. Vs. Narendra Bhat
&
Writ Petition No.3470 of 2019
Shirinbai Foundation & Anr. Vs. Jumma Sil

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. H.N. Verma, Advocate for petitioners
Mr. V.V. Bhangde, for respondent

CORAM : MANISH PITALE, J.

DATED : DECEMBER 19, 2019

By these three writ petitions, the judgment debtors have challenged orders passed by the Court of Joint Civil Judge (Junior Division), Tumsar (Executing Court), whereby the objections filed on behalf of the petitioners have been rejected and the applications for condonation of delay for seeking review of the orders have also been rejected by the Executing Court.

2. The facts leading up the filing of the present writ petitions are that the respondents in these writ petitions being employees of the petitioner No.2 School run by the petitioner No.1 management, had filed suits before the concerned Court at Bhandara for recovery of

arrears of salary and for mandatory injunction to pay salary to the said employees as per Government pay scales. Subsequently, the suits were transferred to the Court at Tumsar and they were shown as civil suits of the year 2000.

3. The said Court decreed the suits filed by the respondents and directed payment of specific amount towards arrears on account of difference of salary and further directed that the petitioners shall pay salary to the respondents as per the prescribed pay scales of the Government of Maharashtra or the Government of India, as mentioned in bye laws Chapter II, Category A(6). It is an admitted position that the appeals filed against the said decrees by the petitioners stood dismissed and eventually the Special Leave Petitions filed by them before the Hon'ble Supreme Court were also dismissed, as a result of which the said decrees passed in favour of the respondents attained finality.

4. After dismissal of the Special Leave Petitions, the respondents moved applications before the Executing Court, seeking amendment of the execution proceedings. The Executing Court allowed the said applications, against which the petitioners filed writ petitions before this Court. The said writ petitions were finally decided and disposed of in the year 2007, whereby it was observed by this Court that the petitioners as judgment debtors were entitled to

file replies to the amended execution petitions to oppose the claim made by the respondents on all such grounds as were permissible in law and the executing Court shall decide the objections, including the objection to maintainability of the said objections.

5. Thereafter, the petitioners filed two sets of applications in all the execution proceedings. The first application was for dismissal of the proceedings, contending that the decrees passed in favour of the respondents, particularly Clause 3, were inexecutable. The other contention was for raising objections on behalf of the petitioners on the claims made by the respondents in the amended execution petitions. The said applications and objections raised on behalf of the petitioners were dismissed by order dated 27/07/2012, passed by the Executing court. Aggrieved by the same, the petitioners filed writ petitions before this Court. The said writ petitions were allowed by a common order dated 18/02/2013, passed by this Court, wherein the matters were remanded back to the Executing Court for decision afresh, in accordance with law.

6. The said common judgment and order was challenged by the petitioners before the Hon'ble Supreme Court of India. On 21/11/2017, the Special Leave Petition filed by the petitioners were dismissed and it was specifically observed by the Hon'ble

Supreme Court that the Trial Court would be at liberty to consider the objections as well as applications for dismissal of the amended execution proceedings afresh as directed by this Court.

7. It is after the Special Leave Petitions were dismissed by the Hon'ble Supreme Court on 07/09/2018, that the Executing Court passed identical orders in the three execution proceedings dismissing both the applications filed on behalf of the petitioners. The Executing Court held that there was no ground made out by the petitioners for claiming that the decree was inexecutable and further that there was no substance in the other applications moved on behalf of the petitioners contending that the respondents could not claim pay scales of the Government of Maharashtra or Government of India.

8. Although, the said orders were passed on 07/09/2018, by the Executing Court, the petitioners claimed that they were unaware about the same because the Special Leave Petitions that were filed before the Hon'ble Supreme Court of India against the aforementioned common order passed by this Court remained pending for long time and the counsel appearing for the petitioners was under the impression that the Special Leave Petitions were still pending. As a result, the proceedings before the Executing Court could not be attended to when the aforesaid orders

dated 07/09/2018 were passed. On this basis, review applications and also applications for condonation of delay were filed in February 2019 before the Executing Court. By order dated 15/4/2019, the Executing Court rejected the applications for condonation of delay, holding that the petitioners had failed to make out sufficient cause for condonation of delay. Thus, the petitioners are before this Court challenging the orders dated 07/09/2018 and 15/4/2019, passed by the Executing Court against them.

9. Mr. H. N. Verma, the learned counsel appearing for the petitioners submitted that the petitioners had demonstrated sufficient cause for condonation of delay before the Executing Court and that in the interest of justice the applications for condonation of delay in seeking review ought to have been granted by the Executing Court. It is specifically pointed out that the pendency of Special Leave Petitions had led to a situation where proceedings before the Executing Court were in a limbo. Therefore, the petitioners could not be blamed for negligence in attending the proceedings before the Executing Court. It is submitted that the order sheet of the Executing Court would show that the proceedings had been diligently attended by the counsel representing the petitioners at earlier point of time, but, due to the pendency of the proceedings before the Hon’ble Supreme Court, the situation had arisen

due to which the impugned order dated 07/09/2018, was passed in the absence of counsel representing the petitioners.

