

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

C.P. No.D — 1904 of 2010.

Date of hearing: 02.12.2020.

Date of judgment: 08.12.2020.

Petitioner: Through Mr. Allah Bachayo Soomro,
Additional Advocate General Sindh.

Respondent No.1: Through Mr. Muhammad Aslam Bhatti
Advocate.

J U D G M E N T

MUHAMMAD SHAFI SIDDIQUI, J.- Petitioner has impugned an order dated 11.10.2010, passed in Civil Revision Application No.18 of 2007, in terms whereof the petitioners were directed to pay the amount of Rs.1,78,415/- within 90 days being 25% of the amount allegedly deducted as per alleged government policy.

2. A suit for recovery was filed as Suit No.24 of 2000, by the respondent which was decreed. The respondent No.1's share in the said decree is agreed to be 7,99,062/- and after deducting the taxes the outstanding amount is payable. Trial Court did not grant interest/markup. In respect of issue No.1 i.e. mark up / interest, an appeal No.325/2001 was filed, however, it was declined. In Civil Revision Application No.117 of 2003 Mr. Masood A. Noorani appearing on behalf of the Provincial Government conceded that he would satisfy the decree passed by the trial Court within three months from the date of the order and in case they / respondents failed to pay the decretal amount within three months from the date of the order, then the respondents/Provincial Government will be liable to pay 7% interest on the balance outstanding amount till adjustment. Consequently, in Execution Application No.02 of 2001, which was already pending an application for attachment in terms of order 21 rule 43 was filed which was dismissed.

3. Aggrieved of it a Civil Revision Application No.18 of 2007 was filed and the Revision Application was allowed and the petitioners were directed to pay the balance amount of 25% in the sum of Rs.1,78,415/- to the decree holder within ninety days. The said order was passed on 11.10.2010, whereas it is urged that the principal amount had already been paid. In terms of para-2 an amount of Rs.5,14,462/- was paid to the decree holder whereas an amount of Rs.1,78,415/- was deducted as government policy whereas a sum of Rs.9781/- were deducted being Income Tax and hence it is a case of the petitioner that judgment debtor has already paid the amount of Rs.5,14,462/- to the decree holder whereas the claim of markup has already been declined.

4. We have heard the learned counsel and perused the record. There is nothing in the judgment of the trial Court as well as of the appellate Court, if the amount allegedly deducted as government policy as 25% was held to be unlawful. The petitioner intend to travel beyond the judgment and decree wherein neither such defence was taken nor the deduction of the amount of Rs.1,78,415/- being 25% of the entire amount of respondent was held as lawful deduction in terms of the government policy. The petitioner cannot travel beyond decree which was neither challenged by the petitioner nor it is otherwise unlawful. In terms of the order of the revisional Court in Civil Revision Application No.18 of 2007, Vth Additional District Judge Hyderabad held as under:-

“6. In my opinion, when the order was already passed by the presiding officer dated 07.10.2004 and he has disbelieved the contentions of the J.Ds in connection with the affidavit, on the basis of which they have relied and deducted 25% amount and against that order revision was also dismissed, then in my opinion Presiding Officer of the same Court was not competent to dismiss the execution application. Accordingly, revision application is allowed and the J.D. No.8 is directed to pay the amount i.e. 25% allegedly deducted by them i.e. Rs.1,78,415/- to the Decree holder within 90 days from today. The parties to bear their own costs.”

5. Similarly while disposing of the Revision Application No.117 of 2003, which is a continuation of a claim of interest over the judgment and decree, Mr. Masood A. Noorani stated that he will satisfy the decree passed by the trial Court within three months failing whereof the interest shall be paid at the rate of Rs.7%. It is not the interest i.e. being claimed by the respondent rather it is the balance principal amount which is being claimed out of Rs.7,99,062/- after deducting income tax for which certificate is also required. No doubt the amount of tax is liable to be deducted from the contractors claim but the balance amount of Rs.1,78,415/- is still held as a principal amount liable to be paid. This 1,78,415/- is neither an interest over and above the judgment and decree nor the tax liable to be deducted but only a balance of the principal amount.

6. Consequently, no interference is required in terms of the order of the revisional Court and this petition is accordingly dismissed.

JUDGE

JUDGE

A.