

HARYANA VIDYUT PARSARAN NIGAM LIMITED & ANR.

v.

GULSHAN LAL & ORS.

(Civil Appeal No. 3306 of 2009)

MAY 6, 2009

[S.B. SINHA AND DR. MUKUNDKAM SHARMA, JJ.]

Civil Procedure Code, 1908 – s.47 – Suit praying for decree of declaration in regard to entitlement to receive higher pay scales and a decree of mandatory injunction directing release/payment of higher pay scales with interest from due date – Decreed by Civil Court – Execution petition moved by decree-holder – Objection to, by judgment-debtor – Held: On facts, the decree-holder legally would not have been entitled to the reliefs prayed for by it – However, as the decree passed has attained finality, the Executing Court is directed to execute the decree strictly in terms thereof.

Appellant-Board has two thermal power plants, one at Faridabad and the other at Panipat. Respondents were employees at the Faridabad plant. Inter alia on the premise that employees similarly situated and working at the Panipat plant were receiving higher salary, they filed suit praying for a decree of declaration in regard to their entitlement to receive higher pay scales and a decree of mandatory injunction directing release/payment of higher pay scales in their favour with interest from the due date.

The Trial Court decreed the suit on basis of the judgment and decree passed in *Anil Kapoor* case which was then pending in second appeal before the High Court. The said second appeal was ultimately dismissed and the Special Leave Petition filed thereagainst was also dismissed. Subsequently, appellant filed appeal against the decree passed in the suit filed by respondents, which

- A was dismissed on the ground of delay. Revision petition filed thereagainst was also dismissed. The decree passed in the suit filed by respondents attained finality. An execution petition in respect of the decree was filed. Appellant filed objection contending that a mere declaratory relief having been passed in favour of the respondents-decree holder, they were not entitled to arrears of pay. The objection petition was dismissed by the Executing Court. Revision petition filed thereagainst was dismissed by the High Court. Hence the present appeal.
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Dismissing the appeal, the Court

- HELD: 1. A decree should ordinarily be confined to the prayer made in the plaint. The respondents not only prayed for a declaration in regard to their entitlement to receive a higher scale of pay but also for a decree of mandatory injunction in their favour directing them to release/pay the said higher scales of pay. They had also prayed for grant of interest on the aforementioned amount. The entitlement of the plaintiffs-respondents to receive the emoluments in the scales of pay mentioned therein and the date from which they had been working was specified. The Trial Judge in no uncertain terms held that no interest shall be payable thereupon. Denial of payment of interest is significant and the same leads to the conclusion that the court was conscious of the fact that not only plaintiffs-respondents were entitled to a declaration but also to a mandatory injunction. [Paras 14, 15 and 16] [945-D-G]
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- G *State of M.P. v Mangilal Sharma*, (1998) 2 SCC 510, distinguished.

- H *U.P. State Road Transport Corporation vs Assistant Commnr. of Police (Traffic) Delhi* 2009 (2) SCALE 526, referred to.

2.1. For the purpose of allowing an objection filed on behalf of a judgment debtor under Section 47 CPC, it was incumbent on him to show that the decree was *ex facie* nullity. For the said purpose, the court is precluded from making an indepth scrutiny as regards the entitlement of the plaintiff with reference to not only his claim made in the plaint but also the defence set up by the judgment-debtor. As the judgment of the Trial Court could not have been reopened, the correctness thereof could not have been put to question. Also an Executing Court cannot go behind the decree. If on a fair interpretation of the judgment, order and decree passed by a court having appropriate jurisdiction in that behalf, the reliefs sought for by the plaintiff appear to have been granted, there is no reason as to why the Executing Court shall deprive him from obtaining the fruits of the decree. [Para 20] [948-E-H; 949-A]

2.2. It is also not a case where this Court can exercise its jurisdiction under Article 142 of the Constitution to mould an order. The decree passed by the Trial Court has attained finality. Whether rightly or wrongly, the judgment of the Trial Judge has been affirmed by this court. It is one thing to say that no right having crystalised in favour of a party to the lis, this Court can mould the relief appropriately, but it is another thing to say that despite the decree being found to be an executable one, this Court will refuse to direct execution thereof. Though, on facts, the respondents legally would not have been entitled to the reliefs prayed for by them, however, as a decree has been passed, the Executing Court shall execute the decree strictly in terms thereof. [Paras 21 and 22] [949-C-F]

Deepa Bhargave v. Mahesh Bhargava 2008 (16) SCALE 305, relied on.