10. As regards the impugned order dated 07/09/2018, passed by the Executing Court, it was submitted that on both the aspects i.e. on executability of the decrees as well as manner in which the decrees were sought to be executed by the respondents, the Executing Court failed to appreciate the contentions raised on behalf of the petitioners. It was submitted that perusal of Clause 3 of the decrees passed in favour of the respondents would show that there was lack of clarity and such a vague direction regarding payment of salary as per pay scales of the Government of Maharashtra or the Government of India could not be executed. It was further submitted that by way of amendment the respondents were seeking payment in terms of a Government Resolution and they were claiming applicability of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 and Rules framed therein, which was impermissible and it did not flow from the decrees passed by the Trial Court. Additionally it was submitted that by making payment of arrears as per Clause 2 of the decrees, the same stood satisfied. Yet, the Executing Court dismissed the applications filed by the petitioners without appreciating the contentions raised on behalf of the petitioners. The learned counsel

for the petitioners relied upon the Judgment of the Hon'ble Supreme Court in the case of **Satimbla Sharma and Others Vs. St Paul's Senior Secondary School and Others (2011) 13 SCC 760** and **Vedic Girls School Vs. Rajwanti 2007(5) SCC 97**, to emphasize that the respondents could not claim salary as per the Government pay scales, particularly when the petitioners were running an unaided minority institution and further that when the decree itself was vague and not ascertainable, grant of salary as per the Government scales sought by the respondents was not sustainable.

11. On the other hand, Mr. R.M. Bhangde, the learned counsel appearing for the respondent employees in all these writ petitions submitted that the Court below had not committed any error while passing the impugned order. It was submitted that no cause for condonation of delay was at all made out by the petitioners while seeking condonation of delay in filing the review applications before the Executing Court. It was submitted that the Executing Court in the order dated 15/04/2019, had noted details of the dates when the execution proceedings were listed before the Executing Court after dismissal of the Special Leave Petitions on 21/11/2017. It was found on facts that the petitioners had been negligent and therefore, it was submitted that no error could be attributed to impugned orders dated 15/4/2019,

refusing to condone the delay. In so far as impugned orders dated 07/09/2018, are concerned, it was submitted that the Executing Court was justified in rejecting the application filed on behalf of the petitioners. The contention regarding inexecutability of the decrees, particularly Clause 3 thereof was without any substance and it was submitted that the said Clause could not be said to be vague. It was submitted that even if there was any scope for contending that the exact nature of the relief granted in Clause 3 was not discernible, as per settled law the Executing Court could certainly look at the body of the judgment on the basis of which the decree was granted and even pleadings of the rival parties before the Trial Court. It was submitted that the findings rendered by the Trial Court in the original judgments and decrees, pertaining to relevant issues were absolutely clear and it was specifically held that the respondent employees were entitled to grant of pay scales on par with identically situated employees in aided schools in the State of Maharashtra. In this regard, reliance was placed in the case of **Rajinder Kumar Vs. Kuldeep Singh and Others (2014) 15 SCC 529**.

12. As regards the merits of the matter before the Executing Court, it was submitted that the respondent employees by way of amended applications had relied upon the Government resolution as well as the provisions of the Maharashtra Employees of Private

Schools (Condition of Service) Regulation Act, 1977. It was submitted that these claims were made by the respondents to support their claim of quantum of relief towards salary payable to them under the decrees sought to be executed. It was submitted that the petitioners herein could certainly object to the quantum payable to the respondents employees and the parties were yet to lead evidence before the Executing Court on that aspect. Considering this situation, it was submitted that the Executing Court was fully justified in dismissing both the applications filed on behalf of the petitioners. On this basis, it was submitted that the writ petitions deserved to be dismissed.

13. Heard learned counsel for rival parties and perused the documents on record.

14. The facts noted above show that this is the third round of litigation between the parties at the stage of the execution of the decrees. The suits were decreed as far back in April, 2003 and the decrees stood confirmed by dismissal of the Special Leave Petitions on 22/08/2008. Yet, till date the decrees have not been executed, partly because the respondent employees sought amendment of their execution proceedings, leading to challenges raised on behalf of the petitioners. In the first two rounds of litigation before this Court, the amendments to the execution

proceedings granted by the Executing Court were upheld and thereafter, orders passed by the Executing Court rejecting the applications filed on behalf of the petitioners were set aside and the matters were remanded to the Executing Court.

