

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM No.21621/2010 in RFA(OS) No.41/2000**

% **Date of Decision: 18.03.2011**

M/s. Puran Chand Packaging Industries Pvt. Ltd. Appellant

Through Mr.K.A.Singh, Advocate.

Versus

Smt.Sona Devi & Anr. Respondents

Through Mr.R.K.Jain, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR.JUSTICE V.K.SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

V.K.SHALI, J. (ORAL)

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1. This is an application filed by the respondent/plaintiff under Section 151 of the Civil Procedure Code for refund of Rs.7 lakhs deposited by him in the present appeal, by virtue of a court order, which was not finally followed by the parties.

2. Brief facts, to comprehend the controversy in issue, are that the respondent/plaintiff had filed the suit for possession against the appellant/defendant before this Court. In the said suit, an application under Order 12 Rule 6 was filed on the basis of which a Decree dated

4th July, 2000 for possession of the suit premises was passed in favour of the respondent/plaintiff.

3. The appellant/defendant feeling aggrieved by the said Decree of possession dated 4th July, 2000 filed the present RFA(OS) No.41/2000. During the pendency of the appeal, a compromise was arrived at between the parties and order dated 4th December, 2001 records the broad terms and conditions of the same as under:-

“1. Appellant shall handover possession of Plot No.20, SMA, Industrial Area to respondents within four months from today and Respondents shall pay Rs.13 lacs to him in full and final settlement of all his claims including those set up in Suit No.2873/90 and 513/96

2. Respondents shall deposit Rs.13 lacs before the Registrar of this Court in two equal instalments within three months from today.

3. Both sides shall withdraw their suits within one month from date of deposit of Rs.13 lacs by respondents. They shall also resolve other ancillary disputes related to payment of electricity charges by Appellant and TDS certificates etc.

4. Two weeks time is granted to both parties to file a joint application incorporating the terms of compromise supported by their respective undertakings.”

4. It transpires that the order dated 4th December, 2001 was modified on 22nd February, 2002 whereupon an amount of Rs.13 lacs was reduced to Rs.12 lacs and further the same was to be deposited in two installments of Rs.6 lacs each, first of which was to be deposited within two months.

5. In pursuance to the said orders dated 4th December, 2001 & 22nd February, 2002, the respondent/plaintiff is purported to have deposited a sum of Rs.7 lakhs. Further in terms of the compromise, the amount of Rs.12 lakhs was to be given to the appellant/defendant who was to hand over the vacant possession of the suit property to the respondent/plaintiff. A joint application in this regard was to be filed. None of these actions were carried out and consequently the appeal was heard and decided on merits.

6. This appeal was finally disposed of vide order dated 26th May, 2008 whereby the Decree for possession passed in favour of the respondent/plaintiff under Order 12 Rule 6 was set aside and the matter was remanded to the learned Single Judge to be heard afresh in accordance with the law. However, while disposing of the appeal, no order with regard to the return of the amount of Rs.7 lakhs, which was deposited by the respondent/plaintiff was passed as none of the parties seemed to have pointed out that any amount stands deposited with the Registrar General.

7. Now, the respondent/plaintiff has filed an application under Section 151 CPC for refund of that amount on the ground since the order dated 4th December, 2001 setting out, the terms and conditions of compromise arrived at between the parties, could not be given effect to

and the matter was decided on merit, the aforesaid amount be directed to be released to the respondent/plaintiff.

8. The appellant/defendant has filed his reply to the application and contested the claim of the respondent/plaintiff for refund of the amount. It has been contended by the learned counsel for the appellant/defendant that the aforesaid amount need not be refunded to the respondent/plaintiff on the ground that he had acted upon the agreement set out in the order dated 4th December, 2001 inasmuch as he had dismantled his machinery from the plot of land in question, for the purpose of handing over the possession of the same to the respondent/plaintiff. It has been stated that the possession actually could not be handed over to the respondent/plaintiff on account of the fact that the amount of money which was to be given by the respondent/plaintiff to the appellant/defendant, had not been given, therefore, the amount may not be refunded. Further the installation of the machinery would result in the expenditure of an amount of Rs.3 lakhs or so and only then can the appellant/defendant restart the business and therefore, this amount be released to them. Secondly, it has been stated that there is a house tax liability of nearly Rs.26 lakhs or so qua the property for which demand has been raised by the MCD and this should also be taken into consideration for non refund of the amount.

9. We have considered the submissions made by the respective sides. It is not in dispute that by order dated 4th December, 2001 as modified by order dated 22nd February, 2002, certain terms and conditions were set out for the purpose of disposal of the amount, which was never acted upon by the defendant/plaintiff, as a consequence which the matter was heard and decided on merits. As a consequence of having decided the appeal on merits, the parties must necessarily restore the status quo ante between themselves. There is no dispute about the fact that the respondent/plaintiff has deposited a sum of Rs.7 lakhs in pursuance to the orders dated 4th December, 2001 and 22.2.2002, though he was required to deposit Rs.12 lakhs, which must be refunded to the respondent/plaintiff along with interest. So far as the plea of appellant/defendant that he would be incurring an expense of Rs.3 lakhs for the purpose of re-installation of the machinery on the plot of land in question or that certain house taxes are due and liable to be payable under his occupation, and consequently, the amount may not be released to the respondent/plaintiff is concerned, that is of no consequence and could not be set up as a ground for not releasing the amount to the respondent/plaintiff. The appellant/defendant is at liberty to raise all such claims to which he may be entitled on account of non observance of the compromise arrived at between the parties as may be permissible in law. However, no order depriving the respondent/plaintiff, getting the refund of the amount deposited by him, can be passed.

10. For the reasons mentioned hereinabove, the amount of Rs.7lakhs along with interest accrued is directed to be released to the respondent/plaintiff by the Registry within a period of four weeks.

11. With these directions, the application stands disposed of.

V.K.SHALI, J.

ANIL KUMAR, J.

MARCH 18, 2011

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