

2024:PHHC:127940



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

120

CR-3497-2024 (O&M)

Date of decision: 26.09.2024

Baljinder Singh and another

...Petitioners

Versus

Major Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. H.S. Jalal, Advocate for the petitioners.

VIKAS SURI, J. (Oral)

1. Challenge in the present petition under Article 227 of the Constitution of India is to the order dated 21.03.2024, passed by the learned Executing Court, whereby conditional warrants of arrest have been issued against the petitioners (judgment debtors).

2. The facts in brief are that respondent-Major Singh, filed a suit for mandatory injunction seeking release of service benefits, including gratuity, at the time of retirement amounting to Rs.5,85,630/-. Reliance was also placed on the resolution dated 22.05.2012 passed by the society whereby the amount of gratuity was revised to Rs.6,21,855/-.

2.1 Upon notice, the suit was contested by filing written statement, wherein the plea was set up that a criminal case had been registered against the plaintiff owing to embezzlement of funds of the society. The plaintiff had raised a dispute, which was referred for



arbitration, and the arbitration cases had been decided against the plaintiff.

2.2 On appraisal of the pleadings and the evidence on record, the trial Court partly decreed the suit with costs against defendant Nos.2 to 5, while dismissing the same against the State Government, i.e. defendant No.1. The plaintiff was held entitled to audited gratuity, subject to adjustment of the entire amount which was recoverable from the plaintiff with regard to his services, being the Secretary of two societies. Defendant Nos.2 to 5 were directed to release the gratuity amounting to Rs.6,21,855/- along with interest @ 6% p.a., from the date of his retirement till realization of the said amount.

3. Aggrieved by the aforesaid judgment and decree, respondent Nos.1 and 2 herein preferred an appeal before the first appellate Court, which was disposed of by a consent order dated 27.03.2024 (Annexure P-4).

3.1 In the meanwhile, respondent filed execution application seeking implementation of the judgment and decree dated 18.10.2021. In the execution proceedings, respondent moved an application under Order 21 Rule 32 CPC for issuance of warrants of arrest and detention in civil prison of the judgment debtors.

3.2 After considering the reply filed to the said application and the rival contentions advanced by the parties, the said application was allowed vide impugned order dated 21.03.2024. The operative part of which reads as thus:-



“6. The present application has been filed under Order 21 Rule 32 read with Section 151 CPC. The JDs have availed various opportunities for making payment to DH, but despite that they have failed to do the same. So, this Court has left with no other option except to issue conditional warrants of JDs. Moreover, this Court has to satisfy the decree. The Civil Court has no jurisdiction to modify a decree. It must execute the decree as it is. The Court cannot go beyond the decree by not giving relief which has already been given to decree holder vide abovesaid judgment and decree.”

4. Aggrieved by the said order, the same has been assailed by way of the present petition.

5. Learned counsel for the petitioners has submitted that the impugned order dated 21.03.2024 cannot be sustained as the judgment and decree sought to be enforced against the petitioners stands modified vide judgment and decree dated 27.03.2024.

6. I have heard learned counsel for the petitioners and perused the paper book.

7. It is not disputed that the suit for mandatory injunction filed by the plaintiff-respondent Major Singh was decreed with costs for recovery of an amount of Rs.6,21,855/- along with interest @ 6% p.a. The said judgment and decree has since merged in the judgment and decree dated 27.03.2024, passed by the first appellate Court. The operative part of the appellate Court's judgment, is reproduced hereunder for reference:-



“16. Learned counsel for the appellants at the outset of arguments consulting the representative of the appellants, submitted that the Department is ready to make the payment of aforesaid dues to the plaintiff by deducting the amount of recovery pending against the plaintiff as per departmental enquiry. Learned counsel for the plaintiff consulting the plaintiff in the Court, submitted that the appeal may be accordingly disposed of by giving the direction to the Department to release the payment of the plaintiff as per the impugned Judgment after deducting the recovery amount.

17. In view of above, appeal is allowed with directions that the impugned Judgment and Decree is upheld. The payment would be made to the plaintiff as per the impugned Judgment and Decree after deducting any recovery amount due against the plaintiff.”

8. On a query of the Court with regard to the amount recoverable from the plaintiff, an affidavit dated 23.09.2024 (Annexure P-13) has been placed on record along with special reports of the audit offices and the various Arbitration Awards, as Annexures P-8 to P-12. It is contended that as per the calculations placed on record, Annexures P-6 and P-7, which are based on arbitral awards, Annexures P-8 to P-12, the decree holder/respondent-Major Singh has to pay the differential amount, after deducting the aforesaid amount from his gratuity, as per decree itself.

9. Heard learned counsel for the petitioners and perused the paper book with his able assistance.

10. Concededly, the execution petition filed by the petitioners is



for execution of the judgment and decree dated 18.10.2021, on the basis of which the impugned order dated 21.03.2024 has been passed. The judgment and decree passed by the trial Court has undisputedly been modified, vide judgment and decree dated 27.03.2024 passed by the learned Additional District Judge, Bathinda, being the first Appellate Court. During the course of arguments, it has not been disputed that the judgment and decree passed by the trial Court has merged with that of the appellate Court dated 27.03.2024 and the same was not before the learned Executing Court at the time of passing of the order dated 21.03.2024.

11. In view of the aforesaid, the present petition is disposed of with liberty to the petitioners to approach the learned Executing Court apprising it of passing of the judgment and decree dated 27.03.2024 and also the additional material produced before this Court as Annexures P-6 to P-12.

12. The revision petition is disposed of with liberty aforesaid.

September 26, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No