

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

206

CWP-3741-2017 (O&M).
Date of Decision: 29.04.2024.

TEJINDER KAUR AND OTHERS

.. Petitioners

Versus

UNION OF INDIA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. P.S. Khurana, Advocate,
for the petitioner.

Mr. Sandeep Bhatia, Advocate,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the orders dated 25.10.2014 and 24.09.2014 (Annexures P-7 and P-6 respectively) passed by respondent No.2 whereby claim of the petitioners for release of interest on the amount due pursuant to the judgment passed by this Court in FAO No.4243 of 2005 decided on 06.02.2014 has been rejected.

Learned counsel for the petitioners contends that Harjit Singh Bhola, (the deceased husband of the petitioner no.1) was the contractor and had undertaken various contractual obligations on behalf of respondent No.2-Garrison Engineer, Ferozepur Cantt. It is submitted that there were

various payments due to the contractor-husband of the petitioner on account of execution of the works, however, he unfortunately died in a road accident on 26.03.2002. The due payments were accordingly withheld by the respondents even though the respondent No.2 had issued a certificate of outstanding amount on 29.11.2003. The petitioner accordingly filed a petition under Section 372 of the Indian Succession Act, for grant of succession certificate regarding 4/5th share out of the Estate/debts/securities of late Harjit Singh Bhola. The trial Court partly allowed the petition on 04.01.2005 but rejected the claim against respondent No.2-Garrison Engineer, on account that the petitioner could not prove the exact amount owed to the deceased Harjit Singh Bhola by the Military Engineering Services. Aggrieved thereof, FAO No.4243 of 2005 was filed before this Court which was allowed vide judgment dated 06.02.2014 directing the respondent No.2 to pass a fresh order with respect to the interest, if any, payable to the petitioner in accordance with the rules, regulations and instructions governing the award of interest. It was observed that the money remained with Military authorities for a period of nearly 12 years and that they would have earned interest thereupon.

In compliance to the said order, the principal amount due to the petitioner was released however, the interest was not paid whereupon an application was submitted by the petitioner on 17.09.2014 for release of the interest on the payments that were withheld by the respondents. Vide order dated 24.09.2014 and 25.10.2014, the claim of the petitioner for grant of interest was rejected on the ground that the delay in releasing the payment was on account of non-production of succession certificate by the petitioner.

It was also conveyed that there was a dispute inter se amongst the heirs about the said amount.

Aggrieved of the rejection of the claim regarding interest, the present writ petition has been filed.

Learned counsel for the petitioners contends that the reasons cited by the respondents for denial of the interest accrued on the amount are fallacious. Respondent No.2 withheld and utilised the amount due to the petitioner for a period of more than 12 years and that the representative of the respondent had appeared before the trial Court and that it was incumbent upon him to furnish the details of the amount due. The petitioners being a widow and children of the deceased Harjit Singh did not have the sources to prove the exact amount which was payable by respondent No.2 to the husband of the petitioner, and that the succession certificate was partly declined with respect to the amount due from respondent No.2 only on account of the dues not being assessed or ascertained. It is contended that once all the said aspects had been taken into consideration by the High Court in FAO No.4243 of 2025 decided on 06.02.2014 whereby direction was issued to respondent No.2 for deciding the issue of interest, the entitlement of the petitioners to the interest ought to have been considered by them while taking into consideration the provisions of Section 34 of the Code of Civil Procedure, 1908, which entitles a person to interest.

Learned counsel for the respondents, on the other hand, contends that petitioner No.1 had filed the petition under Section 372 of the Indian Succession Act, for issuance of a succession certificate in her favour, however, the succession certificate was not allowed to the petitioner with

respect to the liability due to the petitioners from respondent No.2-Garrison Engineer. The same was denied as the petitioner could not bring out the entire facts as a result whereof, the petitioners had to approach this Court.

Learned counsel for the respondents submits that there was no error on the part of the respondents in releasing the payment and since Harjit Singh Bhola had passed away, it was the duty/responsibility of the petitioners to obtain the succession certificate from the competent Court of law after the death of contractor on 26.03.2002. The succession certificate was submitted by the petitioners only in the year 2014 i.e. after a gap of nearly 08 years and that the outstanding amount was released immediately without any further delay. He submits that the payment has been accepted by the petitioners without any reservations/protest and that there is no further liability which is owed by the respondents to the petitioners.

No other argument has been raised.

I have heard learned counsel appearing for the respective parties and have also gone through the documents available on the record.

The liability to the petitioners remains undisputed and the sole reasons given by the respondents regarding delay in release of the payments was on account of necessity of obtaining a succession certificate which was originally declined and was granted under the orders of this Court passed in FAO No.4243 of 2005 decided on 06.02.2014. The payment in question is stated to have been released immediately thereafter vide cheque dated 02.06.2014, however, the issue with respect to the payment of interest on the said amount was considered and denied on the ground that there is no provisions under the contract. However, it is relevant to examine at this juncture that Section 34 of the Civil Procedure Code, 1908,

contemplates award of interest for any period when a dispute has remained pending before the Court. It is undisputed that this Court vide order dated 06.02.2014 passed in FAO No.4243 of 2005, held that the petition under Section 372 of the Indian Succession Act, was erroneously partly allowed by the Court and that the petitioners were entitled to the succession certificate with respect to the amount which was due from respondent No.2- Garrison Engineer. It was also noticed that the witness of respondent No.2- Garrison Engineer had appeared before the Court and that the failure on the part of the said witness to put forth the amount which was due to the petitioners could not be read against the petitioners therein. It was on the said account and inability of the petitioners to establish the liability against respondent No.2 that the claim was declined for which the petitioners have approached this Court and had to await final adjudication till 06.02.2014. It is also not in dispute that during the entire period, the amount remained with the respondent No.2 and that the petitioners have suffered as a result of non-release of the payment to them. Section 34 of the Code of Civil Procedure stipulates compensatory interest on account of delay that may have occurred once a person approaches the Court of law and that in the event there is no other provision for award of interest, interest can be granted by taking aid of the said Section for the period spend in Court, Further, the reasons cited by the respondents for denial of the interest are unsustainable. Invariably, the failure on the part of the petitioners in production of the succession certificate with respect to the amount due from Garrison Engineer was attributable more to the default committed by the witness of the respondents who appeared as AW.3 Ashok Sood. Respondent No.2 cannot take a walk over on account of its own lapse and its witness not

testifying before the Court of law with respect to the exact amount owed by respondent No.2-Garrison Engineer to deceased husband of the petitioner.

Further, there was no validity in regards to the objections raised by the respondents that there was a dispute inter se amongst the heirs of the deceased Harjit Singh Bhola as no document in support of any such dispute or counter claim has been raised by any other person.

Under the given circumstances, the impugned orders are set aside. The petitioners are held entitled to interest @ 6% per annum from 01.03.2005 till actual disbursement of the amount in favour of the petitioners. Let the interest @ 6% per annum be released in favour of the petitioners within a period of 03 months after the receipt of the certified copy of this order. In case the amount is not released within the period of three months as above, the petitioners shall be entitled to further interest @ 9% per annum after expiry of three months.

The petition stands allowed accordingly.

Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

April 29, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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