

DARSHAN SINGH

A

v.

STATE OF PUNJAB

FEBRUARY 13, 2007

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

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Code of Civil Procedure, 1908—Modification of decree—Terms of decree attained finality—High Court, in exercise of its revisional jurisdiction against the order passed in execution, modified terms of decree—Propriety of—Held, not proper.

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A case of embezzlement and misappropriation of Government Funds was filed against Appellant, an Accounts Clerk in PWD Department of the State of Punjab and he was put under suspension on 24-5-1965. A criminal case was also initiated against the Appellant but he was ultimately acquitted. Appellant was re-instated and period of his suspension was treated as on duty for all purposes. He filed suit seeking full pay and allowances for the period 25-5-1965 to 28-4-1978. Trial Court held him entitled for Rupees Sixty Thousand with interest at the rate of 12% p.a. from the date the amount became due till its actual realisation. The decree attained finality. Appellant filed execution petition. Executing Court dismissed objections raised by Respondent-State and held Appellant entitled for interest @ 12% p.a. with yearly rest. Respondent-State filed revision petition which the High Court allowed holding Appellant entitled to Rupees Sixty Thousand from 9-12-1992, i.e. the date of decree upto the date of actual payment.

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In appeal before this Court it was contended that the terms of the decree having attained finality, High Court in exercise of its revisional jurisdiction could not have added/varied the terms of decree and that the High Court erred in granting interest from 9.12.1992, the date of decree, when the decree specifically stated that the interest is liable to be paid by Respondent from the date the amount became due and payable to the Appellant.

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Allowing the appeal, the Court

HELD: 1.1. The Trial Court passed the decree dated 9.12.1992 in favour of the Appellant holding him entitled to interest @ 12% per annum from the

A date the amount became due and payable till realization. The decree simply meant that the Appellant is entitled for dues and the allowances for the period 25.5.1965 to 28.4.1978, thus Appellant became entitled for the interest on due amounts from 25.5.1965 until the date of realization. [Para 18]

[538-B-C]

B 1.2. In this case the decree passed by the Trial Court and further leave granted by the First Appellate Court in favour of the Appellant were approved by all the Courts up-till this Court. This Court had dismissed the Special Leave Petition and thus the decree passed in favour of the Appellant attained finality. The High Court in exercise of its revisional jurisdiction cannot vary the terms of the decree in execution. The High Court has committed an apparent error in granting interest from 9.12.1992. Thus, the Appellant is entitled for an amount of Rs.60,586.75 along with interest @ 12% per annum from the date the amount became due and payable, namely, from 25.5.1965.

[Para 19] [538-F-H; 539-A-B]

D *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors.*, [1970] 1 SCC 670; *C. Gangacharan v. C. Narayanan*, [2000] 1 SCC 459 and *Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises*, [1999] 1 SCC 558, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 745 of 2007.

E From the Final Judgment and Order dated 8.4.2005 of the High Court of Punjab and Haryana at Chandigarh in C.R. No.2569/1996.

Satinder S. Gulati, Kamaldeep Narang and Dr. Kailash Chand for the Appellant.

F Kuldip Singh, R.K. Pandey, Sanjay Katyal, T.P. Mishra, M.K. Verma and Arun K. Sinha for the Respondent.

The Judgment of the Court was delivered by

G **DR. AR. LAKSHMANAN, J. 1.** Leave granted.

H 2. The present appeal is directed against the judgment and order dated 8.4.2005 passed by the High Court of Punjab and Haryana in Civil Revision No. 2569 of 1996 whereby the High Court allowed the Civil Revision filed by the respondent-State of Punjab. The appellant joined the PWD Department of State of Punjab as Clerk on 2.2.1953. He was promoted as a Sub-Divisional

