

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...
CM(M) no.101/2021

Reserved on: 12.07.2021

Pronounced on: 28.07.2021

State of Jammu and Kashmir and another

.....Petitioner(s)

Through: Ms Asifa Padroo, AAG

Versus

Syed & Co.

.....Respondent(s)

Through: Mr Mohsin Qadri, Senior Advocate
with Mr Tahseen Sofi, Advocate
Mr Manzoor A Dar, Advocate with
Mr Lukman Shahzad, Advocate

CORAM:

HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. This is a writ petition under Article 277 of the Constitution of India read with Section 104 of the Constitution of Jammu & Kashmir of erstwhile State of Jammu and Kashmir. Writ of certiorari is prayed for by petitioner to quash execution proceedings initiated by Executing Court to the extent it directs petitioners to pay decretal amount of Rs.3,45,762/- with compound interest, i.e., Rs.2,26,53,629/- upto 18th November 2015 on the basis of calculation made by respondent instead of Rs.20,86,000/- calculated by petitioners through Chief Accounts Officer upto 20th May 2016. Quashment of orders dated 2nd November 1998; 18th November 2015; 1st December 2016; 13th June 2017; 5th May 2017; and 19th August

2017, is also sought for, with a direction to pay royalty with simple interest with regard to timber 9004 Cft of Kail and 3292 Cft of Fur.

2. The case set up by petitioners in writ petition on hand is that in the year 1963-65, Lease Agreements were entered into by Conservator of Forests on behalf of the erstwhile State of J&K with forest lessees, including respondent. However, all these Lease Agreement had been declared ultra vires to the Constitution of J&K by the Full Bench of this Court in a case titled *M/s Good Will Forest Co. v. State of J&K and others*. These agreements were found to be void as Conservator of Forests was not competent to sign lease agreement on behalf of the Governor. In sequence thereof, the J&K Forest Act was amended by inserting Section 52 (c), creating the One-Man Forest Prescribed Authority of the rank of District and Sessions Judge, aiming at determining quantum of benefits/advantages received by either party to the agreement. It is stated that a recovery-suit was filed before the One-Man Authority by the State to recover benefits. Ex-lessee also filed counter claim to recover the excess amount of royalty.
3. In the suit filed by respondent, the One-Man Authority is stated to have vide judgement and decree dated 18th July 1996, held respondent entitled to Rs.3,45,762/- as being excess royalty, besides Rs.24,009/- as sinking fund and Rs.24,009/- as security deposit. Execution of judgement and decree dated 18th July 1996 was sought for by decree holder/respondent. By order dated 2nd November 1998, Executing Court (Principal District Judge, Srinagar) directed petitioners to make payment in terms of judgement and decree or else their operating account would be seized. This order was followed by order dated 29th September 1998, dismissing

restoration application of petitioners. Against above two orders, revision petitions, bearing C.Rev. no.134/1998 and no.135/1998 were preferred before this Court. Both Revision Petitions were clubbed and dismissed vide judgement dated 24th September 2015, by a Bench of this Court. Petitioners preferred to approach the Supreme Court with Petition for Special leave to Appeal No.7184-7185/2016 titled as *Conservator of Forest and others v. Syed and Co.* The Supreme Court found that no ground to interfere with the judgement/order dated 24th September 2015, was made out and accordingly dismissed the SLPs vide Order dated 21st April 2016. The Executing Court vide order dated 1st December 2016 directed judgement debtors – petitioners herein, to explain as to why the terms of undertaking had not been honoured by them and also taking note of deposition of part of amount under decree and time granted for explaining the conduct, salary was permitted to be drawn by petitioners. The Executing Court vide Order dated 13th June 2017 made it clear that prayer made by judgement debtors – petitioners that pleas raised by them be examined afresh, could not be entertained and accordingly the prayer was turned down and judgement debtors were directed to satisfy the decree in letter and spirit by or before next date of hearing while also having in view the undertaking furnished by Principal Chief Conservator of Forests on 20th May 2016. The Executing Court by order dated 5th August 2017 clarified that order dated 17th July 2017 would not come in the way of drawing and disbursing the salary of other employees as only the salary of Principal Chief Conservator of Forests and Conservators of Forests, North, would remain attached. An application appears to have been filed by

petitioners before the Executing Court, to recall order of attachment of salary account of petitioners. The Executing Court by order dated 19th August 2017 dismissed the application. It is how, petitioners have come up before this Court with writ petition on hand.

