

110.

2023:PHHC:157368

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

CR-6729-2023 (O&M)

Date of decision: 08.12.2023

AVIVA LIFE INSURANCE CO. INDIA LTD.

... Petitioner

Versus

PRAVEEN GAVRI

... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Manish Jain, Advocate, for the petitioner.

Mr. Sumeet Jain, Advocate, for the respondent.

GURBIR SINGH, J. (Oral)

CM-22026-CII-2023

Prayer in this application filed under Section 151 CPC by the petitioner is to place on record documents Annexures A-1 to A-4.

For the reasons mentioned in the application, same is allowed. Documents Annexures A-1 to A-4 are taken on record subject to all just exceptions.

CR-6729-2023

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 19.10.2023 (Annexure P-1) passed in appeal by learned Additional District Judge, Gurugram vide which the application filed by the petitioner-JD for removal of lien marked on the account of petitioner, has been dismissed.

2. The brief facts as culled out from the petition are that respondent-plaintiff (hereinafter called, “plaintiff”) filed a suit seeking a decree of declaration to the effect that the order of termination dated 09.10.2014 and the enquiry proceedings carried out by the petitioner-defendant are illegal, null and void and against the principles of natural justice. The said suit was decreed in favour of the plaintiff vide judgment and decree dated 15.11.2022 and he was ordered to be reinstated in the services of the defendant with backwages. The defendant preferred appeal against that judgment and decree. Pending appeal, execution was also filed by the plaintiff and vide order dated 20.03.2023, a lien of Rs.2.5 crores was marked on the account as maintained by the defendant. Aggrieved against the order of marking lien, the defendant filed an application for stay. Since the plaintiff has not prayed for damages in the plaint, the plaintiff moved an application under Order 6 Rule 17 CPC before the Appellate Court for amendment of the plaint seeking directions to the defendant to pay damages to the tune of Rs.1,25,99,500/- along with interest on account of illegal termination. Vide order 15.04.2023, stay was granted on the operation of the impugned order. Since stay was granted on the impugned judgment and decree, the defendant moved an application before the Executing Court for release of lien on its bank account. However, vide order dated 21.04.2023, the learned Executing Court dismissed said application by holding that since the learned Appellate Court is seized of the matter, the Executing Court has no jurisdiction to make an order for vacation of lien and further observed that staying of operation of impugned order does not mean that the order creating lien is also vacated. Defendant also made the same prayer before the learned appellate Court vide

application dated 20.07.2023, but vide order dated 19.10.2023, said application was also dismissed by observing that the execution is pending before the trial Court and liberty was given to the defendant to move appropriate application before the Executing Court, which was directed to be considered as per rules. The application of the plaintiff for amendment of plaint was dismissed vide order dated 19.10.2023 (Annexure P-11). Vide order of even date i.e. 19.10.2023 (Annexure P-1), the learned Appellate Court gave the liberty to the defendant to move an application for removal of lien before the Executing Court, which order is impugned by way of present revision petition.

3. Learned counsel for the petitioner-defendant has contended that the learned appellate Court failed to take into consideration the fact that the application seeking removal of lien had already been dismissed by the learned Executing Court vide order dated 20.03.2023. It is submitted that lien marked at Rs.2.50 crores is highly unjust. If the amount payable to the plaintiff is calculated, it comes to Rs.1,05,82,346/- (Annexure P-12).

4. Pursuant to notice of motion issued vide order dated 08.11.2023, Mr. Sumeet Jain, Advocate, has caused appearance in Court today. He has argued that because of illegal and wrongful act of the petitioner-defendant, the plaintiff could not get a new job and remained unemployed for more than 8 years. He could not give better living to his family. The lien marked is just and proper. He has moved 2nd application before the lower appellate Court for amendment of plaint, which is pending for 09.04.2024 and the proceedings in execution is fixed for 20.05.2024.

5. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

6. The dispute in this matter is regarding marking of lien. The petitioner-defendant is ready to furnish FDR of Rs.1 crore whereas said offer is not acceptable to the respondent-plaintiff, who submits that the amount due is more than Rs.2 crores.

7. Without commenting on the merits of the case, the present petition is disposed of with a direction to the Executing Court to decide the application of the petitioner in accordance with law filed for removal of lien on the account of petitioner, expeditiously preferably within a period of four weeks from the date of receipt of certified copy of this order.

(GURBIR SINGH)
JUDGE

December 08, 2023

sanjeev

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No