

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 753 of 2022

Parbati Das

.....

Petitioner

Mr. Kishore Kumar Jena, Advocate

-versus-

East Coast Railways and others

....

Opp. Parties

Mr. Alok Kumar Mohanty,
Central Government Counsel

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
28.09.2022**

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. Petitioner in this CMP seeks to assail the order dated 29th June, 2022 (Annexure-4) passed by learned 1st Additional Civil Judge (Senior Division), Cuttack in Execution Case No.25 of 2021, whereby the execution case was disposed of with an observation that the decree is fully satisfied`.
 3. Mr. Jena, learned counsel for the Petitioner submits that the Petitioner/DHr. had filed Execution Case No.25 of 2021 for execution of judgment and decree passed in RFA No.73 of 2015 (Annexure-2). The relevant portion of the judgment dated 16th July, 2019 passed by learned 1st Additional District Judge, Cuttack in RFA No.73 of 2015 is quoted hereunder for ready reference.

“The Jdr. No.1 is directed to pay total compensation amount of Rs.8,15,400/- (Rupees eight lakhs fifteen thousand and four hundred only) with simple interest of 8% per annum with effect from the date of filing of the suit i.e., 15.07.2009 to the appellant/plaintiff through the learned court below within two months hence, failing which the appellant-plaintiff would be at liberty to realize the awarded amount along with the interest @ 12% per annum after completion of two months from the date of judgment till the payment is made from Respondent No.1/Jdr. No.1 through the process of law.

In the event of making such payment, the same shall be disbursed by the learned Court below to the plaintiff-appellant in the following manner.

Out of the total awarded compensation amount a sum of Rs.6,00,000/- (Rupees six lakhs only) shall be deposited in the name of Appellant-Plaintiff namely Parbati Das (mother of the deceased) in the said fixed deposit in any nationalized Bank for a period of six years with quarterly interest payable to her; and the balance amount along with the interest accrued on the total compensation amount be released in favour of the Appellant-Plaintiff (mother of the deceased) by way of cash.

The concerned Bank is directed not to allow any loan or advance of the fixed deposit treating the same as security nor it shall allow any premature withdrawal of the same without leave of the court.”

Since the Opposite Parties/JDrs. failed to comply with the aforesaid judgment and decree, the Petitioner filed Execution Case No.25 of 2021. On the date of filing of the filing the Execution Case, the outstanding amount including principal and interest was Rs.12,14,946/-. Accordingly, the Petitioner/DHr. pressed for realization of the aforesaid amount. Subsequently, Opposite Parties/ JDrs. appeared and accepting the prayer made in the Execution Case, deposited the aforesaid amount. In the meantime, one year had already elapsed. Hence, the Petitioner filed an application claiming an additional amount of Rs.8,44,200/- along with 12% interest on the said amount with

effect from 6th April, 2022 till the date of payment. Learned executing Court although referred to the application in the impugned order, but without considering the same has passed the impugned order, holding that the prayer in the Execution Case was made for payment of Rs.12,14,946/-, and the said amount had already been deposited by the Opposite Parties without any objection, dropped the execution case with an observation that the decree was satisfied. It is submitted by Mr. Jena, learned counsel for the Petitioner that amount mentioned in the execution case was on the date of filing of the execution petition. But, by the time the deposit was made by the Opposite Party/JDs., one year had already elapsed. Hence, they are liable to pay interest for the aforesaid period in terms of the judgment and decree put to execution. This aspect was not taken into consideration by learned executing Court. Hence, the impugned order should be set aside and the matter may be remitted back to learned executing Court to consider the petition filed by the DHrs.

4. Mr. Mohanty, learned Central Government Counsel contesting the above, submits that execution proceeding arises out of a money decree and it was filed for realization of Rs.12,14,946/-. The Opposite Parties/JDs. accepting the same deposited the entire amount. In that view of the matter learned executing Court has not committed any error in disposing of the execution case.

5. Taking into consideration the rival contentions of the parties, this Court is of the considered opinion that the amount so mentioned in the execution petition was due on the date of

filing of the execution proceeding. Had the amount been deposited on the date of filing of the execution petition, Petitioner/DHr. would not have any grievance to the same. But it appears that Opposite Parties/JDrs. deposited the amount after lapse of almost one year.

6. In that view of the matter, the Petitioner/DHr. is entitled to the interest, as directed till the amount is realized. This aspect was not considered by the learned executing Court adjudicating the Execution case No. 25 of 2021. In view of the above, impugned order dated 29th June, 2022 under Annexure-4 is set aside and the matter is remitted back to executing Court to adjudicate upon the petition filed by the Petitioner on 19th May, 2022 giving opportunity of hearing to Opposite Parties/JDrs. to file their objections so also opportunity to the parties concerned to have their say in the matter.

7. With the aforesaid observation, the CMP is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge