

IN THE HIGH COURT OF MADHYA PRADESH**AT INDORE****BEFORE****HON'BLE SHRI JUSTICE SUBODH ABHYANKAR****ON THE 31st OF OCTOBER, 2023****MISC. PETITION No. 6382 of 2022****BETWEEN:-**

**NARENDRA S/O TULSIRAM
KHATWASE, AGED ABOUT 27 YEARS,
GRAM SULAWAT, POST INDORAMA
DISTRICT DHAR (MADHYA PRADESH)**

.....PETITIONER***SHRI SANJAY P.JOSHI,ADVOCATE*****AND**

**PRABANDHAK SHAN
PHARMACEUTICAL NEAR PITRU
1. PARWAT, JAMMUDI HAPSI,
DISTRICT INDORE (MADHYA
PRADESH)**

**ONKAR S/O MOTIRAM THEKEDAR
OCCUPATION: BUSINESS 602 JAT
2. NIWAS, NANDAN NAGAR, NEAR
GOVERNMENT SCHOOL, INDORE
(MADHYA PRADESH)**

**SATYENDRA ALIS GOLU S/O
MATHURALAL YADAV
OCCUPATION: BUSINESS KALANI
3. NAGAR, AERODROME ROAD
DISTRICT INDORE (MADHYA
PRADESH)**

.....RESPONDENTS***None, despite service of notice.***

This petition coming on for order this day, the court passed the following:

ORDER

- 1] None for the respondent despite service of notice.
- 2] This miscellaneous petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 18.05.2022 (Annexure P-2), passed in Execution Case No.3/2019 by the Commissioner under the Workmen's Compensation Act/Labour Court, Pithampur District Dhar; whereby, in an execution proceedings, the learned judge of the Labour Court has observed that in the award which has been passed jointly and severally against the respondents, the respondent no.1 has already satisfied his part of the award which is Rs.3,53,729/-, and the remaining amount can be recovered from respondent no.2 and 3, who are the contractors.
- 3] In brief, facts of the case are that the petitioner was earlier employed with respondent no.1/Shan Pharmaceutical Ltd. where he met with an accident on 13.08.2016, as he fell from third floor. Subsequently, he also filed an application under the Workmen's Compensation Act, which was allowed vide award dated 19.11.2018 (Annexure P-1), directing the respondents to pay a sum of Rs.9,03,995/- along with interest @ 12%, and medical expenses of Rs.1,57,191/- have also been awarded. As the amount was not

paid by the respondents, an execution case was filed by the petitioner in which the aforesaid impugned order has been passed which is under challenge before this Court.

4] Shri Joshi, learned counsel for the petitioner has submitted that when the award is passed jointly and severally, it is the free will of the decree holder to execute the decree against any one or all the defendants.

5] In support of his submissions, counsel for the petitioner has also relied upon the decision rendered by the Supreme Court in the case of **Sanwarlal Agrawal and others Vs. Ashok Kumar Khotari and others**, reported as (2023) 7 SCC 307.

6] Heard. On due consideration of the submission, and on perusal of the documents filed on record, it is found that so far as the impugned order dated 18.05.2022 is concern, the Execution Court has passed the following order:-

“विपक्षी 2 एवं 3 उपस्थित। विपक्षी क्रं. 2 एवं 3 ने रजिस्टर्ड डाक से अवार्ड की राशि जमा करने हेतु सूचना पत्र भेजा गया है जिसके अभिस्वीकृति प्राप्त हो चुकी है परंतु विपक्षी क्र 2 व 3 के द्वारा अवार्ड दिनांक 19/11/2018 के अनुसार अवार्ड की बकाया राशि इस न्यायालय में जमा नहीं की गई है।

विपक्षी क्रं. 01 अभिभाषक ने व्यक्त किया कि उनके द्वारा उनके हिस्से की राशि 3,53,729/- तीन लाख तिरेपन हजार सात सौ उन्तीस रुपये इस न्यायालय में जमा की जा चुकी है ऐसी स्थिति में उन्होंने विपक्षी क्रं. 2 एवं 3 के विरुद्ध बकाया अवार्ड की राशि 11,36,469/- ग्यारह लाख छत्तीस हजार चार सौ उन्हत्तर रुपये की वसूली हेतु RRC जारी किये जाने का निवेदन किया।

में विपक्षी क्रं. 1 के तर्क से सहमत हूँ, एवं बकाया अवार्ड की राशि 11,36,4691/- ग्यारह लाख छत्तीस हजार चार सौ उन्हत्तर रुपये विपक्षी क्रं. 2 एवं 3 से वसूली हेतु RRC कलेक्टर इंदौर को जारी हो।”

प्रकरण विविध पंजी से कम एवं मूल कारित के साथ संलग्न कर अभिलेखागार में जमा हो।”

7] This Court has no doubt that the aforesaid findings recorded by the Executing Court clearly runs contrary to the basic principle of law that when a decree is passed jointly and severally, it can either be executed against any one of the defendants, as per the sweet will of the plaintiff, or it can also be executed against all of them.

8] Thus, when a decree has been passed jointly and severally, the executing court has no option to direct that it shall or shall not be executed against any particular defendant, as that would amount to going behind the decree, and the Supreme Court, in the case of **Sanwarlal Agrawal (supra)** in paragraph 16 and 17 has held as under:

“16. This Court has time and again cautioned against the Execution Court adopting such an approach. In *Topanmal Chhotamal v. KundomalGangaram* , a three-Judge Bench held as follows :

“5. ... It is a well-settled principle that a court executing a decree cannot go behind the decree : it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit”.

17. Yet again, in *Meenakshi Saxena (supra)* it was reiterated that :

“17. The whole purpose of execution proceedings is to enforce the verdict of the court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value. It is settled law that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree.”

(emphasis supplied)

9] In view of the aforesaid facts and circumstances of the case, this Court is inclined to allow the petition, as the learned judge of the Labour Court has clearly erred in law in holding that the decree has been satisfied by the respondent no.1 by paying his part of the amount whereas the decree was to be satisfied jointly and severally by the defendants.

10] Accordingly, the impugned order dated 18.05.2022 (Annexure P-2) is hereby set aside, having passed in excess of jurisdiction, and the learned judge of the Executing Court is directed to execute the decree against the respondent no.1 only as

desired by the petitioner/plaintiff.

11] With the aforesaid direction, **the Miscellaneous petition stands allowed and disposed of.**

(SUBODH ABHYANKAR)

JUDGE

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