

GAHC010003122024



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CRP(IO)/14/2024**

ASSAM POWER DISTRIBUTION COMPANY LIMITED AND 6 ORS  
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1957, HAVING  
ITS REGISTERED OFFICE AT BIJULI BHAWAN, PALTAN BAZAR,  
GUWAHATI, DIST- KAMRUP (M), ASSAM, REPRESENTED BY THE  
MANAGING DIRECTOR, ASSAM POWER DISTRIBUTION COMPANY  
LIMITED

2: THE CHAIRMAN  
ASSAM POWER DISTRIBUTION COMPANY LIMITED  
BIJULI BHAWAN  
PALTAN BAZAR  
GUWAHATI  
DIST-KAMRUP (M)  
ASSAM

3: THE CHIEF ENGINEER (DISTRIBUTION)  
ASSAM POWER DISTRIBUTION COMPANY LIMITED  
BIJULI BHAWAN  
PALTAN BAZAR  
GUWAHATI  
DIST- KAMRUP (M)  
ASSAM

4: THE ADDITIONAL CHIEF ENGINEER (E)  
HILLS ZONE  
APDCL  
LOWER HAFLONG  
HAFLONG  
DIST-DIMA HASAO  
ASSAM

5: THE SUPERINTENDING ENGINEER (E)  
KANCH ELECTRICAL CIRCLE  
APDCL

DIPHU  
DIST-KARBI ANGLONG  
ASSAM

6: THE EXECUTIVE ENGINEER  
DIPHU ELECTRICAL DIVISION  
APDCL  
DIPHU  
DIST-KARBI ANGLONG  
ASSAM

7: THE SUB-DIVISIONAL OFFICER (ELECTRICAL)  
DIPHU ELECTRICAL SUB-DIVISION  
DIPHU  
DIST- KARBI ANGLONG  
ASSA

VERSUS

SMT. REKHA BARUA TERON  
W/O LATE DIBAKAR TERON, R/O RONGKHELAN, DIPHU, P.O. AND P.S.-  
DIPHU, DIST- KARBI ANGLONG, ASSAM

**Advocate for the Petitioner** : MR. P N GOSWAMI (ADDL. A.G., ASSAM), MR. R BORA, MR. K P PATHAK

**Advocate for the Respondent** : MS M D MEDHI, MS J KALITA

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**23.09.2024**

Heard Mr. R. Bora, learned counsel for the petitioners and Ms. M.D. Medhi, learned counsel for the sole respondent.

2. This petition, under Article 227 of the Constitution of India, is directed against the order dated 26.09.2023, passed by the learned Civil Judge (Senior Division), Karbi

Anglong at Diphu, in Petition No. 165/2023, filed in Money Execution Case No. 03/2011.

3. It is to be noted here that vide impugned order, dated 26.09.2023, the learned Executing Court has directed the petitioners to pay an interest @ 9% per annum on the principal amount of Rs. 12,00,000/- granted in favour of the respondent, vide judgment and decree dated 10.09.2010, passed in Money Suit No. 01/2002.

4. The background facts, leading to filing of the present petition, are adumbrated herein below:-

"The respondent, namely, Rekha Barua Teron, as plaintiff, had instituted a money suit, being Money Suit No. 01/2002, claiming damages on account of death of her husband due to electrocution, to the tune of Rs. 12,00,000/- along with interest @ 9% per annum from the date of filing of the suit.

Thereafter, vide judgment and decree dated 10.09.2010, the court of Assistant to Deputy Commissioner, Karbi Anglong at Diphu, had decreed the suit in favour of the respondent and directed the petitioners to pay the decreetal amount, i.e. Rs. 12,00,000/, without, however, granting any interest upon the principal amount.

Thereafter, the respondent had filed one execution petition, being Money Execution Case No. 03/2011 and issued notice to the petitioners to show cause regarding execution of the judgment dated 10.09.2010. On 10.09.2011, the petitioners were directed to pay the amount and the suit was accordingly disposed of.

Thereafter, the petitioners had preferred an appeal before the Deputy Commissioner, Karbi Anglong, which came to be dismissed. Thereafter, the second appeal, being RSA No. 103/2014 was preferred before this court and the same was also disposed of vide order dated 29.04.2020, with a direction to the petitioners herein, to file an application for setting aside the ex-parte order before the learned trial court.

Thereafter, on 08.12.2023, the petitioners had deposited the decretal amount before the executing court and the same was received by the respondent.

Thereafter, on account of non awarding of interest, the respondent had filed a petition on 11.05.2023, being Petition No. 165/2023, under Section 47 of the C.P.C., claiming interest on solatium. Thereafter, the petitioners had entered appearance by filing objection, contending that executing court cannot travel beyond the decree. However, the learned Civil Judge (Senior Division), Karbi Anglong at Diphu, vide order dated 26.09.2023, directed the petitioners to pay interest on solatium @ 9% per annum to the respondent from the date of the judgment, till realization.”

