

A

RAMESHWAR DASS GUPTA

v.

STATE OF U.P. AND ANR.

AUGUST 27, 1996

B

[K. RAMASWAMY, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.]

*Code of Civil Procedure, 1908 :*

C

*Executing Court granting a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution—Held, execution Court cannot travel beyond the decree under execution—It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21—Executing Court exceeded its jurisdiction in ordering payment of interest—Therefore it is an order without jurisdiction and is void order.*

D

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
No. 16335 of 1996.

E

From the Judgment and order dated 24.4.96 of the Allahabad High Court in C.R.No. 541 of 1995.

B.D. Agarwal and Vinay Garg for the Petitioner.

The following Order of the Court was delivered :

F

This special leave petition arises from the order of the learned single Judge of the Allahabad High Court made in Civil Revision No. 541/96 on April 24, 1996. The admitted position is that the order of removal of the petitioner from service was set aside by the U.P. Public Services Tribunal, Lucknow. The Tribunal directed as under :

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"The petition is partly allowed. The O.P. No. 1 and 2 are directed to consider the confirmation of the petitioner on Group 1 post and consequent promotion to Class II and Class I post from the date on which his junior Sri Ram Niwas was promoted to such post with all consequential benefits of seniority, salary, pension etc., arising therefrom."

H

In execution thereof, as per the rules, the petitioner laid execution A  
petition under Order 21 Rule 1, CPC read with clause (5) of the Tribunal's  
Rules on a certificate for recovery of the dues under the order. The  
executing court in the impugned order dated December 12, 1995, in  
addition to the salary, gratuity and pension in a total sum of Rs. 1,97,575.32, B  
awarded interest at 12% per annum from the date of the execution till date  
of the order which worked out to the sum of Rs. 1,46,205. The respondents,  
challenged the legality thereof only in respect of the direction to pay the  
interest at 12%. In the revision, the High Court in the impugned order held  
that the executing Court had no power to enlarge the decree. The decree  
of the Tribunal does not grant payment of interest and, therefore, the order  
directing payment of interest was without jurisdiction. Thus this special C  
leave petition.

It is contended for the petitioner that though normally the executing  
Court cannot grant interest, in view of the unreasonable stand taken by the  
judgment-debtors in denying the legitimate claims of the petitioner and for D  
prolonging the case unreasonably for long time, the executing Court must  
be held to have jurisdiction to grant interest in execution of the decree. He  
also contended that the revisional power of the High Court should be  
confined only to errors which do vitiate the ultimate justice. In this case,  
the executing Court, having regard to the facts and circumstances of the  
case, has done justice to the petitioner. The High Court, therefore, was not E  
right in reversing the order. We find no force in any of his contentions.

It is well settled legal position that an executing Court cannot travel  
beyond the order or decree under execution. It gets jurisdiction only to  
execute the order in accordance with the procedure laid down under Order F  
21, CPC. In view of the fact that it is a money claim, what was to be  
computed is the arrears of the salary, gratuity and pension after computa-  
tion of his promotional benefits in accordance with the service law. That  
having been done and the court having decided the entitlement of the  
decree-holder in a sum of Rs. 1,97,000 and odd, the question that arises is G  
whether the executing Court could step out and grant a decree for interest  
which was not part of the decree for execution on the ground of delay in  
payment or for unreasonable stand taken in execution? In our view, the  
executing Court has exceeded its jurisdiction and the order is one without  
jurisdiction and is thereby a void order. It is true that the High Court  
normally exercises its revisional jurisdiction under Section 115, CPC but H

A once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest.

B The special leave petition is accordingly dismissed. Whatever be the difference of amount due and payable to the petitioner, it is but the duty of the respondents to pay the same as expeditiously as possible but not later than three months from the date of the receipt of this order. The petitioner is directed to communicate this order to the respondents.

G.N.

Petition dismissed.