Clerk in the year 1957 and thereafter as Accounts Clerk in April 1965. A

3. A case of embezzlement and misappropriation of Government funds was made against him and the department filed an appeal against the Respondent and he was put under suspension vide office order No. 57/E dated 24.5.1965. A criminal case was initiated against the Appellant which ultimately resulted in the acquittal of the Appellant vide judgment and order dated 9.8.1973 passed by the Additional Sessions Judge, Amritsar. No departmental action was taken against the Appellant and he was merely kept under suspension. The Appellant was reinstated vide order dated 12.4.1978 and it was ordered that period of his suspension be treated on duty for all intents and purposes. The Appellant was given proforma promotion as Officiating Head Clerk w.e.f. 24.9.1972 vide office order No. 55/E dated 27.4.1978. The Appellant retired after attaining the age of superannuation as Superintendent Grade-IV on 28.2.1989. B
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4. The Appellant filed Suit No. 898 of 14.5.1990 for declaration and mandatory injunction seeking full pay and allowances for the period 25.5.1965 to 28.4.1978 and also claimed that he was entitled to cross efficiency bar w.e.f. 1.9.1981 and consequential relief thereof i.e. proficiency step up increments, increase in leave encashment, pension and gratuity etc. with interest at 18% per annum. The Appellant sought mandatory injunction for payment of the aforementioned dues with interest. D
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5. The suit of the Appellant was partly allowed by the trial court holding him entitled for an amount of Rs.60,586.75 along with interest at 12% per annum from the date the amount became due till its actual payment. The claim for crossing the efficiency bar was, however, rejected by the Trial Court being time barred. F

6. An appeal was filed by the Appellant which was allowed by the First Appellate Court vide judgment dated 17.11.1993 and the appeal filed by the Respondent/State was dismissed. The Appellant was held to be entitled for consideration of crossing the efficiency bar. G

7. Two second appeals which were filed by the Respondent against the common judgment of the Appellate Court were dismissed by the High Court on 12.9.1994. Thereafter the Appellant filed execution petition in the Court of Additional Civil Judge, Amritsar on 31.10.1994. The Respondent/State filed its objections. The Respondent/State thereupon filed Special Leave Petition Nos. H

- A 1527-1528 of 1995 in this Court and the same was dismissed vide order dated 3.2.1995. The Appellant replied to the objections of the State in the execution proceedings. Office Order No. 100 dated 24.3.1995 was issued by the Respondent whereby the Appellant was allowed to cross the efficiency bar. Vide Office Order No. 103/95 dated 30.3.1995, the Appellant was also granted one additional increment on consolidation of 8 years' service in the form of proficiency step up w.e.f. 1.1.1986. The Executing Court dismissed the objections filed by the Respondent/State and held that the Appellant is entitled for interest at 12% per annum with yearly rest. The Civil Revision Petition filed by the State against the order dated 15.5.1996 of the Executing Court was allowed holding that the Appellant is entitled to an amount of Rs.60,586.75 from 9.12.1992, namely, the date of decree upto the date of actual payment.

8. Mr. Satinder S. Gulati, the learned counsel for the Appellant submitted that in terms of the decree which has attained finality, the High Court in exercise of its revisional jurisdiction passed an order, could not have ordered/ varied the terms of the decree in view of the law laid down by this Court in various judgments. The learned counsel further submitted that the High Court was under an apparent error in granting interest from 9.12.1992 though the decree specifically stated that the interest is liable to be paid by the Respondent from the date of the amount became due and payable to the Appellant. The learned counsel also addressed on the question that the Executing Court cannot go behind the terms of a decree passed by a Court of a competent jurisdiction. He has further submitted that the Respondent has already held Appellant entitled for crossing the efficiency bar and had made payment against the same to the Appellant, but the High Court had passed the impugned judgment as if the Appellant is yet to be considered for crossing the efficiency bar.

9. It was submitted that the Appellant had made a representation to the department for his reinstatement to Superintending Engineer (Construction Cell), Amritsar which was kept under consideration for two years, thereafter the Appellant was reinstated vide Order No. 17/F&K dated 12.4.1978 issued by the Chief Engineer, PWD. It was ordered by the Chief Engineer for his reinstatement and the period of suspension was ordered to be treated on duty for all intents and purposes. It was further submitted that in pursuance and in continuation of the aforesaid order dated 12.4.1978 passed by the Chief Engineer, the Appellant was given proforma promotion as Officiating Head

Clerk w.e.f. 24.9.1972 on the orders issued by the Superintending Engineer, Amritsar, PWD dated 27.4.1978 and that the Appellant was posted as Officiating Head Clerk in Bridge Investigating Division and where the Appellant joined the duty on 28.4.1978. Thus, it is seen that in view of the aforementioned facts and circumstances the whole suspension period of the Appellant was regularized by the department as duty period for all intents and purposes, therefore, the Appellant became entitled for whole arrears of pay and emoluments and the suspension period stood condoned. But the High Court vide order dated 8.4.2005 allowed the Civil Revision filed by the Respondent setting aside the order dated 15.5.1996 passed by the Executing Court. It is submitted that the impugned order is apparently erroneous for the reasons that the High Court held in it that the amount of Rs.60,586.75 is payable to the Appellant along with interest @ 12% per annum from 9.12.1992 till the date of payment, instead from the date the amounts became due and payable to the Appellant.

