
(2000) 10 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1480 of 2000

Punjab State Civil Supplies Corporation Limited	APPELLANT
Vs	
Shiv Kumar	RESPONDENT

Date of Decision : 11-10-2000

Acts Referred:

Citation : (2000) 10 P&H CK 0051

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Gobind Goel, for the Appellant; Mr. V.K. Shukla, for the Respondent

Judgement

R.L. Anand, J.—This is a civil revision and has been directed against the order dated 13.11.1999 passed by the Additional Civil Judge (Junior Division), who passed the following order :-

"J.D. has not made the payment inspite of direction given earlier. J.D. has asked to make the payment vide order dated 16.10.1999 but J.D. was not made any payment inspite of directions given earlier, therefore, warrants of attachments are ordered to be issued against the J.D. on filing warrant fee and list of property for 3.1.2000."

2. The brief facts of the case are that Shiv Kumar filed a suit for declaration to the effect that the order passed by the Managing Director of petitioner-Corporation issued vide endorsement Amla-10 (549)-91/1704-07 dated 22.4.1991 inflicting upon him punishment of recovery of Rs. 46,168.04 and censure of service is illegal, null and void with consequential relief of permanent injunction restraining the Corporation from making recovery of the said amount by giving effect to the operation of the impugned order. The suit was contested. Vide judgment and decree dated 19.9.1997 the suit was decreed by the trial Court and it was ordered as follows :-

"It is ordered that the suit of the plaintiff is hereby decreed and the plaintiff is

entitled to consequential relief as prayed for. However, the defendant is at liberty to hold the fresh enquiry against the plaintiff as per law and to pass fresh orders. The Parties are left to bear their own costs."

This decree has become final.

3. It stands conceded at the Bar that in pursuance of the order dated 22.4.1991 the petitioner-Corporation-recovered the amount of Rs. 46,168.04 by deducting the same from the salary of the respondent-Shiv Kumar over the period when his suit was pending.

4. With the decree of the suit, the plaintiff-petitioner filed the execution proceedings. He, in fact, also wanted to recover the amount which was deducted from his salary by the Corporation. If I see to the execution application filed by the plaintiff, in para No. 10 of the same he made a prayer to the executing Court that the J.D. be directed to refund the amount which they have deducted from his wages during the pendency of the suit. The J.D. appeared in the execution proceedings and at one point of time it was given to understand to the executing Court that the J.D. will make the payment and as a result of that vide order dated 16.10.1999 the executing Court passed the order against the present petitioner to make the payment to the decree- holder. In spite of the directions given by the executing Court the J.D. did not make the payment, as a result of that the impugned order was passed vide which the executing Court issued warrant of attachment against the J.D. Aggrieved by the order dated 13.11.1999, the present revision.

5. I have heard the learned Counsel for the parties and with their assistance have gone through the record of the case.

6. The learned Counsel for the petitioner-Corporation submits that some further developments have taken place after the passing of the order dated 13.11.1999. In the judgment and decree dated 19.9.1997 the Court gave option to the Corporation to hold a fresh enquiry against the decree-holder as per law and to pass fresh order. In pursuance of that, enquiry has been conducted by the punishing authority and again the decree-holder has been found guilty and the punishing authority ordered to recover the said amount on 27.4.2000. It is further submitted by the learned Counsel that against the order dated 27.4.2000 the decree-holder has also filed a department appeal which is still pending. The counsel further submitted that with the passing of the order dated 27.4.2000 no relief is open to the decree-holder, who is still in service. Now the decree has been complied with on papers with the passing of the order dated 27.4.2000. The counsel submitted that when no effective relief can be granted to the decree-holder, his execution is liable to be dismissed. It was further submitted that in the judgment and decree no declaration was granted to the decree-holder for the recovery of the amount as it was not a money suit.

7. On the contrary, the learned Counsel for the respondent submitted that against the order dated 27.4.2000 the decree-holder has already filed an appeal.

The fate of the appeal is not known to either of the parties and any relief can be granted by the appellate authority. Moreover, the order dated 27.4.2000 can again be challenged by the plaintiff-decree-holder in a civil suit. The decree dated 19.9.1997 has to be respected as such. It was a decree for declaration with consequential relief. The recovery has been effected by the Corporation during the pendency of the suit. Moreover, it was undertaken by the J.D. before the executing Court that it will pay the amount to the decree-holder. So much so, the order dated 16.10.1999 has never been challenged by the Corporation. Therefore, there is no force in the present revision. It was further submitted by the counsel for the respondent that since the petitioner is withholding the amount of Rs. 46,168.04 illegally, therefore, the decree-holder should also be awarded interest on that amount.

8. After hearing the rival contentions of the parties, I am of the considered opinion that this revision is totally devoid of any merit. The order dated 27.4.2000 has not attained the finality so far. It is subject to appeal and even if the appeal goes against the decree-holder, he will also have the right to file a civil suit in the competent court of jurisdiction according to the law. In these circumstances, the order dated 27.4.2000 can be held to be in fluid state and, therefore, the Corporation at this juncture cannot take the benefit of the order dated 27.4.2000. So far as the main decree is concerned, the executing Court has to execute the decree as such. If the nature of the suit of the plaintiff-decree-holder is examined, it will reveal that he had challenged the order dated 22.4.1991 vide which recovery of Rs. 46,168.04 was ordered and penalty of "Censure" was imposed upon the plaintiff-decree-holder. Unfortunately for the plaintiff, he could not get a stay from the Civil Court, as a result of that the Corporation realised the amount from the salary of the decree-holder over the period. When the suit of the plaintiff was decreed and it was further ordered by the court while passing the order that the plaintiff is entitled to the consequential relief, it becomes the duty of the executing Court not only to set aside the impugned order but also to give all incidental and consequential relief which are open to the decree-holder by passing of that decree. Since the recovery has been effected by the Corporation, therefore, it was obligatory on the part of the executing Court to grant this relief. I must say that this type of technical objections does not lie in their mouth. We are dealing with a case of Corporation which has illegally recovered the amount which has been set aside by the competent Court of jurisdiction. In these circumstances, the law supposes and pre-supposes that the petitioner-Corporation ought to have complied with the decree forthwith as it has attained finality. Be that as it may, the law courts are not powerless and for the ends of justice we can implement the decree so as to give proper effect to it. I have already stated above that in the execution application the decree-holder has prayed to the executing Court for the refund of the amount which was deducted from his wages during the pendency of the suit. At one point of time directions were also given to the J.D, on 16.10.1999 for the payment of the amount. That order has never been challenged by the J.D.

9. In this view of the matter, the present revision stands dismissed with the direction to the executing Court to realise the amount from the petitioner-Corporation along with interest @ 12% per annum as this amount has been illegally withheld by the Corporation.

10. Revision dismissed.