4. I have heard learned counsel for parties and considered the matter.
5. Learned counsel for petitioners, after dilating facts qua subject-matter of the case, has exhorted that respondent/plaintiff has been declared entitled to Rs.3,45,762/- as excess royalty, Rs.24009/- as sinking fund, and Rs.24009/- as security deposit, along with interest @ 12% per annum, and judgement and decree do not specifically mention anywhere that compound interest would be calculated on compound basis and therefore directions passed by Executing Court with reference to payment of interest as compound interest are bad as well as against basic judgment and decree. It is urged that Executing Court has passed order dated 18th November 2015, 5th August 2017, 19th August 2017 only on the basis of Order dated 2nd November 1998, which order has been passed without any objection from petitioners. It is also contended that petitioners sought before Executing Court calculation of interest by an independent expert but that submission has not been acceded to.
6. On the other hand, learned counsels appearing for respondent, has invited attention of this Court to judgement dated 20th November 1992, passed by the Supreme Court in Civil Appeals no.543 of 1985 and 544 of 1985 titled as *Syed & Co. & others v. State of J&K*, to aver that respondent was given right to recover the amount. Civil suit was preferred. Petitioners filed written statement and thereafter did not chose to appear. Thus, the suit was

decreed vide judgement 20th November 1992. Learned counsels also state that the amount and quantity of timber decreed in favour of plaintiff-respondent was illegally withhold/retained by petitioners in the year 1965 as is apparent from aforesaid judgement of the Supreme Court as also judgement and decree. According to them, terms and conditions of decree including interest part and quantity of timber to be given to respondent are well qualified as was also spelt out by Executing Court while passing Order dated 2nd November 1998, directing judgment debtors-petitioners to pay Rs.31,69,615/- in favour of decree holder-respondent. The order dated 2nd November 1998 was put to challenge in a Revision Petition, which was dismissed by this Court and even the Supreme Court declined to interfere with the order dated 2nd November 1998 and despite that, petitioners again seek quashment of the said order in instant writ petition, *albeit* that has attained finality and cannot be subject to supervisory jurisdiction under Article 227 of the Constitution of India.

7. Civil suit filed by respondent was decreed. In execution petition, certain orders were passed including orders, impugned herein. Among them were orders dated 29th September 1998 and 2nd November 1998. In terms of order dated 29th September 1998, application for restoration was dismissed and by order dated 2nd November 1998, petitioners were directed to pay the amount of Rs.31,69,615/- to respondent. Both these orders dated 29th September 1998 and 2nd November 1998, were put to challenge in Revision Petitions, which were dismissed vide order dated 24th September 2015. SLPs were preferred before the Supreme Court, which also saw same result and were dismissed vide order dated 21st April 2016. Thus, orders dated

29th September 1998 and 2nd November 1998 have attained finality and are no more open to petitioners to throw them to challenge before this Court that too in a writ petition under Article 227 of the Constitution of India as law concerning challenge to be thrown to the orders of the courts below under Article 227 of the Constitution is well settled that High Court can interfere in exercise of its powers of superintendence when there is a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice on the basic principles of natural justice have been flouted. The orders impugned in this writ petition need not be interfered with as they are well reasoned orders. Reference in this regard is had from the law laid down in *Shalini Shyam Shetty v. Rajendra Shankar Patil*, 2010 AIR SCW 6387; *Abdul Rehman Dar and others v. Showkat Ali Bhat and others*, 2011 (IV) JKJ 334 (HC); and *Radhey Shyam and another v. Chhabinath and others*, AIR 2015 SCW 1849.

8. For all that has been said above, writ petition *lacks in* merit and is accordingly **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.
9. Copy be sent down.

(Tashi Rabstan)
Judge

Srinagar
28.07.2021
Ajaz Ahmad, PS

Whether the order is reportable: Yes/No.