

Dharam Chand  
*v.*  
 The State of  
 Punjab and  
 others  
 \_\_\_\_\_  
 Dua, J.

for consideration in each case whether in the circumstances disclosed, this Court should or should not interfere on the writ side. In the present case, after considering all the circumstances, I have not the least doubt that if the petitioner has under the law not entailed disqualification, it is eminently a fit case in which this Court should interfere at this stage. It is undeniable that an election process is an expensive affair both for the State and the candidates, and the writ petition having actually been admitted and the parties being before the Court, it would require very strong reasons to persuade me to refuse to go into the merits of the controversy. No such strong or compelling reason has been brought to my notice.

In the result, the writ petition succeeds and allowing the same, I quash the order of Shri R. D. Joshi, S.D.O., Fazilka, dated 11th September, 1961. The petitioner is entitled to his costs of these proceedings.

K.S.K.

APPELLATE CIVIL

*Before Prem Chand Pandit, J.*

UNION OF INDIA,—Appellant

*versus*

SHEELA DEVI AND ANOTHER,—Respondents

Execution First Appeal No. 334 of 1960

1961  
 \_\_\_\_\_  
 December, 1st.

*Code of Civil Procedure (Act V of 1908)—Order XLI—  
 Rule 5—Appeal against a decree awarding future interest  
 till payment filed and application for stay of the execution  
 made—Court ordering execution to continue but amount  
 not to be paid to decree-holder till she furnished security  
 for restitution—Amount deposited in executing Court by  
 the judgment-debtor which was withdrawn by decree-  
 holder after furnishing security after a month—Decree-  
 holder—Whether entitled to interest for that month.*

*Held*, that the deposit of the decretal amount in the executing Court can amount to payment to the decree-holder only if it is an unconditional deposit and the decree-holder can withdraw it whenever he likes. Such was not the position in the present case. The decree-holder had to find a suitable security, which was to be accepted by the Executing Court after notice to the appellant, before she could withdraw this amount. This condition was imposed by the High Court on the application of the appellant itself. If the Union of India had made the payment of the decretal amount either to the decree-holder or in Court unconditionally, then the respondent would not have been entitled to any interest from the date of such payment or deposit. A judgment-debtor cannot be allowed to deprive the decree-holder of the fruits of his decree, if he is unable to arrange for an adequate security for restitution. The decree-holder is, therefore, entitled to the interest for the period of one month from the date of the deposit of the decretal amount in the treasury till its actual withdrawal by her on furnishing security.

S. M. SIKRI, ADVOCATE-GENERAL, for the Appellant.

Nemo.

#### JUDGMENT

PANDIT, J.—Some agricultural land of Smt. Sheela Devi, respondent, was acquired by the Union of India and she was awarded compensation for the same. While doing so, the arbitrator awarded interest also and passed the following order regarding the same—

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“.....The claimant is, therefore, entitled to interest on the entire amount of compensation from 25th August, 1955 to 28th August, 1956 at the rate of four per cent and upon the balance after deducting Rs. 33,396 from 28th August, 1956 till the date of payment.....”

The Union of India filed a regular first appeal against the decision of the arbitrator in this Court and the appeal is still pending. In this

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appeal the appellant made an application for the stay of the execution proceedings filed by the respondent. On this application, the following order was passed by a learned Single Judge of this Court—

“Execution will go on, but the decretal amount will only be paid to the decree-holder on her furnishing security to the satisfaction of the Executing Court for restitution. The security will only be accepted after notice to the Union of India.”

It is common ground that the Union of India deposited the decretal amount in the treasury, but the same was paid to the respondent-decree-holder one month after the said deposit when she furnished the required security, as directed by this Court. The decree-holder claimed a further sum of Rs. 1,925-5-4 as under—

	Rs. A. P.
(i) Interest at 4 per cent per annum from 26th August, 1959 to 26th February, 1960 due for six months on Rs. 80,400	... 1,608-0-0
(ii) Interest at the rate of 4 per cent per annum for one month on Rs. 95,200	... 317-5-4
Total amount	... 1,925-5-0

Since the judgment-debtor denied the claim, the matter was tried by the learned Senior Subordinate Judge, Ludhiana. Before him, item No. (i) was not disputed and regarding item No. (ii) he held that the decree-holder was entitled to the said interest for the period of one month, after the deposit of the amount in the treasury and actual withdrawal by the decree-holder. He, consequently, held that the decree-holder was entitled to the entire sum of Rs. 1,925-5-4 as claimed by her. Against this

order, the present execution first appeal has been filed by the Union of India.

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The sole point for decision in this case is whether the decree-holder was entitled to the interest for the period of one month from the date of the deposit of the decretal amount in the treasury till its actual withdrawal by her on furnishing security.

