

2023:PHHC:139442
**129 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6441-2019 (O&M)
Date of decision: 31.10.2023

Rameshwar Tyagi

....Petitioner

Versus

Satish Kumar (deceased) through LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sanjay Verma and
Mr. Pravesh, Advocates for the petitioner

Mr.Sachin Mittal, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the challenge is to the correctness of the order passed by the Executing Court on 16.09.2019. The petitioner herein is the judgment debtor. He is aggrieved of the direction of the Executing Court to pay the interest at the rate of 18% per annum on the amount of Rs.10,00,000/-, which was agreed.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the petitioner contends that the High Court while allowing the appeal filed by the respondent did not grant any interest. He submits that the Executing Court cannot move beyond the decree. He relies upon the judgment passed by the Supreme Court in **State of Punjab and others vs.**

Harvinder Singh’ (2008) 3 SCC 394 and ‘State of Punjab and others vs. Krishan Dayal Sharma’ (2011) 11 SCC 212.

4. On the other hand, the learned counsel representing the respondent submits that the decree-holder has been held entitled to Rs.10,00,000/- and he has prayed for the recovery of the amount with interest. Once his suit has been decreed, there will be an automatic order of payment of interest.

5. This Court has considered the submission made by the learned counsel representing the parties. In the **Krishan Dayal Sharma’s case (supra)**, the Supreme Court held as under:-

“6. There is no dispute between the parties that the decree which was put to execution did not contain any order or direction for the payment of any interest on the amount which was payable to the decree-holder consequent to the declaration made by the court decreeing the respondent's suit. There is further no dispute that no relief for interest had been claimed by the respondent in the suit nor any such claim was discussed or awarded by the court decreeing the suit.

7. In the absence of pleadings and directions in the judgment or decree which was under execution, it was not open to the executing court to award interest. The executing court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice.

8. *The right of the decree-holder to obtain relief is determined in accordance with the terms of the decree. The executing court has referred to a number of decisions where interest had been granted on the arrears of salary and pension. The executing court failed to appreciate that in those decisions direction for payment of interest had been issued by the court while granting relief for reinstatement or payment of arrears of salary or pension. None of those decisions relate to the grant of interest by the executing court. No doubt the courts have power to award interest on the arrears of salary or pension or other amounts to which a government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the executing court in the absence of any direction in the decree.*

9. *In this view the executing court in the instant case acted in excess of its jurisdiction in awarding interest to the respondent decree-holder.”*

6. In **Harvinder Singh’s case (supra)**, the Supreme Court in para 5 held as under:-

5. *Our attention was invited to the trial court judgment wherein reliance was placed on the reported decision of the Punjab and Haryana High Court in State of Punjab v. Radha Ram [(1990) 2 SLR 588 (P&H)] . In this case a learned Single Judge of the Punjab and Haryana*

High Court has taken a view that even if the decree is silent upon the interest, the executing court can grant it in case of money claims. In this case the learned Single Judge had relied on the decision of the Full Bench between the parties in Radha Ram v. Municipal Committee, Barnala [(1983) 85 Punj LR 21 (P&H)] . Three paragraphs are quoted from that decision. All the three paragraphs only pertain to the right of a person, whose termination had been set aside, to get the arrears of salary and allowance. From the three paragraphs at least it does not seem that the Full Bench had, in any manner, held that even where there is no interest granted in the decree, still the executing court would have the power to grant the interest. However, the learned Single Judge, after quoting the three paragraphs in para 6 observed that the executing court, while calculating the relief of past emoluments would have the powers under Section 34 of the Code of Civil Procedure, 1908 and would be in a position to grant interest. In our opinion this cannot be a correct reading of the Full Bench judgment or even the judgment in Krishan Murari Lal Sehgal v. State of Punjab (I) [(1977) 2 SCC 587 : 1977 SCC (L&S) 312 : AIR 1977 SC 1233] which was relied upon by the Full Bench of the Punjab and Haryana High Court. From the three paragraphs quoted above in the judgment it has been held by the Full Bench that: (Radha Ram

case [(1983) 85 Punj LR 21 (P&H)] , Punj LR p. 28, para 12)

“12. ... Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of the law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from that status.”

7. In this case, the operative part of the decree passed by the High Court while allowing the Regular Second Appeal reads as under:-

“It is ordered that the appeal is allowed and the judgment & decree of the court of District Judge, Gurgaon dated 08.10.2012 affirming that of the judgment & decree of the court of Additional Civil Judge (Senior Division), Gurgaon dated 08.10.2012 (as described at page no.1) be and the same are hereby set aside. The suit filed by the plaintiff is ordered to be decreed with costs.”

The cost incurred by the plaintiffs in suit shall be paid by the defendant as suit of the plaintiff is ordered to be decreed with costs by this Hon’ble Court.”

8. It is evident that there is no specific order directing the judgment debtor to pay the amount alongwith interest. The court

has only directed that the plaintiff suit shall stand decreed. However, in the absence of the specific order to grant the interest, the Executing Court was not correct in directing the judgment debtor to pay the amount alongwith 18 % per annum interest.

9. Keeping in view the facts that the decretal amount of Rs.10,00,000/- has already been paid during the pendency of the revision petition, the impugned order dated 16.09.2019 passed by the Executing Court is set aside. The Executing Court is directed to consign the execution petition to the records as the payment has already been made.

10. Disposed of.

11. All the pending miscellaneous applications, if any, are also disposed of.

31.10.2023

rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No