5. Being aggrieved with the aforesaid order, dated 26.09.2023, the petitioners have approached this court by preferring this petition for setting aside the impugned order on the following grounds:-

- (i) That, the learned executing court cannot travel beyond the decree and
- (ii) That, as no interest was awarded upon the sum of Rs. 12,00,000/-, the respondent is not entitled to any interest upon the same and therefore, the learned executing court cannot grant such interest to the respondent

6. Mr. Bora, learned counsel for the petitioners submits that the impugned order suffers from manifest illegality, inasmuch as the impugned order was passed by the learned executing court and the learned executing court has no power to go beyond the decree, as the learned trial court while passing the decree had not granted any interest upon the principal amount. Mr. Bora further submits that the learned executing court, granting interest @ 9% had relied upon three decisions of Hon’ble Supreme Court in the case of **Chhanga Singh and Another vs. Union of India and Another**, reported in (2012) 5 SCC 763; **Gurpreet Singh vs. Union of India**, reported in (2006) 8 SCC 457; & **Sunder vs. Union of India**, reported in (2001) 7 SCC 211 and that in the said judgments Hon’ble Supreme Court has dealt with granting of interest

upon solatium and the said judgments relate to land accusation case and as such, the ratio laid down therein cannot be applied in the present case and therefore, it is contended to allow the petition by setting aside the impugned order dated 26.09.2023.

6.1 Mr. Bora, learned counsel for the petitioners has referred one case law of Hon'ble Supreme Court in the case of **Rameshwar Das Gupta vs. State of U.P. and Another**, reported in **1997 AIR (SC) 410** to strengthen his submission.

7. On the other hand, Ms. Medhi, learned counsel for the respondent has supported the impugned order and submits that the learned trial court has rightly relied upon the decisions of Hon'ble Supreme Court in the case of **Chhanga Singh** (Supra); **Gurpreet Singh** (Supra); & **Sunder** (Supra) and granted solatium. Ms. Medhi further submits that going by the meaning of solatium it cannot be said that the ratio laid down in the cases, cannot be applied here in this case, as the respondent had suffered a lot on account of death of her husband, since the date of accident and therefore, Ms. Medhi has contended to dismiss the petition, by upholding the impugned order.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the decisions of Hon'ble Supreme Court relied upon by the learned trial court while granting interest and also perused the decision of Hon'ble Supreme Court referred by Mr. Bora, learned counsel for the petitioners.

9. The law relating to power and duty of executing court is well settled in catena of decisions by Hon'ble Supreme Court and also by different High Courts. In the case of **V. Ramswami vs. T.N.V.Kailash Theyar** reported in **AIR 1951 SC 189 (192)**, it was observed that, "the duty of an executing Court is to give effect to the terms of the decree. It has no power to go beyond its terms. Though, it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation".

10. Thereafter, in the case of **Topanmal Vs M/s Kundomal Gangaram** reported in **AIR 1960 SC 388**, it was held by the Hon'ble Supreme Court that, an executing Court

must take the decree as it stands. An executing Court cannot go behind the decree. It can neither add something in the decree already passed, nor alter the decree. It cannot grant relief which is not contemplated by the decree.

11. It appears that in the case of **Rameshwar Das Gupta** (Supra), Hon'ble Supreme Court in the paragraph No. 4 has held as under:-

"4. 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 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 computation 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 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 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."

12. Now, advertng to the facts of the present case, I find that at the time of passing the impugned judgment and decree, the learned trial court had not granted any interest upon the principal amount i.e. Rs.12,00,000/-, though an averment was made in the

plaint. The payment of the decretal amount being made by the petitioners in the execution case the decree stood satisfied. Thereafter, entertaining a petition filed by the respondent herein, for grant of interest on the principal amount, on account of non-granting of interest and thereafter granting of the same, to the considered opinion of this court, is beyond the limit of scope and purview of the executing court. The same is not in conformity with the proposition of law laid down in the cases discussed herein above. The executing court cannot travel beyond the decree and the same is well settled.

13. Thus, I find sufficient force in the submission of Mr. Bora, the learned counsel for the petitioners. And the decision of Hon'ble Supreme Court in the case of **Rameshwar Das Gupta** (Supra), referred by him, also supported his submission.

14. I have also considered the submission of Ms. Medhi, the learned counsel for the respondent and gone through the cases relied upon by the learned executing court in **Chhanga Singh and Another** (supra), **Gurpreet Singh** (supra) and **Sunder** (supra) and I find that Hon'ble Supreme Court has dealt with the issue of granting of interest upon solatium in land acquisition cases. Notably, in the said cases Hon'ble Supreme Court has dealt with the issue of granting of interest upon solatium and the same was provided in the Land Acquisition Act itself.

15. This being the position, this court is unable to agree with the submission of Ms. Medhi, learned counsel for the respondent that the respondent herein is entitled to solatium. Such an argument is fallacious and devoid of substance and on such count this court afraid that, the decisions relied upon by the learned executing court would not advance the case of the respondent. Giving of extended meaning to the word solatium beyond the limit and scope of the Land Acquisition Act is impermissible.

16. Thus, the ratio laid down in the aforementioned cases, based on which the learned trial court has granted 9% interest per annum in favour of the respondent, cannot be applied to the case in hand and on such count the impugned order is illegal, arbitrary and it fails to withstand the legal scrutiny and therefore, it requires interference of this court.

17. In the result, I find sufficient substances in this petition and accordingly, the same stands allowed. Therefore, the impugned order dated 26.09.2023, stands set aside and quashed.

18. In terms of above, this CRP (IO) stands disposed of.

**Sd/- Robin Phuikan**  
**JUDGE**

**Comparing Assistant**