

petition and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties, the Court has to satisfy itself, after hearing the parties and after making such inquiries as it thinks fit, that the petition was in fact presented by both the parties to the marriage, that they have been living separately for a period of one year or more and that they have mutually agreed that the marriage should be dissolved. If both the parties had voluntarily consented to file the petition for dissolving the marriage by mutual consent and all the other conditions mentioned in sub-section (1) of section 13-B of the Act are fulfilled, it will not be open to a party to withdraw the consent. In the present case without making an inquiry under sub-section (2) the trial Court has dismissed the petition as withdrawn which could not be done merely on the asking of one party.

(3) For aforesaid reasons, this appeal is allowed, the impugned order of the trial Court is set aside and the case is sent back to the trial Court to make inquiry envisaged by sub-section (2) of section 13-B of the Act and then decide the petition for divorce by mutual consent in accordance with law. The parties have been directed to appear before the trial Court on October 7, 1985. The records be sent to the trial Court immediately.

N.K.S.

Before, J. V. Gupta, J.

STATE OF PUNJAB,—Appellant.

*versus*

KARTAR SINGH AND OTHERS,—Respondents.

*Execution First Appeal No. 1374 of 1985.*

November 5, 1985.

*Code of Civil Procedure (V of 1908)—Section 144—Amount awarded by Collector for land acquired under the Land Acquisition Act—Said amount enhanced by District Judge on a reference under section 18 of the Act—State appeal filed against the order of enhancement made under section 18—Bond executed by the claimant stipulating that the enhanced amount would be re-paid in case the State*

State of Punjab v. Kartar Singh and others (J. V. Gupta, J.)

*appeal allowed—High Court reducing the compensation and directing restitution of the amount taken by the claimant as enhanced compensation by the order under section 18 of the Act—State Government—Whether entitled to interest under section 144 of the Code on the enhanced amount of compensation to be recovered from the claimant.*

*Held*, that under section 144 of the Code of Civil Procedure, 1908 the parties are to be placed in the same position which they would have occupied but for such a decree or order and for that purpose the court could make any orders for the payment of interest, damages, compensation etc. which are properly consequential on such variation, reversal, setting aside or modification of decree or order. As such the State was entitled to the interest under section 144 of the Code on the enhanced amount of compensation to be recovered from the claimant.

(Para 4)

*Execution First Appeal from the order of the Court of Shri A. S. Gill, District Judge, Hoshiarpur, dated the 15th March, 1985 ordering that the respondents cannot be burdened with interest on the amount to be realised from them and dismissing the application.*

D. S. Brar, A.A.G. (Pb.), for the Appellant.

Sarwan Singh, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This judgment will dispose of E.F. As Nos. 1374 to 1386 of 1985 as the question involved is common in all the cases.

(2) The Punjab State filed application under section 144 of the Code of Civil Procedure (hereinafter called the Code) for restitution of the amount already realised as enhanced compensation by the respondents under the award by the Court under section 18 of the Land Acquisition Act, (hereinafter called the Act) which was subsequently modified by this Court in appeal. The applicant State also claimed interest at the rate of six per cent per annum on the amount which was paid to the respondents by way of enhanced compensation earlier. The dispute between the parties was as to whether the State was entitled to the interest or not under section 144 of the Code. The learned District Judge took the view that the respondents could not be burdened with interest on the amount to be realised from them because no such undertaking was given by them in

the security bonds furnished by them while realising the enhanced amount of compensation. Dissatisfied with the same, the State of Punjab has filed these appeals in this Court.

(3) The learned counsel for the appellant contended that under the provisions of section 144 of the Code, the Court could make orders for the payment of interest, damages and compensation which are properly consequential on such variation, reversal, setting aside or modification of the decree or order. Thus, argued the learned counsel, the view taken by the learned District Judge was wrong and misconceived. On the other hand, the learned counsel for the respondents submitted that there was no direction in the High Court order for refunding the enhanced amount of compensation with interest, nor there was any undertaking given by the respondents in this behalf while furnishing security bonds and, therefore, in the absence of any such stipulation, no interest could be awarded under section 144 of the Code. In support of the contention, the learned counsel relied upon *Land Acquisition Officer v. Mulji Haridas* (1) and *Birendra Nath v. Surendra Kumar* (2).

(4) After hearing the learned counsel for the parties and going through the case law cited at the bar, I am of the considered opinion that the State is entitled to the interest on the enhanced amount of compensation to be recovered by it under section 144 of the Code. The authorities relied upon by the learned counsel for the respondents have no applicability to the facts of the present case. In *Birendra Nath's case* (supra), it was held that where an order for the return of costs contains no direction for the payment of interest, no interest can be realised in execution of that order and, therefore, interest in restitution under section 144 of the Code cannot be allowed though ordinarily interest is a part of the normal relief given in restitution. In the present cases, there was on such specific direction for the refund of compensation with interest, but it was a natural consequence of the order passed by this Court when the award given by the District Judge was modified in appeal. Under section 144 of the Code, the parties are to be placed in the same position which they would have occupied but for such a decree or order and for that purpose, the Court could make any orders for the payment of the interest, damages, compensation etc. which are

(1) A.I.R. 1932 Bombay 326.

(2) A.I.R. 1940 Calcutta 260.

Sarup Singh v. Rattan Singh and others (J. V. Gupta, J.)

properly consequential on such variation, reversal, setting aside or modification of the decree or order. Thus, the payment of interest is a part of the normal relief granted under section 144 of the Code, as held in *Birendra Nath's case* (supra) also. The other judgment i.e. *Land Acquisition Officer's case* has absolutely no relevancy.

(5) Apart from the above, the respondents have taken the benefit of the money which they have received from the State of Punjab as enhanced amount of compensation which they were not entitled to receive in view of the decree passed by this Court in appeal. Thus, having taken the benefit of the amount, the same must be returned to the appellant with interest, as claimed.

(6) Consequently, all the appeals succeed and are allowed. The orders under appeal are set aside. The cases are sent to the District Judge, Hoshiarpur, for determining the actual amount of interest which the appellant is entitled to claim on the amount of compensation to be refunded. The parties have been directed to appear in the Court of the District Judge on December 9, 1985.

Before J. V. Gupta, J.

SARUP SINGH,—Petitioner.

versus

RATTAN SINGH AND OTHERS,—Respondents.

Civil Revision No. 179 of 1984.

November 6, 1985.

*Code of Civil Procedure (V of 1908)—Order 21 Rule 32—Plaintiff's suit for permanent injunction decreed—Such decree be coming final between the parties—Opposite party taking forcible possession of the suit land after the decree of the trial court—Plaintiff decree-holder filing execution application claiming restoration of possession and mesne profits for the land forcibly occupied—Decree not specifying any amount as mesne profits—Application of decree holder allowed and directions as prayed for issued—Executing court—Whether can give such directions—Decree for permanent injunction—Whether liable to be executed only under Order 21 Rule 32 of the Code of Civil Procedure, 1908.*

*Held*, that the decree for the grant of permanent injunction could be executed under Order 21 Rule 32 of the Code of Civil Procedure, 1908 and under the said provisions the executing court has no jurisdiction to issue warrants for possession. Under the above said provisions, the executing court could order detention of the judgment-debtor in civil prison or attach his property,