

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4757 OF 2011

STATE OF MADHYA PRADESH & ANR. ..APPELLANTS

VERSUS

PAWAN SAW MILLS & ORS. ..RESPONDENTS

WITH

CIVIL APPEAL NO. 4756 of 2011

O R D E R

1. How unjust enrichment takes place is reflected by the action taken by the executing court while wrongly interpreting the decree in the instant matter. It appears that way back on 19.11.1992, State of Madhya Pradesh as well as State of Uttar Pradesh, conducted raid upon the premises of Respondent No.1, i.e. Pawan Saw Mills, State of Uttar Pradesh had seized saw mill, whereas State of Madhya Pradesh effected seizure of saw mills' machinery, tools and timber which were lying. The seizure memo was drawn by appellants on 19.11.1992, which included the following items :

- 1.) 1 Ek Nag Motor 10 Horse Power
- 2.) 3 Nag B Bent
- 3.) 8 Nag Puli
- 4.) 6 Nag Chutki Sent

- 5.) 1 Nag plate ka chotta hissa
- 6.) 3 Nag Wheel"

2. Aforesaid items were given back as per *Superdaginama* executed by Respondent No.1 on 10.01.1994. The details of goods which were given back is as under:

" DETAILS OF GOODS

As per the orders of the Forest Officer, Forest Division, Teekamgarh letter No.1/7.1.1994 and 88/7.1.94 the following articles have been released on superdari:

1. One Motor - 10 Horse Power
2. 3 Nos. B. Belt
3. 2 Nos. Pulley
4. 6 Nos. Chutki Set
5. 1 No. small part of plate
6. 3 Nos. wheel"

As per the orders of the trial court, the electric motor and all the seized parts of the saw mill were returned by the appellants to the Respondent Nos.1 and 2 as per *Superdaginama* dated 10.01.1994.

3. The decree which was passed by the trial court in the instant case had been modified by the first appellate court to the following extent:

"The Appeal No.159/95 of the appellants M/s. Pawan Saw Mills is admitted with costs against the Respondents/Defendants No.3 and 4 to the extent that the appellants are entitled to get the damages at the rate of Rs.200/- per day from the

Respondents/Defendants with effect from 19.11.1992 till the date of returning their Saw Machine parts and electricity motors etc. The Respondents/Defendants No.1 and 2 are hereby directed to renew the license of the plaintiffs as per rules after receiving the prescribed fees and completion of the legal formalities

The Appeal No.193/95 is partly admitted to the extent that the plaintiffs are not entitled to get any damages from the Defendants/ Respondents No.1 and 2. The judgment of the Hon'ble lower court is confirmed with regard to rest of the conclusions.

A copy of the judgment be kept in Appeal No.193/95."

4. The timber, which was seized, was sold away by the State of Madhya Pradesh in the year 1992-1993. However, the fact could not be proved before the trial court as the State of Madhya Pradesh remained *ex-parte* and preferred the second appeal before the High Court only when the first appellate court fastened the liability exclusively on appellants by modifying the judgment and decree passed by the trial court. The High Court has dismissed the appeal.
5. It was submitted by learned counsel appearing on behalf of the State of Madhya Pradesh that as per the decree passed by the trial court, the State of

Madhya Pradesh had to make the payment of damages @ Rs.50/- per day from the date of seizure of the parts of saw mill i.e. machinery and tools w.e.f. 19.11.1992 to 29.07.1993, whereas total financial liability was Rs.6,500 only. As per modified decree passed by the first appellate court dated 08.05.1997, liability for damages came to be enhanced to Rs.83,600/- from Rs.6,500/-. It was further submitted that the damages @ Rs.200/- per day was imposed with effect of date of seizure i.e. from 19.11.1992 to the date of return of the goods i.e. 10.01.1994, for a total period of 418 days including expenses of the filing of the appeal and litigation expenses, total amount came to Rs.92,618/- whereas on the basis of wrong calculation executing court has got deposited the amount from the appellant(s) herein on 05.08.1997 a sum of Rs.3,93,543/-. On 28.10.1997 a sum of Rs.6,500/- and on 22.02.1999, a cheque dated 15.02.1999 was handed over for a sum of Rs.1,08,525/- and on 19.02.2003 a sum of Rs.3,37,435/- had also been paid. It was further submitted that total amount under decree passed by

first appellate court was Rs.92,618/- plus cost of the timber whereas much more amount had been deposited. When second appeal was preferred an interim stay was granted by the High Court as such payment of the cheque for further amount was stopped. As a matter of fact, the decree holder was not entitled for the amount for which the compromise had been entered into. As a matter of fact, Respondent(s) had received a sum of Rs.8,46,053/- which was far in excess of the decretal amount. As per the learned counsel appearing for the appellants, a sum of Rs.7,27,233/- had been paid excess.

