



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-1704-2024 (O&M)
Date of decision: 28.05.2024

Parvin and others

...Petitioners

Versus

Harbhajan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. U.K. Kanwar, Advocate for the petitioners.

VIKAS SURI, J.

1. The petitioner-decree holders have invoked jurisdiction of this Court under Article 227 of the Constitution of India seeking directions to the Executing Court at Jalandhar to decide the execution application registered as EXE/51/2023, titled as *Parvin vs. State of Punjab and others*, in a time bound manner. Reliance has been placed upon the directions and guidelines laid down by the Apex Court in ***Rahul S. Shah vs. Jinendra Kumar Gandhi and others*, (2021) 6 SCC 418.**

2. The case of the petitioners as made out from the averments in the instant revision petition is that the claim petition filed by the petitioners before the Motor Accident Claims Tribunal, Jalandhar was allowed vide award dated 27.01.2023 and the claimant/petitioners were awarded compensation in the sum of Rs.13,46,089/- along with interest



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@ 7.5% p.a. from the date of filing the claim petition till its realization. Seeking enforcement of the aforesaid award, the petitioners moved execution petition on 16.02.2023. Upon notice of the same, the JDs put in appearance on 20.05.2023 and sought time for making payment. Thereafter, the matter is being adjourned repeatedly on the request of the JDs to make the payment.

3. It is submitted that the execution proceedings are now pending for 29.07.2024.

4. On advance notice, Ms. Vikas Suman Chaudhary, DAG, Punjab, appears on behalf of respondent Nos.2 and 4 i.e. the owner of the offending vehicle i.e. Punjab Roadways Bus bearing registration No.PB10-ES-4308.

5. Heard learned counsel for the parties and with their able assistance perused the record.

6. In **Rahul S. Shah's case** (supra), after noticing that procedural provisions had been constantly abused, the Apex Court expressed its dismay over the manner in which execution petitions are being dealt with by the Executing Courts and in the light of the same issued a slew of directions. The operative part of the said judgment reads thus:-

“42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third-party interest and further



exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

42.5. The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security



to ensure satisfaction of any decree.

42.8. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

42.11. Under section 60 of CPC the term "...in name of the judgment- debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police



Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.”

7. The aforesaid directions were reiterated by the Apex Court in ***Bhoj Raj Garg vs. Goyal Education and Welfare Society and others***, **2023(1) Apex Court Judgments (SC) 165**. The relevant portion of the said decision reads as under:-

“2. This means that it becomes the duty of the Execution Court to dispose of the execution proceedings at the earliest and since this Court has directed that the Execution Court must dispose of the execution proceedings within six months from the date of filing, which can be extended only by recording reasons in writing for such delay, this direction is meant to be observed. This would mean that every effort should be made to dispose of the execution petition within the said time limit and the Execution Court should have reasons for not being able to dispose of the execution petition. The Execution Court is duty bound to record reasons in writing when it is unable to dispose of the matter.”

3. We need only reiterate what this court has already ordered.”



8. In the present case, the facts are not disputed. Admittedly, the claim petition filed by the petitioners under Section 166 of the Motor Vehicles Act, 1988, was allowed and the petitioners were awarded compensation of Rs.13,46,089/- along with interest @ 7.5% p.a. The petitioners are now before the Executing Court seeking enforcement of the aforesaid award. Learned counsel for the petitioners has emphatically contended that in view of the slew of directions issued by the Apex Court, the Executing Court was under an obligation to dispose of the execution proceedings within six months from the date of filing and the same were to be extended only by recording reasons in writing for such delay. The execution application was moved on 16.02.2023 and since then much time has lapsed and the matter is being adjourned merely at the asking of the respondent-judgment debtors.

9. Per contra, learned State counsel submits that the award dated 27.01.2023 has not attained finality and it has been impugned by the respondents by way of FAO-5883-2023, which is pending for 25.07.2024. However, it is not disputed that the Appellate Court has not granted any stay, so far.

10. It is well settled that pendency of appeal does not operate as a stay of proceedings under a decree or order except so far as the Appellate Court may order. The provisions of Order 41 Rule 5 CPC provide that execution of a decree shall not be stayed by reason only of an appeal having been preferred. In view of the settled law, there being no stay of execution of the award dated 27.01.2023, the Executing Court was to proceed and is bound to follow the directions of the Hon'ble



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Supreme Court of India in letter and spirit. The execution petition is to be decided within a period of six months as directed by the Apex Court.

11. In view of the above, the present revision petition is disposed of with a direction to the Executing Court concerned to comply with the directions of the Apex Court in the case noticed above and dispose of the execution petition in accordance with law while recording reasons for its non disposal in case of any further delay, as held by the Apex Court.

12. The revision petition is disposed of in the aforesaid terms.

13. Pending applications, if any, also stand disposed of.

May 28, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No