15. The principal issue raised on behalf of the petitioners was that a perusal of Clause 3 of the decrees passed by the Trial Court in favour of the respondent employees would show that the decrees were inexecutable. It was contended that the manner in which Clause 3 of the decree was worded it was vague, not ascertainable and appeared to be contradictory. It was submitted that the aforesaid clauses directed that the petitioners were liable to pay salary to the respondent employees in terms of pay scales prescribed by the Government of Maharashtra or the Government of India, as mentioned in para 6 Chapter II category A(6). It was submitted that no such bye laws actually existed and that, therefore, this part of the decree was wholly inexecutable. As regards the pay scales in terms of the scales of Government of Maharashtra, it was submitted that since the petitioners were running an unaided minority institution, there was no question of the said pay scales of Government of Maharashtra being applicable. It was submitted that there were judgments of the Hon'ble Supreme Court laying down the said portion. On this basis, it was claimed that the decree was inexecutable.

16. It was also claimed that the said Clause No.3 was vague in so far as scale payable to the respondent employees could not be ascertained and in such a situation, the decree was rendered inexecutable. Therefore, the execution proceedings deserved to be dismissed. It was further contended that the provisions of the bye laws, as mentioned in the decrees were not enforceable, therefore, on this basis also the decrees were not executable. In order to examine whether the decrees could not be said to be executable because of the fact that they were vague, it is necessary to refer to the said operative portion of the decree. Clause 3 of the operative portion of the decrees in all these three cases reads as follows :

> "Defendant is hereby further directed to pay the salary as per prescribed pay scale Govt. of Maharashtra or Govt. of India as mentioned in a bye-laws Chapter II Category -A(6)."

17. The position of law laid down by the Hon'ble Supreme Court in the case of **Rajinder Kumar Vs. Kuldeep Singh and Others** (supra) states that if there is any ambiguity in the decree, the Executing Court should construe the decree if necessary after referring to the judgment. In the present cases, in the first place the above quoted Clause of the decrees passed in favour of the respondent employees does not 0.appear to be vague. This is because the petitioners were specifically directed to pay salary as per the

prescribed pay scales of the Government of Maharashtra or the Government of India as mentioned in the bye laws. If the petitioners had any confusion as to whether the payment was to be made in terms of the scales payable to employees of Government of Maharashtra or the Government of India, as per the referred bye laws, a perusal of the judgment of the Trial Court in the present case shows that while arriving at findings on the said question of entitlement of the respondent employees to pay scales payable to the employees of aided schools, it is categorically stated by the Trial Court in its judgment as follows :

> "26. It is pertinent to note that, I have already discussed and held that, the plaintiff is entitled to recover the difference of salary as per schedule filed on record by plaintiff at Exh.42. In such circumstances one thing is crystal clear that, the defendants are paying less salary to their employees i.e. plaintiff has compared to the prescribed pay scale of State Govt. of Mah. As well as Govt. of India through it was bounden duty of the defendant school. No doubt the defendant school is unaided one but there should be parity in respect of payment of salary of the employee of defendant school as well as school of State Govt. of Mah. However, it is a bounden duty of a defendant to pay salary to their employee as per prescribed pay scale of State Govt. or of Govt. of India. As I have already held that, there should not be discrimination in respect of payment of salary of private unaided school as well as aided school. In such circumstances, relief claimed by plaintiff is quote consistent and reliable to give discretion to the defendant to pay salary as per pay scale of State Govt. of Mah. or Govt. of India along with other benefits. Therefore, my findings as to issue

No.6 in affirmation."

18. Since the judgments and decrees passed by the Trial Court in the case of 3 respondent employees are identical, the above quoted portion applies to all the respondent employees herein. A perusal of the above quoted portion shows that implication in the judgments of the Trial Court is that even if the petitioners are running an unaided minority school, there cannot be discrimination in respect of payment of salary of the respondent employees as compared to the employees of the schools run by the Government of Maharashtra. In fact, it was held that it was the bounden duty of the petitioners to pay salary to their employees as per the prescribed pay scales of the Government of Maharashtra or the Government of India. It is further held that there should not be discrimination in respect of payment of salary in private or unaided schools. The said findings given in the judgments of the Trial Court read with Clause 3 of the decrees requires the petitioners to make payment of salary to the respondent employees in the same scales in which similarly situated employees of the State of Maharashtra aided schools are being given. Therefore, there is no ambiguity in the clauses of the decrees and contentions raised on behalf of the petitioners that the decree is unexecutable cannot be sustained.