6. It was submitted on behalf of respondent(s) decree holder that no evidence was led by the State of Madhya Pradesh to prove factum of sale of goods and value fetched by the State of Madhya Pradesh on sale of timber. The value of the timber was lower at that time but it has gone very high at present. The wheels of saw machine were not given back and due to the appeal preferred by the State of Madhya Pradesh the license had not been renewed by the State of Uttar Pradesh, the respondent decree

holder has suffered loss w.e.f 1992 for last 25 years and once compromise had been entered into before the executing court, it ought to be honoured by the State of Madhya Pradesh.

7. After hearing learned counsel for the parties, in our opinion, the executing court while fastening liability has gone beyond the scope of the decree. Whereas it was required to execute the decree as it stood and could not have found more items to be handed over which were not reflected in the seizure list as well as in *Superdaginama*. The finding beyond that was rendered illegally. Thus, executing court has committed gross illegality in exceeding its powers, it was not legitimate and it went beyond decree while awarding compensation. As a matter of fact, the list of seizure of articles prepared on 19.11.1992 and the list of items reflected in *Superdaginama* tally with each other and it was clear that what had been seized had been returned except timber. The submission raised by decree holder that the wheels of the saw machine were not handed over, is wholly incorrect. It is mentioned in *Superdaginama* that three wheels were

returned back. Thus, seized motors and tools were handed back as such the decree stood satisfied with respect to the return of the machinery of saw mill i.e. motors and tools etc. by the State of Madhya Pradesh. However, other part, which remained to be complied by the State of Madhya Pradesh, was with respect to the return of timber.

8. Since, order of the executing court has also been questioned before us, it is apparent that the decree holder has realized more amount than the one which could be legally realized under the decree. No doubt about it that the decree was required to be complied with respect to the return of the timber also. Fact remains that it was sold in auction. There is nothing to doubt about the factum of sale of the timber seized by the State of Madhya Pradesh in the year 1992 in which the timber was sold for a sum of Rs.26,202/-. The timber once sold could not have been returned back. Thus, the decree holder would be entitled to price of the timber for which it was sold along with the interest thereupon.

9. It appears that the decree holder was entitled for

a sum of Rs.92,618/- plus Rs.26,202/- along with interest but had received a sum of Rs.8,46,053/-. The State of Madhya Pradesh was required to furnish proof of sale of timber before trial court when it had sold the timber it remained ex-parte and payment of the price of timber was not made timely.

10. Thus, in exercise of our powers to do complete justice between the parties, we direct that total sum of Rs.5 lacs would be sufficient towards full and final settlement of decree by the State of Madhya Pradesh, to be adjusted out of amount already received by decree holder. Let amount of Rs.5 lacs be retained out of amount which has been paid to the decree holder and the remaining amount shall be returned by decree holder to the State of Madhya Pradesh, within a period of three months from today and report the compliance to this court.
11. The executing court on behalf of the decree holder or the State of Madhya Pradesh shall entertain no further objection. It is open to the respondent decree holder to approach to the State of Uttar Pradesh in accordance with decree subject to fulfillment of the conditions.

12. The impugned judgment passed by the High Court is set aside. The order of executing court is also set aside. The appeals, accordingly, stands disposed of. No costs.

.....J.
[ARUN MISHRA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI
AUGUST 24, 2017

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4757/2011

STATE OF MADHYA PRADESH & ANR.

Appellant(s)

VERSUS

PAWAN SAW MILLS & ORS.

Respondent(s)

WITH

C.A. No. 4756/2011 (III-A)

Date : 24-08-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Mr. Ankit Kr. Lal, Adv.
Mr. Mishra Saurabh, Adv.

Mr. B. S. Banthia, AOR

For Respondent(s) Mr. A. N. Bhargava, Adv.
Mr. P. K. Jain, AOR
Mr. Giridhary Lal Choudhary, Adv.

Mr. Anil Kumar Jha, AOR

UPON hearing the counsel the Court made the following
O R D E RThe Civil Appeals are disposed of in terms of the Signed
Order.(RASHI GUPTA)
SENIOR PERSONAL ASSISTANT(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]