

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

DECIDED ON: 21st March, 2023

**(1) C.R. No. 7757 of 2019 (O&M)
Dee Kay Mechanical Works**

.....PETITIONER

VERSUS

Punjab State Power Corporation Ltd.

.....RESPONDENT

**(2) C.R. No. 7951 of 2019 (O&M)
Deepak Wire Industries**

.....PETITIONER

VERSUS

Punjab State Power Corporation Ltd.

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Tribhawan Singla, Advocate for petitioners.

AVNEESH JHINGAN, J (ORAL)

1. These two civil revision petitions are being disposed of by a common order as the legal issue involved is similar.

2. For convenience sake, the facts are being considered of Civil Revision No. 7757 of 2019.

3. The brief facts are that the petitioner was registered under Micro Small and Medium Enterprises Development Act, 2006 (for short 'MSME Act'). For resolving the dispute between the parties, the matter was referred for arbitration. The proceedings culminated into award dated 14.6.2010. The petitioner was awarded a sum of Rs. 37,15,894/- along with future interest at the rate of 19.5% per annum w.e.f 1.8.2009 till the date of its realization. The petitioner was satisfied with the award and had not filed objection under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act'). In the execution proceedings, the petitioner claimed that interest should be calculated by giving a monthly rests. The contention was rejected vide order

dated 6.8.2019, hence, the present petition.

4. Learned counsel for petitioner submits that as per MSME Act, interest is to be calculated with the monthly rests.

5. The issue involved in the present case whether the Executing Court can go beyond the decree is no longer *res-integra*.

6. The Supreme Court in **Vasudev Dhanjibhai Modi Versus Rajabhai Abdul Rehman and others, 1970(1) SCC 670** has held as under:

"6. A Court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."

7. Further in **Rameshwar Dass Dupta Versus State of U.P., 1997 AIR (Supreme Court) 410**, the Supreme Court has held as under:

"4. It is well settled legal position that an executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21, CPC. In view of the fact that it is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefites in accordance with the service law. That having been done and the court having decided the entitlement of the decree -holder in a sum of Rs. 1,97,000/- and odd, the question that arises is whether the executing Court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution ? In our view, the executing Court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It is true that the High Court normally exercises its revisional jurisdiction under Section 115, CPC but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest." (emphasis supplied)

8. The Supreme Court in **Rajasthan Financial Corporation v. M/s.**

M.I. Corpn. Ltd, AIR 2003 SC 4273, has held as under:

“18. We have considered the rival submissions. There can be no dispute to the proposition that the executing Court cannot go beyond the decree. There can be no dispute that the executing Court must take the decree according to its tenor. Also as has been set out in the Greater Cochin Development Authority's case (supra) when a decree is in terms of an award/document then the terms of that document have to be looked at.”

9. In **M/s TCI Finance Ltd. Versus Calcutta Medical Centre Ltd. and another, 2005(8) SCC 41,** the Supreme Court held as under:

"10. The Executing Court cannot go beyond the decree. It is the settled position in law which flows from Section 38 of CPC; except when the decree is a nullity or is without jurisdiction. The crucial expression in Section 47 is "All questions arising between the parties to the suit" "or their representatives". Order 21 Rule 54 deals with attachment of immovable property, while Rule 58 deals with adjudication of claims to, or objections to attachment of property. Case of respondent No.1 is not covered by Section 47 or Order 21 Rule 54 or Rule 58. The High Court misconceived the nature of claim set up by respondent No.1. Learned Single Judge rightly noted that respondent No.1 was not having independent right to the properties. It found that the right claimed was as assignee under the judgment debtor. The agreement, if any, in that regard was not produced before the Court and, therefore, learned Single Judge drew adverse inference. Before the Division Bench, the stand of respondent No.1 was that it was a tenant. Without indicating any reason as to how reasoning of learned Single Judge was wrong the Division Bench enlarged the scope of the controversy and directed the Execution Court to decide question of tenancy which is legally impermissible."

10. Further, in **Gurdev Singh Versus Narain Singh, 2008 (1) RCR (Civil) 125,** it was held as under:

"9. It is well stated that Executing Court cannot go behind the decree. As the decree did not clothe the decree holder to pray for execution of the decree by way of removal of the trees, the same could not have been directed by the learned executing Court in the name of construing the spirit of the decree under execution."

11. Further, in **S. Bhaskaran Versus Sebastian (Dead) By Lrs. And**

others, 2019 AIR (Supreme Court) 4306, it was held as under:

"9. Having perused the records and the findings of the Trial Court, we find ourselves unable to agree with the decision of the High Court in the impugned judgment. It is well-settled that an executing court cannot travel beyond the order or decree under execution (see [Rameshwar Dass Gupta v. State of U.P. and Another](#), (1996) 5 SCC 728).

In the present case, the Trial Court had already considered the evidence on record and given a finding that the Appellant and his uncle were the trustees of the temple. Notably, Umapathymurthy was a party to this suit and had contested it by filing a written statement, claiming to be the eldest son of Sadhasivamurthy. However, at that time, he did not put forth any objections to the heir certificate of Sadhasivamurthy, which was considered by the Trial Court while arriving at its finding. This judgment was confirmed by the First Appellate Court and no further appeal was preferred by the Respondents against it. In light of this, the findings of the Trial Court have become final, and Umapathymurthy as well as the other Respondents are bound by them.

By allowing them to re-open the question of trusteeship by way of an application in an execution petition, the High Court has gone beyond the decree to be executed and exceeded its revisional jurisdiction under Section 115 of the CPC. Since the findings of the Trial Court had attained finality, the decision of the executing court dated 31.01.2007 by which E.A. No. 5750/2003 was dismissed, should have been affirmed. Thus, the impugned judgment is not only illegal, but also without jurisdiction."

12. It is not disputed that the award was not challenged by petitioner and has attained finality. There is no ambiguity in the award that the interest was granted at the rate of 19.5% per annum. The contention of petitioner was rightly rejected in the impugned order as the executing Court cannot travel beyond the award/decreed. The petitioner could not have been granted relief in Execution Petition which was not awarded in arbitral award.

13. There is no factual or legal infirmity in the impugned order, consequently, the revision petitions are dismissed.

14. Since the main cases have been dismissed, pending application, if
any is rendered infructuous.
15. Photocopy of this order be placed on the file of connected case.

21st March, 2023
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *Yes*