Bhawarlal Bhandari v. Universal Heavy Mechanical

A *Lifting Enterprises* (1999) 1 SCC 558, referred to.

Case Law Reference:

	2009 (2) SCALE 526	referred to	Para 16
B	(1998) 2 SCC 510	distinguished	Para 18
	(1999) 1 SCC 558	referred to	Para 19
	2008 (16) SCALE 305	relied on	Para 20

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3306 of 2009.

From the Judgment & Order dated 1.2.2006 of the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 5260 of 2005.

D WITH

C.A. No. 3307, 3308, 3309, 3310 of 2009.

E Paramjit Singh Patwalia, Salman Khurshid, Neeraj Kumar, Jain, Sandeep Chaturvedi (for Ugra Shankar Prasad), Arunabh Chowdhury, Aman Preet Singh Rahi, Arijit Bhaumik (for Ruby Singh Ahuja), Rishi Malhotra, Prem Malhotra for the Appearing parties.

F The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

G 2. Interpretation of a judgment of Civil Judge, Faridabad in Civil Suit No. 180 of 1999 dated 17-11-2000 is in question in these appeals.

H 3. Respondents are employees of the appellant-Board, a successor of Haryana State Electricity Board constituted and incorporated under Section 5 and 12 of the Electricity (Supply) Act, 1948. Respondents were employees of a Thermal Power

Plant at Faridabad. Indisputably the appellant has another A
Thermal Power Plant at Panipat.

Inter alia on the premise that the employees similarly
situated and working at Panipat, Thermal Power Plant were
receiving a higher salary, the aforementioned suit was filed B
praying inter alia for the following reliefs :

"(a) a decree of declaration in favour of plaintiffs and
against the defendants, declaring the plaintiffs entitled to
receive the said higher pay scale of Rs.1400-2600/- w.e.f. C
24.10.1991, and of Rs.5000-150-8000 w.e.f. 1.1.1996
alongwith interest @ 18% p.a. from the date of due till
actual payment, as given to their co-employees as
mentioned in para No. 2 above of the plaint, on the basis
of principle of 'equal pay for equal work,;

(b) a decree of mandatory injunction in favour of plaintiff D
and against the defendants, directing the defendants to
release/pay to the plaintiffs the said higher pay scales of
Rs. 1400-2600/- w.e.f. 24.10.1991 and of Rs. 5000-150-
8000/- w.e.f. 1.1.96 alongwith interest @ 18% p.a. from the E
date of due till actual payment, forthwith;"

4. The issues which were framed in the aforementioned
suit in terms of the pleadings of the parties were as under :

"(1) Whether the plaintiffs are entitled to receive the pay F
scales of Rs. 1400-2600 w.e.f. 24.10.1991 and of Rs.
5000 to 8000/- w.e.f. 1.1.1996 alongwith interest at the
rate of 18% from the defendants?

(2) If issue No. 1 is proved, whether the plaintiffs are G
entitled for mandatory injunction as prayed for?"

The learned Trial Judge while determining the said issue
Nos. 1 and 2, relying on the basis of a Judgment and decree
passed in the case of *Anil Kapoor vs. Haryana State Electricity*
Board being RSA No. 800 of 1992 which was then pending in H

A second appeal before the High Court of Haryana held as under:

B "The plaintiffs are entitled to get the benefit as ordered by the Hon'ble High Court and which would be subject to the decision of RSA No.800/1992. The plaintiffs have proved the legal notice served by them through counsel which is placed on record as Ex. P1, as admitted by DW1 in his cross examination, but no reply was given by the defendants."

