

2024:PHHC:036832

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
137**

CR-1613-2024

Date of decision: 14.03.2024

AVIVA LIFE INSURANCE CO. INDIA LTD.

.....PETITIONER

Versus

PRAVEEN GAVRI

.....RESPONDENT

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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

RITU TAGORE, J. (ORAL)

1. This revision petition is for setting aside the order dated 20.01.2024 (Annexure P-1) passed by the learned Civil Judge (Jr. Divn.), Gurugram, in Execution Petition No. 16/2023 titled as Praveen Gavri vs. CEO & MD Aviva Life, whereby the learned Executing Court dismissed the application, asking for removal of lien marked on the account of petitioner, and to set aside the order dated 20.03.2023 (Annexure P-4), whereby learned Executing Court, marked the lien on the Bank Account bearing No. 11809138, maintained by the petitioner with Citi Bank.

2. I have heard the learned counsel for the petitioner and with his able assistance, have gone through the paper-book.

3. Learned counsel for the petitioner submits that the Courts below have erred in refusing to exercise the jurisdiction in deciding the applications P-5 and P-7 respectively, filed by the petitioner praying for release of lien on the Bank Account of the petitioner. Learned counsel stated that the learned Executing Court failed to take into consideration that

the learned Appellate Court vide its order dated 19.10.2023 had directed the Executing Court to consider the application, if any, moved by the petitioner (JD), in accordance with law. It is stated that the petitioner had moved an application for removal of lien but the learned Executing Court vide impugned order dated 20.01.2024 (Annexure P-1) refused to decide the application on merits, on the premise that it had no jurisdiction to deal with the execution of the decree, when stayed by the learned Appellate Court. Learned counsel stated that the learned Appellate Court also declined to release the account of the petitioner on the ground that execution petition is pending before the Executing Court, and relegated the petitioner (JD) to Executing Court by moving an appropriate application for decision, as per law. Learned counsel prayed that appropriate directions be given to the Courts below to decide the applications (Annexure P-5 and P-7) moved by JD. At the same time, learned counsel, made a submission of not pressing the relief qua the order dated 20.03.2023 (Annexure P-4) at this stage, by stating that decision on the aforementioned applications would cover his grievance.

4. Keeping in view the limited prayer, issuance of notice to the respondent is dispensed with.

5. It is a matter of record that respondent filed a suit for declaration and mandatory injunction against the petitioner before the learned Civil Judge(Junior Division), Gurugram and the suit was decreed in favour of the respondent vide judgment dated 15.11.2022 (Annexure P-2). The petitioner aggrieved by the aforesaid judgment and decree filed its first statutory appeal on 20.12.2022 (Annexure P-3). Meanwhile, respondent filed an Execution Petition No. 16/2023 titled as Praveen Gavri vs. CEO & MD Aviva Life Insurance Company (Annexure P-1). As made out from

the paper-book, Learned Executing Court vide order dated 20.03.2023, after considering the plea of the decree holder, created a lien to the extent of ₹ 2.5 Crore of the decretal amount against the account bearing No. 11809138 of the petitioner and gave directions to Manager of the Citi Bank, accordingly. The aforesaid order was passed *ex-parte*.

6. It is also a matter of record that in Civil Appeal No. 448-2022, the respondent filed an application under Order 6 Rule 17 read with Section 151 of Code of Civil Procedure, 1908 for amendment of the plaint. The learned Appellate Court posted the appeal for reply of the petitioner and meanwhile, stayed the operation of the judgment vide its order dated 15.04.2023 (Annexure P-6).

7. Further, examination of the paper-book reveals that being aggrieved by the order of the Executing Court, petitioner moved an application for urgent listing of the matter before the Learned Appellate Court (Annexure P-5). On 20.04.2023, petitioner also moved an application before the learned Executing Court for release of lien on its bank account. The Executing Court, vide its order dated 06.07.2023, dismissed the application by observing as under:-

"once the Ld. Appellate Court seized of the matter, this executing Court has no jurisdiction to make an order for vacation of lien because had there been intention of Ld. Appellate Court to remove the lien, there could be specific order merely because the operation of judgment and decree has been stayed does not mean that the order creating lien is also vacated."

8. Thereafter, petitioner moved an application before the learned Appellate Court for removal of lien, the learned Appellate Court also

dismissed the said application by observing as follows:-

"since the execution petition is pending before Ld. Trial Court, they are at liberty to move appropriate application before the said court and executing court is directed to consider the same as per rule."

9. Petitioner also filed a revision against the order dated 19.10.2023 (Annexure P-9), which was disposed of with direction to the learned Executing Court to decide the application for removal of lien pending before it in accordance with law expeditiously.

10. Having considered the facts, as appearing on record, this Court is of the view that the learned Executing Court erred in not deciding the application (Annexure P-7) on merits, moved before it. The learned Appellate Court had stayed the operation of impugned judgment and not the order dated 20.03.2023 (Annexure P-4), creating lien on the account of the petitioner, passed by the learned Executing Court prior to the passing of the order staying the operation of the impugned judgment. Furthermore, in the present case, learned Appellate Court, vide order dated 19.10.2023, had directed the learned Executing Court to consider the application, if any, moved by the petitioner (JD).

11. In view thereof, learned Executing Court was not required to lay its hands off on premise of lack of jurisdiction to decide the application, specially when the learned Appellate Court had not stayed the order dated 20.03.2023 (Annexure P-4) passed by the learned Executing Court. Learned Executing Court, thus, committed a jurisdictional error while passing the order dated 20.01.2024 (Annexure P-1). The same is, hereby, set aside with a direction to the learned Executing Court to decide the application for release of lien on bank account of the petitioner (JD)

(Annexure P-7) on merits. It is hoped that the learned Executing Court shall dispose of the above application expeditiously.

12. Accordingly, the revision petition stands disposed of in above terms.

13. In view of the disposal of the main revision petition, pending applications, if any, stand disposed of accordingly.

March 14, 2024
pj

(RITU TAGORE)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether reportable: *Yes/No*