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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 1162 of 1986.

Union of India ... Revisionist

Vs.

Shambhoo Nath Respondent.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This revision (no.325 of 1985) under Section 115 of the Code of Civil Procedure, received by transfer under section 29 of the Administrative Tribunals Act XIII of 1985 from the Court of VI Additional District Judge, Gorakhpur, is directed against the order dated 4.12.1985 passed by the Munsif III, Gorakhpur in execution case no.8 of 1984 upholding the contention of the decree-holder respondent to get interest and for issue of attachment order for the recovery of the same. Against ^{execution} ~~the~~ order, the revisionist had filed objections under Section 47 CPC before the ^{execution} ~~revisional~~ Court stating that the decree in question is not executable. A sum of Rs.2,757/- has already been paid to the decree-holder on 28.12.1982 and he has also received the costs of the suit awarded by the trial Court and the application for execution is not maintainable under the law. The execution Court, however, did not consider the same and passed the impugned order.

(V/V)

.2.

2. The decree-holder respondent did not appear before us to contest the revision despite sufficient opportunities. On behalf of the judgment debtor-revisionist, it was contended before us that the decree sought to be executed by the respondent is merely a declaratory decree and is not executable under the law. It was also contended that there is no direction in the decree to pay interest and the impugned order passed by the execution Court for the realization of interest is against the terms of the decree.

3. We have carefully gone through the relevant record and find that the respondent had filed the suit, in which the main decree was passed, for declaration and mandatory injunction. After contest, the trial Court decreed the suit with costs directing that the plaintiff-respondent is entitled to get his salary refixed from 1.1.1947 to 19.9.1954 in C.P.C. scale. A mandatory injunction was also issued directing the defendant-revisionist to refix the pay of the plaintiff in the grade of Rs. 55-130 from 1.1.1947 and to pay all consequential benefits to the plaintiff. There was no direction in the decree for payment of interest. The impugned order passed by the Execution Court directing the payment of interest to the plaintiff and for issuing the attachment in that connection is, therefore, without

(V/3)

.3.

Jurisdiction and illegal. The plaintiff-respondent is not entitled to get any interest and as such, there is force in the objection of the judgment debtor-revisionist.

4. The revision is accordingly allowed. The objections of the revisionist against the impugned execution order are allowed and it is ordered that the decree-holder-respondent is not entitled to recover any interest from the judgment debtor-revisionist in execution of the decree passed in suit no. 812 of 1978. We direct the parties to bear their own costs.

Blm

5.1.1987
Member (A)

Dated 5.1.1987
kkb

Subarun
5.1.1987
Member (J)