C It was directed :

D "For the reasons recorded above, issues No. 1 and 2 are decided in favour of the plaintiffs to the effect that the plaintiffs are entitled to receive pay scale of Rs. 1400-2600 w.e.f. 24.10.1991 and Rs.5000-8000 w.e.f. 1.1.1996 subject to decision of RSA No.800/1992."

On the aforementioned findings, the following relief was granted :

E "In sequel of my aforesaid discussion on the aforesaid issues, the suit of the plaintiffs for declaration and mandatory injunction succeeds and the same is hereby decreed to the effect that the plaintiffs are entitled to receive the pay scale of Rs.1400-2600 w.e.f.24.10.1991 and Rs.5000-8000 w.e.f. 1.1.1996. However, the plaintiffs are not entitled to any interest as claimed. Keeping in view of circumstances of the case, both the parties are left to bear their own costs. Decree-sheet be prepared accordingly and file be consigned to the record room."

G 5. Indisputably the said decree has attained finality as the same has been upheld upto this court.

6. An execution petition was filed.

H Appellants herein filed an objection to the said execution petition raising a contention that a mere declaratory relief having

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been passed in the favour of the decree holder, they were not A
entitled to the arrears of pay, stating :

"In view of the judgment dated 9.10.2001 of Hon'ble High B
Court in RSA-800/92, the present D.Hs are not entitled for
any relief and in case they are paid the arrears it will further
multiply the litigation as their pay scale shall become higher
than their functional cadre post and will adversely effect the
entire policy of various categories of staff of the erstwhile
Board now Corporation.

The said objection petition was dismissed by a reason of C
an Order dated 23-08-2005 passed by the learned Executing
Court upon considering the findings of the Trial Court in the suit,
stating :

"It is apparent from the bare reading of the aforesaid D
findings that the grant of pay scales of Rs.1400-2600/-
w.e.f. 24.10.1991 and Rs.5000-8000 w.e.f. 1.1.1996 was
subject to the decision of RSA No.800/1992. It is not
disputed that the said RSA titled as Haryana State
Electricity Board vs. Anil Kapoor and others, was disposed E
of along with civil writ petition No. 1632 of 1999 titled as
Anil Kapoor and others Vs. Haryana Power Generation
Corporation and the Hon'ble Punjab and Haryana High
Court vide judgment dated 9.10.2001 allowed the said writ
petition and dismissed appeal no.800 of 1992. Aggrieved F
against the aforesaid judgment dated 9.10.2001, the JD
had preferred a Special Leave Petition No. 14609-14610/
2002 in the Hon'ble Supreme Court which was also
dismissed on that 20.1.2003. Learned counsel for the JD
has failed to bring on record the fact that the judgment and G
decree dated 17.11.2000 was ever challenged in any
competent court of law, wherein the same was set aside
or the operation of the said judgment was ever stayed.
Hence, the judgment and decree dated 17.11.2000 must
be held to have attained finality. Moreover, JD has not H
claimed any lack of jurisdiction or legal infirmity making the

A judgment in question to be unexecutable.”

7. A revision application was filed thereagainst which by reason the impugned judgment has been dismissed by a learned Single Judge of the High Court.

B 8. Mr. Jain, learned counsel appearing on behalf of the appellants would submit that a mere declaratory decree having been passed, the execution petition was not maintainable.

C In any event, the learned counsel urged, no arrears of pay could have been granted for a period of more than three years.

