

S/L 17
16.5.2023
Court No.652
SD

CO 737 of 2021

Smt. Lalita Moitra, since deceased, represented by Monindra
Nath Moitra & Ors.

Vs.
State of West Bengal

Mr. Tanmoy Mukherjee
Ms. Paromita Moitra

...for the Petitioners.

Ms. Sutapa Sanyal
Ms. Susnita Saha

...for the Opposite Party.

Being aggrieved and dissatisfied with the Order No.86 dated 18.02.2021 passed by the learned Additional District Judge, 1st Court at Howrah in Money Execution Case No.35 of 2013 arising out of L.A. Misc. Case No.22 of 2005, present application under Article 227 of the Constitution of India has been preferred.

The petitioner states that the Division Bench of this Court while disposing FA No.317 of 2007 was pleased to observe vide its order dated 08.02.2013 as follows:-

“It is also made clear that if the entire compensation amount in terms of the order passed hereinabove is not paid to the appellant within the time granted to the State-respondent, then the solatium amount will carry further interest @ 8% per annum from the date of this order till realisation.”

It is further submitted on behalf of the petitioners that on the basis of said order, the compensation amount along with interest at the rate of 8% was required to be paid by the State within two months from the date of the order,

i.e., April 8, 2013. Subsequently, the Land Acquisition Tribunal by its order dated June 29, 2017 passed in Money Execution Case No.35 of 2013, was pleased to observe as follows:-

“So, it appears that the decree-holder is entitled to get a total amount of Rs.3,35,96,048/-, out of which, the Judgement-debtor i.e. State of West Bengal paid total amount of Rs.2,71,72,343/- and as such, the claimant/decreed-holder is entitled to get a rest total amount of Rs.64,23,705/-. Although the Hon’ble High Court, Calcutta directed this Court to give the interest @ 8% per annum on the solatium from the date of the order of the Hon’ble Court to till realization. As it is not known to this Court on which date, the payment will be made by the State of West Bengal, therefore, it is impossible to calculate the same as on this date. The State of West Bengal/Judgment-debtor is hereby directed to calculate the amount after this day on solatium only and the same will be made payment after that calculation till payment of the same.

In this order, the interest calculated in view of the spirit of the provisions of Section 28 of the L.A. Act, 1894 and Section 23 of the Act is meant for compensation and the solatium includes u/s 23(2) of the Act. Therefore, under the scheme of the Act is supported to calculate the interest u/s 28 including the solatium in favour of the decree-holder.

The State Authority as well as the Requiring Body are hereby directed to disburse the entitled amount to the claimant within two months from the date of this order positively in order to save the Government from paying further interest.”

It is now submitted on behalf of the petitioner that the State made the actual payment of Rs.64,23,705/- on 05.02.2021 by issuing account payee cheque. Now, the petitioner contends that the State is also liable to pay the interest from 30.8.2017 till actual realisation of money, i.e., 26.01.2021 which is amounting to Rs.25,22,209/- and accordingly, they filed an application before the executing court under Section 151 of the Code of Civil Procedure on February 15, 2021.

Learned court below by the impugned order was pleased to reject the said application with the observation that decree-holder received the entire amount on the basis of award passed by the court and the decree-holder previously did not file any such application before the court before receiving the decretal dues from the State of West Bengal amounting to Rs.64,23,705/-. Accordingly, the decree-holder by her own conduct waived her claim of further dues from the State of West Bengal.

Learned counsel appearing on behalf of the State submits that the delay in such payment was caused due to laches on the part of the decree-holder for not supplying the correct name in whose favour the State was liable to disburse the said amount and as such, the State is not liable to pay any further interest for the laches on the part of the decree-holder.

In reply, petitioner's counsel submits that his client's instruction is petitioner received said amount on protest, reserving her right to claim interest till actual realisation of compensation amount with interest.

However, learned counsel appearing on behalf of the petitioner submits that it is immaterial whether he received said amount on protest or not because State is duty bound to carry out court's order. According to the spirit of the order, State is under obligation to pay the interest till the date of actual realisation of the amount, i.e. 05.02.2021 and in this context, he also quoted provision laid down under Section 34 of the Land Acquisition Act and submitted that it is

mandatory obligation on the part of the State to pay interest till the date of actual disbursement of said amount.

In the above backdrop, the order impugned passed by court below is not only cryptic but also not supported by reason. From the order impugned it appears that court below jumped to a conclusion that petitioner has waived her right to claim interest since she did not make such prayer earlier, without having any reference to the earlier orders passed by courts time to time and without having any discussion on the representation made by the State in support of delayed disbursement. As such, I find that this is a fit case for remanding the issue involved in present application for fresh hearing in presence of both the parties.

Accordingly, the impugned order dated 18.02.2021 is hereby set aside.

Learned court below is directed to dispose of the decree-holder's application dated February 15, 2021 afresh after hearing the contention raised by the State as well as by the decree-holder and to pass a reasoned order afresh within a period of four weeks from the date of communication of the order.

With these observations, C.O. 737 of 2021 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)