

(1988) 01 OHC CK 0015

In the Orissa High Court

Case No : Civil Revision No. 390 of 1986

Dileswar Sahu and Others

APPELLANT

Vs

Land Acquisition Officer, Sambalpur

RESPONDENT

Date of Decision : 21-01-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 1(2), Order 41 Rule 5

Citation : AIR 1989 Ori 47 : (1988) 66 CLT 334

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Advocate : J.P. Misra, for the Appellant; D.P. Sahu, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—This revision at the instance of the decree-holder is directed against an order of the executing Court recording an order dropping the execution proceeding on full satisfaction. The execution case was started for satisfaction of an award in a Land Acquisition Case wherein the decree-holder was awarded compensation of Rs. 67,300/- with 15% of solatium and interest at the rate of 6% per annum from the date of delivery of possession of the land till the receipt of payment. An appeal was preferred by the State registered as First Appeal No. 135 of 1973 in this Court. In the meantime the execution case having been levied, the State moved for stay of the same. An order of stay was passed which was modified on 22-3-74 directing the State to deposit the entire decretal amount including the advocate's fee within six weeks in the executing Court failing which the order of stay was to stand vacated. After some deposits were made an order was passed by this Court on 14-3-75 allowing the petitioner to withdraw half of the amount in deposit on furnishing property security to the satisfaction of the executing Court and the other half was to remain in deposit till the final disposal of the appeal. The petitioner was not able to furnish security and withdraw the amount as directed. A further deposit was also made on

11-12-75, The First Appeal was dismissed on 5-8-83 and thereafter the Suite filed an application before the executing Court u/s 47 of the C.P.C registered as Miscellaneous Case No. 3/85 with a prayer For dismissing the execution case on full satisfaction since it had already deposited the decretal-amount The Miscellaneous case was dismissed by the executing Court on 23-3-85 holding that the amounts had been deposited only as security for obtaining stay and not as discharge of the decretal dues. On 13-12-85 a fresh memo was filed by the State for the very same relief for dismissing the execution case on full satisfaction. On the said memo an order having been passed dismissing the execution case as completely satisfied, the petitioner has come up in this revision.

2. The learned Subordinate Judge in dismissing the execution case has come to the conclusion that the amount in deposit by the State was not made by way of security but towards the decretal amount and being of such view has passed the impugned order.

3. The view taken is wholly untenable. A deposit made in the execution Court in pursuance of a direction issued under Order 41, R. 5 of the C.P.C. is never in discharge of the decree as contemplated under Order 21, Rule 1 of the C.P.C. The amount is deposited only by way of security over which the decree-holder is not given any control. The amount lying in deposit with the Court besides being beyond the reach of the decree-holder is also liable to be substituted with any other kind of security as the judgment-debtor may seek to furnish with permission of the Court. Even a direction of the Court that the amount in deposit may be withdrawn by the decree-holder on furnishing security does not transform the deposit to that of discharge of the decree it being only a conditional payment to the decree-holder who under the decree has an unqualified right to withdraw any amount lying in deposit in satisfaction of the decree. The matter was conclusively set at rest by decision of the Supreme Court in *P.S.L. Ramanathan Chettiar and Others Vs. O. Rm. P. Rm. Ramanathan Chettiar*, . It is next contended by Mr. Sahu. the learned Standing Counsel, that besides the fact that the amount when deposited should have been taken to be in satisfaction of the decree, even otherwise. the full amount having already been deposited, it must be taken that after dismissal of the first appeal, the deposit enured towards the decree and hence there is no defect in the order of the learned Subordinate Judge dismissing the decree on full satisfaction. It is on the other hand contended by Mr. J.P. Misra, learned counsel for the petitioner that the amount having never been deposited towards the decretal dues, it could not on its own become such a deposit after dismissal of the First Appeal in this Court and the petitioner is entitled to interest on the decretal amount till the actual payment.

4. Under Order 21, Rule 1 of the C.P.C. when an amount is deposited in Court in satisfaction of a decree, the judgment-debtor is mandatorily required to give notice of the payment to the decree-holder, either through Court or directly to him by registered post with acknowledgement due. Sub-rule (4) to Rule 1 of

Order 21 also stipulates that when an amount has been deposited in Court, the interest, if any, would cease to run from the date of service of the notice required to be served under Sub-rule (2). Thus, the notice contemplated under Order 21, Rule 1(2) is relevant only when the decree is one with interest. The notice is also a compulsory requirement. Section 142 read with Order 48, Rule 2 of the CP.C enjoins the notice to be served, when given, through Court in the manner as provided for service of summons. Hence, until the notice is served under Sub-rule (2) to Rule 1 of Order 21, the accrual of interest on the decretal amount would not stop, even if the amount might be lying in deposit in Court. The learned Standing Counsel contends, with the aid of AIR 1921 Nag 148 *Narayan v. Ganpatrao*, that on deposit of the amount by the judgment-debtor in Court and the same being brought to its notice, the Judge is to order notice to be issued to the decree-holder of the fact of the deposit and the judgment-debtor is only to file the process-fee; and even if the process-fee is not paid, yet the Court is bound to inform the decree-holder of the payment when he next appears for sale of the property. It is thus his contention that since the amount had been paid into Court it was the Court which should have issued the notice and the same having not been done the decretal amount would not earn any further interest. The submission is devoid of any merit and the authority cited for the proposition does not also support the same. It is only when payment of the dues has been made in the Court under Order 21, Rule 1 and such nature of payment is brought to the notice of the Court, then the question of the Court issuing notice arises. In the present case, the amount was never so deposited by the opposite party. The further submission raised by the learned Standing Counsel that the amount lying in deposit in Court, even if it is taken as a security deposit, yet after dismissal of the appeal, was available for withdrawal by the decree-holder and hence would not earn any interest thereafter is unsound. A security deposit made in Court cannot by itself get converted as deposit under Order 21, Rule 1 of the CP.C. without an order of the Court to that effect. In AIR 1951 Hyd 95 *Ram Rao v. Kundanmul*, it was held that payment of an amount under Order 41, Rule 5(2), C.P.C. is only an act of indemnity of the judgment-debtor for due compliance with the decree and that if the security so furnished is lost by act of God or other supervening circumstances, then the judgment-debtor is not discharged from his liability to pay the decree-holder the decretal amount. The same principle also arises when the deposit is made pursuant to the orders of the appellate Court. Similarly, in *Kothamasu Venkata Subbayya Vs. Udatha Pitchayya*, it was decided that the security deposit in Court does not ipso facto become the property of the decree-holder without the order of the Court and that mere availability of certain sum for satisfaction of the decree cannot be equated with the actual satisfaction of a decree. The authorities are thus overwhelming against the proposition advanced by the learned Standing Counsel for which it must be rejected.

5. It is however a fact that long after the dismissal of the appeal in this Court Miscellaneous Case No. 3/85 was filed before the executing Court bringing it to

its notice that the decretal amount had already been deposited and that the execution case might be dismissed on full satisfaction. Further on 13-12-85 a memo was filed informing the Court of full deposit having been made on account of which the dismissal of the execution case was sought for. If, in fact by such dates, whichever is earlier, the entire decretal amount with interest as was fully due to the petitioner had been deposited by the judgment-debtor, then the information to the Court of the amount being available towards satisfaction of the decree would cast a duty on the Court to issue notice to the judgment-debtor or inform him on the next date of the amount being available for him to withdraw the same and in such event further interest would not accrue thereafter.

6. In the result, the Civil Revision is allowed with costs. The impugned order is set aside and the execution case is restored to file. The executing Court is to proceed in accordance with the observations made. The LC.R. be sent back forthwith.