



CR-4236-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(119)

CR-4236-2023 (O&M)
Date of decision:- 03.10.2024

Rajiv Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Veena Hooda, Advocate
for the petitioner.

Mr. Sharad Aggarwal, DAG, Haryana

SUVIR SEHGAL, J. (ORAL)CM-13162-CII-2023

1. Application is allowed as prayed for.
2. Legal representatives of Jagdish Chander @ Jagdish Nain are brought on record in place of the deceased.

Main case

3. By way of instant revision petition, petitioner has approached this Court under Article 227 of the Constitution of India for setting aside the impugned order dated 09.05.2023, Annexure P-4, passed by the learned Additional District Judge, Fatehabad.
4. Counsel for the petitioner submits that M/s Nain Construction Company was awarded work of upgradation of a road vide letter dated 03.03.2010, but a dispute arose between the parties and in the midst of

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execution of the work as respondent No.1 terminated the contract and imposed some damages. She submits that in terms of the agreement between the parties, an application was moved before the Empowered Standing Committee, which culminated in the passing of the award dated 29.08.2014. In the meantime, Sh. Jagdish Nain, representative of M/s Nain Construction Company, expired in the year 2011. She submits that respondent No.1 filed an execution petition in the year 2016 and M/s Nain Construction Company was proceeded against ex-parte. Counsel asserts that on attaining knowledge about the pendency of the execution proceedings, an application dated 07.01.2023, Annexure P-3, was filed by the petitioner, who is the son of the deceased, for setting aside the ex-parte proceedings and for permitting the petitioner to appear, but the application has been erroneously dismissed by the Executing Court.

5. Mr. Sharad Aggarwal, DAG, Haryana, learned counsel for respondent No.1 has opposed the petition to submit that the petitioner is adopting delaying tactics and despite being aware did not deliberately participate in the execution proceedings.

6. I have heard the counsel for the parties and considered their respective submissions.

7. From perusal of the death certificate (at page 37 of the paper-book), it is apparent that Jagdish Nain, petitioner's father, had expired on 19.10.2011. Execution petition has been filed by respondent No.1 in the year 2016 and on account of non-appearance of the representative of M/s Nain Construction Company, the judgment debtor was proceeded against

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ex-parte. Application was filed by the petitioner, who is the legal representative of Jagdish Nain, for participating in the proceedings. However, without appreciating that the sole representative of M/s Nain Construction Company had already expired, the learned Additional District Judge, Fatehabad erred in dismissing the application. This Court is of the view that as the impugned order has been passed without appreciating the factual position, the same cannot be sustained.

8. For the afore-going reason, impugned order, Annexure P-4, is set aside and matter is remitted to the Executing Court to decide the application, Annexure P-3, afresh, in accordance with law.

9. Petition is disposed of.

10. Parties are directed to appear before the Executing Court on 11.11.2024, for further proceedings in accordance with law.

11. As the main case has been decided, miscellaneous application shall stand disposed of.

(SUVIR SEHGAL)
JUDGE

03.10.2024

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No