

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

Case: CFA No.16/2011
CM No.6537/2024
IA No.19/2011

Indian Oil Corporation Ltd., Rail
Head Complex, Jammu, through its
Area Manager, Jammu

.....Applicant/Appellant(s)

Through: Mr. R. Koul, Advocate.

Vs

1. Collector, Land Acquisition, Jammu. Non-applicant/Respondent(s)
2. Jaswant Raj S/o Sh. Bal Mukan R/o Bari Brahmana, Jammu (deceased).
3. Smt. Suman Dutta Wd/o Late Ashok Kumar R/o 101, Govindpuri Modinagar, Ghaziabad, UP.
4. Sh. Shivam Dutta S/o Late Ashok Kumar R/o 101, Govindpuri Modinagar, Ghaziabad, UP.

Through: Ms. Aparna Gupta, Assisting counsel to
Mrs. Monika Kohli, Sr. AAG for respondent
No.1.
Mr. M. A. Bhat, Advocate for legal
representatives of deceased respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

28.11.2024

CM No.6537/2024

01. This is an application filed by appellant seeking modification of order dated 10.10.2024 as also for hearing of the case for its final adjudication.
- In the application, it has been submitted that the appeal involves a money

decree but it is not imperative that amount need to be deposited before this Court. It has been submitted that impugned decree stands stayed by this Court on the basis of the grounds urged by the appellant/applicant and there being no change in the circumstances ever since, therefore, there was no occasion for this Court to direct the appellant to deposit the decretal amount. It has been further submitted that provisions contained in Code of Civil Procedure are not applicable to an appeal under Land Acquisition Act, as such, there was no occasion for this Court to direct deposition of the decretal amount.

02. I have heard learned counsel for the parties and perused the record of the case.
03. The appellant has filed the present appeal for impugning judgment dated 18.07.2011 passed by learned Principal District Judge, Jammu whereby in a reference under Section 18 of the J&K Land Acquisition Act, the learned District Judge has enhanced the compensation in favour of respondent No.2 to Rs.2 lacs per kanal from Rs.55,000/- per kanal as was awarded by the Collector. On 08.08.2011, the appeal was admitted to hearing and operation of impugned judgment dated 18.07.2011 passed by the Principal District Judge, Jammu was stayed. The said stay order is still in operation.
04. On 10.10.2024, this Court passed an order directing the appellant to deposit the decretal amount within one month. It is this order, which is sought to be modified by the appellant by means of the present application.

05. The contention of the learned counsel for the applicant/appellant that provisions contained in Civil Procedure Code are not applicable to an appeal filed under Section 52 of the State Land Acquisition Act, is without any merit, for the reason that in Section 52 of the Act itself, it is clearly provided that Civil Procedure applicable to the appeals from original decrees would be applicable to appeals against the judgment passed by the District Judge in a reference under Section 18 of the Land Acquisition Act.
06. The provisions of the Civil Procedure Code relating to appeals from original decrees means provisions contained in Order 41 of the CPC and the same is clearly applicable to appeal filed before the High Court in terms of Section 52 of the Land Acquisition Act. Sub-rule (3) of Rule 1 of Order 41 CPC, which has been inserted by Act of X of 1983 in the Jammu & Kashmir Civil Procedure Code w.e.f. 15.08.1983, provides that where the appeal is against the decree for payment of money, the appellant has to, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish security in respect thereof as the Court may think fit.
07. The Supreme Court, while interpreting the provisions contained in Sub-rule (3) of Rule 1 of Order 41 CPC, has in the case of **‘Kayamuddin Shamsuddin Khan Vs. State Bank of India’** reported in **1998 (8) Supreme Court Cases 676** held that non-compliance with direction given under Rule 1(3) of Order 41 of CPC to deposit the amount would result in dismissal for application for stay of execution of decree. Thus, in an appeal against decree for payment of money, it is incumbent upon the

Appellate Court to direct the appellant to deposit the disputed amount in the appeal or to furnish security in respect thereof to the satisfaction of the Court.

08. In the present case, while passing order dated 10.10.2024, this Court has only followed the mandate of sub-rule (3) of Rule 1 of Order 41 CPC and merely because the said mandate was not followed by this Court at the time of staying the execution of the impugned decree, does not debar this Court from passing the order for deposition of the amount in dispute at this stage. In fact, as per sub-rule (5) of Rule 5 of Order 41 of CPC, if appellant fails to deposit the decretal sum as ordered by the appellate court in terms of sub-rule (2) of Rule 1 of Order 41 of CPC, the Court cannot stay the execution of the decree.
09. In view of the above, I do not find any merit in this application. The same is **dismissed**, accordingly. However, appellant/applicant is granted further one month's time to comply with order dated 10.10.2024, failing which, the interim order dated 08.08.2011 staying the execution of the impugned judgment and decree shall stand vacated and it shall be open to the decree holder to seek execution of the decree before the appropriate forum.
10. CM No.6537/2024 stands **disposed of**.
11. List the main appeal for final hearing on 06.02.2025.

(Sanjay Dhar
Judge

Jammu
28.11.2024
Narinder