(2016) 07 MP CK 0011

In the Madhya Pradesh High Court

Case No : W.P. No. 8984 of 2007

Anand Tiwari APPELLANT

Vs

Dhirendra Singh RESPONDENT

Date of Decision : 07-07-2016

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2016) 3 MPLJ 524 : (2017) 1 TAC 153

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Shri Arun Pandey, Advocate, for Petitioner; Shri Gopal Jaiswal, Advocate, for Respondents

Final Decision : Allowed

Judgement

Sujoy Paul, J.—In this petition filed under Article 227 of the Constitution, the petitioner has challenged the orders passed by the court below on 14.3.2007 and 29.3.2007 whereby the court below has declined the prayer of the petitioner for grant of interest on the amount deposited in the bank.

2. Brief facts necessary for adjudication of this matter are that respondent No.1 and 2 filed a claim case before the Tribunal for grant of compensation under the provisions of Motor Vehicles Act. The said claim case was registered as Case No.98/98. It was decided by award dated 11.2.2000. The Tribunal awarded a sum of Rs. 62,000/- as a compensation with 12% interest. Feeling aggrieved by the aforesaid award, the petitioner preferred an appeal before this court. The respondent No.1 and 2 also filed cross objection for enhancement of amount.

3. The petitioner deposited a sum of Rs. 25,000/- before the Tribunal before filing the appeal. This court directed the petitioner to deposit the remaining amount of Rs. 37,000/- on 11.5.2000 (Annexure P/1). In obedience of the said order, petitioner deposited the remaining amount of Rs. 37,000/- before the Tribunal on 30.6.2000. The petitioner simultaneously preferred an application

before the Tribunal on 18.6.2001 Annexure P/2 praying that the amount so deposited be kept in fixed deposit. The aforesaid miscellaneous appeal/cross objection was decided by this court on 30.3.2005 (Annexure P/3). This court modified the order of Tribunal and enhanced the award amount upto Rs. 97,000/- but reduced the interest @ 6% in lieu of 12%.

4. Respondent No.1 and 2 moved an application for execution of award and order of this court aforesaid. The petitioner submitted his reply by contending that he has already deposited the award amount of Rs. 62,000/- before the Tribunal and therefore that amount be paid to the respondent No.1 and 2 with interest which should have been as per rate applicable to a fixed deposit account. The Tribunal, in turn, wrote a letter to the respondent No.3 bank for getting information regarding the rate of interest on the said amount. The letter of the court is Annexure P/4. In turn, the bank informed the Tribunal that no interest is being paid on Government account. Hence, the Tribunal by impugned order dated 14.3.2007 and 29.3.2007 held that no interest is payable on the amount deposited by the petitioner before the Tribunal.

5. Criticising this order, it is contended by Shri Arun Pandey that as per the Division Bench judgment of this court in MA No.661/98 (Sharda Bai v. MPSRTC) dated 11.5.2001, the amount was required to be deposited in the fixed deposit. The Division Bench in the said case directed the Registry to circulate the orders for strict compliance by all subordinate courts. In obedience of this direction, the Registry of High Court by order dated 19.7.2001 (Annexure P/6) directed all the Tribunals/Courts to deposit the money arising out of decree/compensation in FDR in the name of the court or the party as the case may be. It was made clear that it is necessary "so that parties entitled to it do not loose interest during the period it is not given to the party". Thus, in the nutshell, the petitioner contended that he promptly deposited the amount before the Tribunal which was, in turn, deposited before the bank. Petitioner has not committed any error whatsoever. If for any reason whatsoever, the said amount is not deposited in the FDR, petitioner cannot be deprived from the interest and said interest needs to be deducted while making the payment to the claimants.

6. Prayer is opposed by the other side. The stand of the bank is that they have deposited the amount as per the direction of the Tribunal. The bank was never instructed to keep the amount in FDR. The bank had no knowledge about the letter dated 19.7.2001 and the order of this court dated 11.5.2001. Thus, interest cannot be fastened on the bank.

7. I have heard the learned counsel for the parties at length and perused the record.

8. The interesting conundrum in this case is whether petitioner is entitled to get benefit of interest at the rate applicable to a fixed deposit. The stand of the bank is that in absence of any instructions for depositing the same in the FDR, bank is not liable to pay the interest.

9. On the basis of aforesaid facts, it appears that there is some mistake on the part of the court/clerical staff because of which proper instructions were not given to the bank for depositing the amount in FDR. As per Legal Maxim, actus curiae neminem gravabit, an act of the court shall prejudice no man. In A.R. Antulay v. R.S. Nayat and another , (1988) 2 SCC 602 (7 Judges Bench), it was held that said maxim actus curiae neminem gravabit ? an act of the court shall prejudice no man ? is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. It is a well settled position in law that an act of the court should not injure any of the suitors.

10. Therefore injustice done should be corrected by applying the principle actus curiae neminem gravabit ? an act of the court should prejudice no one. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both. The maxim operates in a difference and narrow area. The area of operation of the maxim is, generally, procedural. As per the aforesaid view of Apex Court, it is clear that the said maxim can be pressed into service generally in procedural matter. In the present case, it is a procedural flaw because of which amount was not directed to be deposited in FDR. In (2003) 8 SCC 648 (South Eastern Coalfields Ltd. v. State of MP and others, the Apex Court held that no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. This shows that this maxim is not confined to an act of the court but is applicable to all the courts if correctly apprised of the facts and the law. Needless to mention that if the Tribunal would have acted in consonance with the Division Bench judgment of this court dated 11.5.2001 widely circulated by the Registry on 19.7.2001 Annexure P/6, interest as per FDR would have accrued. In (2010) 2 SCC 518, the Apex Court held that for applying the maxim, it has to be shown that a party has been prejudiced on account of any order passed by the court.

11. Certainly, the petitioner is prejudiced because the interest at the rate of FDR was not accrued on the amount deposited by the petitioner. If the same would have accrued , to that extent petitioner''s liability would have been shortened/ minimized. Thus, I find that grievance of the petitioner is justifiable. No doubt, technically no fault can be found in the action of the bank in not depositing the amount in the FDR. The court should have directed for the same. However, for this technicality, the petitioner cannot be deprived from the benefit of interest. In the opinion of this court, if in the peculiar facts and circumstances of this case, a direction is issued to the bank to treat the said amount as deposited in the FDR and grant interest to the petitioner, it will not have any serious/drastic impact on the financial health of the bank.

12. Hence, to do complete justice in the matter, I deem it proper to direct the respondent-bank to treat the said amount deposited by the petitioner as

deposited in FDR and calculate and pay the interest at the rate applicable on fixed deposits. The court below in execution proceedings will calculate the liability by taking into account the aforesaid interest accrued on the deposited amount. The impugned orders dated 14.3.2007 and 29.3.2007 are set aside.

13. The petition is allowed. No cost.