10. The learned counsel for the Appellant submitted that the Respondent did not lead any evidence to their objections but on behalf of the Appellant two witnesses were examined and the Respondent did not lead any evidence to show that the Appellant was not entitled to the interest @ 12% per annum with yearly rest as Appellant raised in the execution.

11. It was also brought to our notice that an Office Order No. 100 dated 24.3.1995 was passed by the Superintending Engineer, Central Works Circle, PWD allowing the Appellant to cross the efficiency bar w.e.f. 1.9.1981 at the stage of Rs.850/- in the pay scale of Rs.620-20-700/25-850/30-1000/40-1200 and his pay was raised from Rs.850/- to Rs.880/- per month. The Respondent vide Office Order No. 103 dated 30.3.1995 granted the Appellant one additional increment on consolidation of 8 years' in the form of proficiency step-up w.e.f. 1.1.1986 in the pay scale of Rs.2000-3500 raising his pay from Rs.2100 to Rs.2150 per month. Thus, it is seen that the Respondent has already held that the Appellant to be entitled for crossing the efficiency bar and had made the payment to him for the same and the High Court in the impugned judgment has said that the Respondent should consider the Appellant's case for crossing the efficiency bar.

12. In support of his contention that the Executing Court cannot go behind the terms of the decree passed by a Court of competent jurisdiction, the learned counsel for the Appellant placed strong reliance on the judgments in *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors.*, [1970] 1 SCC

A 670; *C. Gangacharan v. C. Narayanan* reported in [2000] 1 SCC 459 and *Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises*, [1999] 1 SCC 558.

13. We shall now consider the above three judgments.

B *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors.*(supra), this Court in para 6 held the following:-

C “A court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.”

D 14. This Court held that the Executing Court cannot go behind the decree unless it is shown that it was passed by a Court inherently lacking jurisdiction and thus was a nullity. The aforesaid decision of this Court squarely applies to the facts of the present case. This is not a case in which the decree on the face of it was shown to be without jurisdiction. It is not the case of the Respondent that the Court which passed the decree was lacking inherent jurisdiction to pass such a decree.

E 15. This Court in the judgment reported in *Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises* (supra) and in *C. Gangacharan v. C. Narayanan* (supra) has also taken the same view that the Executing Court cannot go behind the decree of a Court of competent jurisdiction except in the decrees *void ab initio* without jurisdiction.

F 16. Mr. Kuldip Singh, learned counsel for the Respondent, in reply to the arguments advanced by the learned counsel for the Appellant, submitted that this Court had issued notice to the Respondent limited to the question of efficiency bar and also regarding the due date from which the payments are to be made. According to him, the High Court has decided the case after due consideration of all aspects on the due dates for awarding the interest i.e. 9.12.1992 is quite justified and are well within the provisions of the settled law. It is further submitted as follows:-

“Due date from which the payments are to be made.

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- (i) That Hon'ble High Court orders dated 8.4.2005 are in order and as per law. A
- (ii) That the Trial Court decreed the suit filed on 9.12.1992 for the 60586.75 with interest @ 12% per annum from the date, the amount become due till the date of realization.
- (iii) That the amount of Rs.60586.75 was clearly quantified by the Trial Court in his orders dated 9.12.1992. B
- (iv) That there is no provision in the decree that the amount become due in the year 1965 when the plaintiff was suspended or that this amount become due on the date of his reinstatement on 12.4.1978. C
- (v) That there is no provision of any specific date in the decree and the award is clearly quantified to Rs.60586.75 paise and was declared on the date of decree i.e. 9.12.1992 and thus interest become due only after that date. D

