

2024:PHHC:108553



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

CR-4700-2024 (O&M)

Date of decision: 22.08.2024

Baljit Kaur and another

...Petitioners

Versus

The Oriental Insurance Company Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Ashwani Arora, Advocate for the petitioners.

VIKAS SURI, J.

1. This petition under Article 227 of the Constitution of India has been filed by the petitioners/claimant-decree holders directing the executing Court to expedite and conclude the proceedings seeking execution of award dated 31.10.2022 passed in their favour by learned Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal').

2. Brief facts of the case as pleaded by the petitioners are that the petitioner and proforma respondents had filed a claim petition before the Tribunal on account of death of deceased Gulzar Singh in a road side accident, which took place on 09.10.2018. After receiving evidence from both sides, the Tribunal passed an award dated 31.10.2022 (Annexure P-1) for the sum of Rs.62,64,852/- along with interest @ 8% p.a. in their favour. The liability to pay compensation was joint and several on the owner, driver and the insurer. The petitioners along with other claimants filed execution application (Annexure P-3) on 31.01.2023 seeking



enforcement of the award.

2.2 Upon notice, the insurance company-respondent No.1 herein filed an application seeking stay of the execution petition during pendency of the appeal having been preferred by them. It was conceded before the executing Court that no stay has been granted by the Appellate Court and accordingly, the said application was disposed of vide order dated 17.05.2023 by observing that in the aforesaid circumstances, the execution proceedings could not be stayed. On the subsequent hearing, the judgment debtor moved another application seeking stay of the execution petition during pendency of FAO-1292-2023. The said application was also disposed of with the same observations as aforesaid, vide order dated 15.07.2023. Thereafter, the proceedings were deferred at the request of learned counsel for judgment debtor.

2.3 On 04.05.2024, the judgment debtor again sought time for making payment on the ground that the first appeal was pending before this Court in the same month. Vide order dated 04.05.2024, the executing Court observed that the application moved by the judgment debtor for staying the execution proceedings on the aforesaid ground already stood declined vide order dated 17.05.2023 and despite one year having lapsed, adjournment was being sought on the same ground. However, one more opportunity was granted to the judgment debtor for making payment. The matter was posted for 30.05.2024. Thereafter, the execution proceedings are being adjourned for making payment but no



steps as envisaged under Order 21 Code of Civil Procedure have been taken.

3. Aggrieved by the delay being caused in disposal of the execution petition, the claimant-petitioners have invoked jurisdiction by way of the present petition.

4. Learned counsel for the petitioners submits that till date, no stay has been granted by the Appellate Court against the award passed by the Tribunal, enforcement of which is being sought through the execution petition referred to above. Reliance is placed upon the directions issued by Hon'ble Supreme Court of India in ***Rahul S. Shah vs. Jinendra Kumar Gandhi and others***, (2021) 6 SCC 418 and ***Bhoj Raj Garg vs. Goyal Education and Welfare Society and others***, 2023(1) Apex Court Judgments (SC) 165.

5. Heard learned counsel for the petitioner and with his able assistance, perused the record.

6. In **Rahul S. Shah's case** (supra), with regard to the execution proceedings, *inter alia*, the following directions were issued:-

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

42.1. to 42.11 x x x x x

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. to 42.14 x x x x x.”



7. The aforesaid directions were reiterated by the Apex Court in *Bhoj Raj Garg's case* (supra). 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. 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 31.10.2022, the executing Court ought to proceed and is bound to follow the directions of the Hon'ble 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.



9. 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, 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.
10. The revision petition is disposed of in the aforesaid terms.
11. Pending applications, if any, also stand disposed of.

August 22, 2024
sumit.k

(VIKAS SURI)
JUDGE

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