9. Ms. Indu Malhotra, learned senior counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment.

D 10. Indisputably, respondents herein in terms of judgment of the Punjab and Haryana High Court passed in RSA No.800 of 1992 titled as Haryana State Electricity Board Vs. Anil Kapoor and Ors. were said to be similarly situated and were granted the following higher grade/pay scales:

E (a) Rs.950-20-1150/25-1500 w.e.f. 1.1.1986

(b) Rs.1200-30-1560/40-2040 w.e.f.1.5.1990

(c) Rs.1400-2600 w.e.f.24.10.1991

F (d) Rs.5000-150-8000 w.e.f.1.1.1996.

G 11. Learned Subordinate Judge decreed the said suit inter alia holding that it was admitted that the respondents had been getting lesser pay as compared to other co-employees and thus on the basis of the principle of equal pay for equal work and being senior to the other employees cannot be deprived of the scales of pay allowed to their juniors.

H 12. It was furthermore directed that plaintiffs-respondents were entitled to derive the benefit as ordered by the High Court

which would be subject to the decision of RSA No.800 of 1992. Indisputably RSA No. 88 of 1992 was dismissed by the High Court by a Judgment and Order dated 9-10-2001 and Special Leave Petition preferred thereagainst had also been dismissed.

13. We may notice that a first appeal preferred against the original judgment and decree passed in the suit filed by the respondent was filed by the appellant only on 24-03-2005 which was dismissed on the ground of delay. A civil revision application filed thereagainst had also been dismissed.

14. Concededly the decree passed by the civil court has attained finality. The only question which arises for consideration is as to whether having regard to the nature of the decree passed, it is executable.

A decree, as is well-known, should ordinarily be confined to the prayer made in the plaint. We have noticed hereinbefore, that the respondents herein not only prayed for a declaration in regard to their entitlement to receive a higher scale of pay but also for a decree of mandatory injunction in their favour directing them to release/pay the said higher scales of pay. They had prayed for grant of interest on the aforementioned amount.

15. The entitlement of the plaintiffs-respondents to receive the emoluments in the scales of pay mentioned therein and the date from which they had been working was specified.

16. The learned Judge in no uncertain terms held that no interest shall be payable thereupon. Denial of payment of interest, in our opinion, is significant and the same leads to the conclusion that the court was conscious of the fact that not only plaintiffs-respondents were entitled to a declaration but also to a mandatory injunction.

But for the purpose of construction of a judgment, it must be read as a whole. The issues framed in that behalf assumes

- A great significance. We have noticed, hereinbefore, that both the issues framed by the learned Trial Judge had correlation with the reliefs claimed for.

- B In *U.P. State Road Transport Corporation v. Assistant Commnr. Of Police (Traffic) Delhi* [2009 (2) SCALE 526], this Court held:

- C "A decision is an authority, it is trite, for which it decides and not what can logically be deduced therefrom. This wholesome principle is equally applicable in the matter of construction of a judgment. A judgment is not to be construed as a statute. It must be construed upon reading the same as a whole. For the said purpose, the attending circumstances may also be taken into consideration."

- D 17. Thus, when a relief had been granted upon taking into consideration not only the declaratory relief prayed for but also the relief for mandatory injunction, we are of the opinion, that the learned trial judge and consequently the High Court were correct in their views.

- E 18. Furthermore it is beyond any doubt or dispute that the decree was passed having regard to the decision of the court in Anil Kapoor's case. In the said case, Anil Kapoor not only filed the suit but also filed a writ petition.

- F Once the decision in Anil Kapoor's case was followed that not only they would be entitled to scale of pay but also the other reliefs prayed for by them, there cannot be any doubt whatsoever that having regard to the fact that Anil Kapoor and various other persons being junior to the plaintiffs having been held to be entitled to a relief, respondents were also held to be entitled to the same relief.