17. In the light of the above background, the following substantial questions of law of public importance arose for consideration of this Court:-

- A. Whether in terms of the decree which has attained finality, the High Court in exercise of its revisional jurisdiction against the order passed in execution would have added/varied terms of decree? E
- B. Whether the High Court was under an apparent error in granting interest from 9.12.1992 though the decree specifically stated that the interest would be paid along with interest @ 12% per annum from the date the amount became due and payable to the Appellant? F
- C. Whether the impugned directions by the High Court in regard to crossing of efficiency bar by the Appellant are erroneous for the reasons that the Respondent/State has already allowed the Appellant to cross the efficiency bar w.e.f. 1.9.1981 by passing an office order No. 100 dated 24.3.1995? G

18. We have carefully considered all the orders passed by the Trial Court, Appellate Court and the High Court and also the order passed by the Executing Court. We have also perused the annexures and the records filed

A along with the SLP. Our attention was drawn to the relevant passages in the judgments. Both the learned counsel argued the case at length. In our opinion, the order of the High Court is absolutely incorrect. In the instant case, the Respondent/State has taken the stand in their counter-affidavit before this Court totally contrary to the stand taken before the High Court and the courts below. The Trial Court passed the decree dated 9.12.1992 in favour of the Appellant holding him entitled to interest @ 12% per annum from the date the amount became due and payable till realization. The decree simply meant that the Appellant is entitled for dues and the allowances for the period 25.5.1965 to 28.4.1978, thus Appellant became entitled for the interest on due amounts from 25.5.1965 until the date of realization. The State of Punjab in their objections to the Execution Petition of the Appellant took erroneous ground that the Appellant became entitled for payment from the date i.e. 24.4.1978, but before this Court the State of Punjab has taken the stand in para 5(v) of the counter-affidavit that the Appellant is entitled for interest from the date of decree i.e. 9.12.1992. It is totally contrary to the earlier stand taken by them. Therefore, contradictory stand taken by the State cannot at all be countenanced.

19. In the instant case, the Respondent/State has already held the Appellant entitled to cross the efficiency bar w.e.f. 1.1.1981 and his pay was raised from Rs.850/- to Rs.880/- per month vide their office order No. 100 dated 24.3.1985. The Respondent/State even granted one additional increment w.e.f. 1.1.1986 raising his pay from Rs.2100/- to Rs.2150/- per month vide their office order No. 103 dated 30.3.1995. The Appellant has been paid the due amounts by the Respondent/State according to their aforementioned office orders. Now, before this Court for the first time the State has taken the stand in paragraphs (vii) and (viii) that the order of the High Court for considering the case of the Appellant for crossing the stage of efficiency bar is justified. This is the case where the decree passed by the Trial Court and further leave granted by the First Appellate Court in favour of the Appellant were approved by all the Courts up-till this Court. This Court vide order dated 3.2.1995 dismissed the Special Leave Petition (C) Nos. 1527-1528 of 1995 filed against the judgment dated 12.9.1994 in RSA Nos. 1915-1916 of 1994 and thus the decree passed in favour of the Appellant attained finality. In such a case, the stand taken by the State in their counter-affidavit is really unfortunate. We have already noticed that the High Court in exercise of its revisional jurisdiction cannot vary the terms of the decree in execution in view of the ruling by this Court in 1970 (1) SCC 670 and 1999 (1) SCC 558 and 2000(1) SCC 459. In our

opinion, the High Court has committed an apparent error in granting interest from 9.12.1992 though the interest is liable to be paid by the Respondent to the Appellant. Thus, we hold that the Appellant is entitled for an amount of Rs.60,586.75 along with interest @ 12% per annum from the date the amount became due and payable, namely, from 25.6.1965. We have already pointed out that the contradictory statements made and taken in the counter affidavit by the State.

20. In our view, the impugned order dated 8.4.2005 passed by the High Court is totally erroneous and thus not sustainable in law. We, therefore, direct the Respondent/State to pay the said sum of Rs.60,586.75 with simple interest @ 12% per annum from 25.5.1965 till its realization. The entire amount due shall be paid within two months from this date failing which the Appellant will be entitled for payment with 18% simple interest per annum.

21. The Civil Appeal stands allowed. However, there will be no order as to costs.

B.B.B.

Appeal allowed.