As already mentioned above, the arbitrator had held that the respondent would be entitled to the interest till the date of payment of the decretal amount. The question, therefore, arises whether the deposit made by the appellant in the present case amounts to payment of the same to the decree-holder-respondent. There is no authority of this Court on this point, but to me it appears that such a deposit could amount to payment to the decree-holder only if it was an unconditional deposit and the decree-holder could withdraw it whenever he liked. Such was not the position in the present case. The decree-holder had to find a suitable security, which was to be accepted by the Executive Court after notice to the appellant, before she could withdraw this amount. This condition was imposed by this Court on the application of the appellant itself. If the Union of India had made the payment of the decretal amount either to the decree holder or in Court unconditionally, then the respondent would not have been entitled to any interest from the date of such payment or deposit. A judgment-debtor cannot be allowed to deprive the decree-holder of the fruits of his decree, if he is unable to arrange for an adequate security for restitution. As aptly remarked by Mockett and Shahabuddin JJ. in *Periakaruppan Chettiar v. A. L. V. R. S. T. Veerappa Chettiar* (1), "it would, as I have indicated before, weigh very heavily on an impecunious decree-holder if at the instance of a well-to-do judgment-debtor, he should be put

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(1) A.I.R. 1944 Mad. 46

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in the position of losing interest on the amount of decree which might ultimately be due to him for no other reason except that he had not the means to furnish security to enable him to draw it out". A similar point came up for decision in *Mooka Naicker v. A. K. Venkatasami Naidu and another* (2), where it was held as under—

"The judgment-debtor-appellant as a condition of obtaining stay of execution of the decree under appeal was asked by the High Court to make a deposit of the amount of the decree of the Court below, which deposit the decree-holder-respondent was directed to take out on his furnishing security. The respondent, however, could not furnish security and did not take out the money. In the execution of the decree after the disposal of the appeal, the judgment-debtor contended that the interest had ceased to run with the deposit of the decretal amount as this was not a case of mere voluntary payment.

(Held) that since the order of the Court under which he made the deposit, was one which was made on his invitation, the contention could not be sustained and the failure of the decree-holder to draw out the deposit did not disentitle him to interest on the deposit."

Learned counsel for the appellant relied on a decision in *Chowthmull Manganmull v. The Calcutta Wheat and Seeds Association* (3), where it was observed—

"Where the defendant-appellant obtained an order for stay of execution of decree passed against him on depositing the decretal amount in Court pending the

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(2) A.I.R. 1950 Mad. 807.  
(3) A.I.R. 1925 Cal. 416

appeal and subsequently the appellant was adjudicated insolvent and the Official Assignee did not choose to proceed with the appeal, which was, therefore, dismissed : (Held) that the money deposited in Court was payable to the decree-holder and not to Official Assignee."

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On the basis of this authority, he submitted that the moment the judgment-debtor deposited the money in Court, it became the property of the decree-holder and, that being so, it would be considered that the decretal amount was paid to the decree-holder and interest ceased to run thereon from that date. In the first place, the facts in that authority were not the same as in the present case. Secondly, this authority was distinguished by a Division Bench of the Bombay High Court in *Keshavlal Manilal and others v. Chandulal Valabhai and others* (4), wherein it was held—

"A judgment-debtor, who had appealed from the lower Court's decree was granted stay on his depositing the decretal amount. The decree-holder was allowed to withdraw the sum on furnishing security, but he did not do so. Thereupon, on the application of the Judgment-debtor the amount was invested in the Government promissory notes and by the time the decree was passed, the investment had appreciated in value and the decree-holder claimed the same:

(Held) that all that the decree-holder can claim was the sum found due under the decree with interest and that no more can be given to him, while the profit must go to the person who made the deposit."

When deciding this case, Macklin J. observed thus

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while referring to *Chowthmull Mangamul v. Calcutta Wheat and Seeds Association* (3)—

“It was stated moreover that the money was paid into Court to give security to the decree-holders that in the event of their succeeding in the appeal they should obtain the fruits of their success. In my opinion, this is the correct way of regarding the deposit in the present case also; it was primarily a deposit of security rather than a deposit of the decretal debt, and the decree-holder cannot claim it as his own, unless the judgment-debtor fails to satisfy the decree by the payment of the money due under the decree.”

In view of what I have said above, I find no force in this appeal, which is hereby dismissed. Since the respondent is unrepresented before me, I make no order as to costs in this Court.

B.R.T.

APPELLATE CIVIL

*Before Tek Chand and S. B. Capoor, JJ.*

KANSHI RAM AND OTHERS,—Appellants.

*versus*

HAR LAL AND OTHERS,—Respondents.

Regular Second Appeal No. 558 of 1960.

1961  
December, 6th *Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 6(1), 7 and 13—Suit by some proprietors for a permanent injunction against the Gram Panchayat and some biswedars restraining them from preventing the plaintiffs and other residents and inhabitants of the village from grazing their cattle in the land in suit and from removing dried wood for fuel and from*