- G This court furthermore in *State of M.P. v. Mangilal Sharma* [(1998) 2 SCC 510] categorically held as under :

- H "6. A declaratory decree merely declares the right of the

decree holder vis-a-vis the judgment debtor and does not
in terms direct the judgment-debtor to do or refrain from
doing any particular act or thing. Since in the present case
decree does not direct reinstatement or payment of
arrears of salary the executing court could not issue any
process for the purpose as that would be going outside
or beyond the decree. Respondent as a decree holder
was free to seek his remedy for arrears of salary in the
suit for declaration. The executing court has no jurisdiction
to direct payment of salary or grant any other
consequential relief which does not flow directly and
necessarily from the declaratory decree. It is not that if in
a suit for declaration where the plaintiff is able to seek
further relief he must seek that relief though he may not be
in need of that further relief. In the present suit the plaintiff
while seeking relief of declaration would certainly have
asked for other reliefs like the reinstatement, arrears of
salary and consequential benefits. He was however,
satisfied with a relief of declaration knowing that the
Government would honour the decree and would reinstate
him. We will therefore assume that the suit for mere
declaration filed by the respondent-plaintiff was
maintainable, as the question of maintainability of the suit
is not in issue before us."

However in that case as the decree for reinstatement and
back wages had not been granted, the court opined that the
Executing Court cannot grant a further relief. Herein, however,
as noticed, the respondents not only had prayed for a
declaratory decree but also decree for mandatory injunction.

19. Mr. Jain has relied upon a decision of this Court in
*Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting
Enterprises* [(1999) 1 SCC 558]. Therein the decree was
passed by a court lacking inherent jurisdiction and in that
situation this court considered as to whether a decree passed
by a court wholly without jurisdiction would be a nullity to hold:

- A "10. The aforesaid decision of this Court squarely applies to the facts of the present case. This is not a case in which the award decree on the face of it was shown to be without jurisdiction. Even if the decree was passed beyond the period of limitation, it would be an error of law or at the highest a wrong decision which can be corrected in appellate proceedings and not by the executing court which was bound by such decree. It is not the case of the respondent that the Court which passed the decree was lacking inherent jurisdiction to pass such a decree. This becomes all the more so when the respondent did not think it fit to file objection against the award which was sought to be made rule of the court."
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- It is on that premise the question which has been raised by Mr. Jain that the court could not have passed a decree for back wages for a period of more than three years assumes importance. Whether by reason of the decree the respondents would be getting some amount by way of backwages for a period of more than three years would depend upon the facts of each case. It would also depend upon the date on which the cause of action of suit arose.
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20. As indicated hereinbefore, for the purpose of allowing an objection filed on behalf of a judgment debtor under Section 47 of the Code of Civil Procedure, it was incumbent on him to show that the decree was ex facie nullity. For the said purpose, the court is precluded from making an indepth scrutiny as regards the entitlement of the plaintiff with reference to not only his claim made in the plaint but also the defence set up by the judgment - debtor. As the judgment of the Trial Court could not have been reopened, the correctness thereof could not have been put to question.
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- It is also well-known that an Executing Court cannot go behind the decree. If on a fair interpretation of the judgment, Order and decree passed by a court having appropriate jurisdiction in that behalf, the reliefs sought for by the plaintiff
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appear to have been granted, there is no reason as to why the Executing Court shall deprive him from obtaining the fruits of the decree.

In *Deepa Bhargava v. Mahesh Bhargava* [2008 (16) SCALE 305], this Court held as under:

"11...An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Indian Contract Act."

21. It is also not a case where this Court can exercise its jurisdiction under Article 142 of the Constitution of India to mould an order. The decree passed by the learned Trial Court has attained finality. Whether rightly or wrongly, the judgment of the learned Trial Judge has been affirmed by this Court. It is one thing to say that no right having crystallised in favour of a party to the lis, this Court can mould the relief appropriately, but it is another thing to say that despite the decree being found to be an executable one, this Court will refuse to direct execution thereof.

22. We are not oblivious of the fact that the respondents legally would not have been entitled to the reliefs prayed for by them. However, as a decree has been passed, we do not intend to go behind the same. The Executing Court shall, it goes without saying, execute the decree strictly in terms thereof.

23. For the reasons aforementioned, there is no merit in this case. The appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

B.B.B.

Appeal dismissed.