19. It is contended on behalf of the petitioners that the direction in Clause 3 is vague and that if there is any point in dispute that arises in so far as decree is concerned, then in terms of the law laid down by the Hon'ble Supreme Court in the case of **Vedic Girls School Vs. Rajwanti** (supra), such a decree would not be executable. But, a perusal of the aforesaid judgment shows that in the said case the decree passed in favour of the employee merely stated that the employee was entitled to receive salary through cross cheques from the defendants therein. While seeking to the execute said decree, the decree holder employee insisted that such salary must be paid to her in terms of Government scales. In such a situation, the Hon'ble Supreme Court held that the decree holder could not insist payment as per the Government scales because no such specific direction was found in the decree.

20. In the present case, as noted above, it is specifically directed that the respondent employees are entitled to payment of salary in terms of pay scales given to the employees of the Government of Maharashtra or the Government of India. Therefore, reliance placed on the said judgment is misplaced.

21. So also, reliance placed on the case of **Satimbla Sharma and Others Vs. St Paul's Senior Secondary School and Others** (supra), is also misplaced because the question whether, under the said law laid

down by the Hon'ble Supreme Court the respondent employees would be entitled to parity of pay scales with the employees of the Government schools was a question that was raised and contested when the original decree was made subject matter of the appeals. In fact, such specific question was raised in the second appeal filed by the petitioners before this Court, but, the same was rejected and even Special Leave Petitions were rejected, leading to confirmation of the original decree passed by the Trial Court. If the Executing Court entertained the very same question, it would amount to going behind or beyond the decree passed by the Trial Court, which is wholly improper. Therefore, there is no substance in the contention raised by placing reliance in the case of **Satimbla Sharma and Others Vs. St Paul's Senior Secondary School and Others** (supra). Hence, this Court does not find any fault in the findings rendered by the Executing Court to the effect that the application for dismissal of the execution proceedings filed by the petitioners had no substance in it.

22. The Executing Court also found that the other applications filed in the execution proceedings by the petitioners were also without any substance. A perusal of the said applications would show that the emphasis in the said applications was again on how the decree passed by the Trial Court was inexecutable. Apart from that, it was further contended that the

respondent employees were not entitled to claim grant of salary in terms of the Government resolution passed by the State Government or on the basis of provisions of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977. On this basis, it was claimed that the decree could not be executed. But, the said aspect pertains to the quantum of financial relief payable to the respondent employees and it may be claimed by the respondent employees that they were entitled to specific quantum on the basis of said Government resolution or provisions of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977. But, the same would have to be ascertained on the basis of evidence that may be led by the respondent employees and also by the petitioners to contest the same. It could never be said that the amended execution petitions of the respondent employees did not deserve further consideration because neither the Government resolution nor the provisions of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977, were applicable. Therefore, there appears to be no error in the impugned orders and writ petitions appear to be without any substance.

23. At this stage, the learned counsel for the petitioners submitted that if the impugned orders were confirmed, there would be no opportunity to the petitioners to lead any evidence to counter the claims

made by the respondent employees in the context of the quantum of salary payable to them in terms of decree, as the applications were dismissed and there were no objections surviving before the Executing Court. The learned counsel for the petitioners invited attention of this Court to specific orders passed by the Executing Court, whereby the right of the petitioner to cross-examine the witnesses of the respondent employees was taken away and the applications for recall of such orders were pending. It was also pointed out that applications made on behalf of the petitioners for permission to recall witnesses of the respondent employees and to cross-examine them, were also pending. In this situation, it was submitted that if the writ petitions were dismissed and the impugned orders were confirmed, the evidence sought to be led on behalf of the respondent employees would be accepted by the Executing Court, without any cogent evidence placed on record.

24. In this situation, the ends of justice would be meet by disposing of the writ petition in the following terms.

1. As noted above, this Court has found no merits in the writ petitions and hence they are dismissed and the impugned orders passed by the Executing Court stand confirmed.

2. Considering the facts and circumstances of the present case, notwithstanding the orders passed by the Executing Court, the petitioners would be at liberty to move fresh objection before the Executing Court, limited to the question of quantum of salary payable to the respondent employees in terms of Clause 3 of the decrees passed in their favour.

3. The petitioners as well as respondent employees would be given opportunity to lead evidence in support of their respective stands on the aforesaid issue.

25. The rival parties have agreed before this Court that despite orders dated 21/11/2018, 01/12/2018, 20/12/2018, passed by the Executing Court in the execution proceedings directing that the case would proceed without cross – examination of the decree holders, the petitioners would be at liberty to lead evidence and to cross-examine the witnesses.

26. Considering the fact that the decrees in the present case were passed in favour of the respondent employees as far back as in April 2003, which stood confirmed up to the Hon’ble Supreme Court in August 2008, the Executing Court is expected to proceed expeditiously and to ensure that the decrees are executed in accordance with law, as early as possible

and in any case within a period of six months from today.

JUDGE

MP Deshpande