IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.21843 of 2014 (O&M)
Date of decision:21.12.2015

M/s Kujjal Builders Pvt. Ltd. ... Petitioner

vs.

Chandigarh Administration & another ... Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Ms. Munisha Gandhi, Senior Advocate with
Mr. Gourav Goel, Advocate and
Ms. Salina Chalana, Advocate for the petitioner.
Mr. Sanjeev Sharma, Senior Advocate with
Mr. Vivek Chauhan, Advocate for the respondents.
...

S.J. VAZIFDAR, ACTING CHIEF JUSTICE.

The petitioner has sought a writ of certiorari to set aside the demand raised in a letter 14.10.2010 of a sum of Rs.1,84,93,151/- on account of interest for an alleged delay in payment of the balance amount of premium of only one day and orders dated 15.04.2013 and 25.09.2014 passed by the Appellate and Revisional Authorities upholding the demand.

2. We have held that there is no delay in payment. On 09.03.2006, the respondents conducted an auction in respect of a hotel site on the terms and conditions contained inter-alia in the general terms and conditions for the auction of business of hotel site on the lease hold basis for 99 years at the Rajiv Gandhi Chandigarh Technology Park, Chandigarh. Clause 4 thereof reads as under:

> "4. Successful bidders shall pay 25% amount of the bid accepted by the Auctioning Officer on the spot in cash or by means of demand draft in favour of Estate Officer and the remaining 75% of the premium shall be paid within a period of 90 days from the date of auction without any interest, failing which interest @ 20% shall be charged. In case the lessee fails to pay the remaining 75% amount of the premium as mentioned above within 90 days of the auction, the Estate Officer may

cancel the lease of the site or building as case may be."

3. The petitioner's bid of Rs.75 crores being the highest was accepted. Pursuant thereto, the petitioner deposited 25% of the amount on the same day. Thereafter a regular letter of allotment was issued in favour of the petitioner. Clauses 1 & 4 thereof read as under:

> "1. The lease shall be governed by the provisions of the Capital of Punjab (Development & Regulation) Act, 1952 as amended from time to time and the rules framed thereunder.
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> …. …. ….
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> 4. The lease shall be deemed to have commenced from the date of auction. The balance of 75% of the premium shall be payable within a period of 90 days from the date of auction without any interest failing which interest @ 20% p.a. shall be payable after 30 days from the date of auction to be date of actual payment. Further in case, the lessee fails to pay the remaining 75% amount of the premium as mentioned above within 90 days of the auction, the Estate Officer may cancel the lease of the site/building."

4. The petitioner admittedly paid the balance amount of 75% on 07.06.2006. The only question that falls for consideration is the day on which the period of 90 days expired. The petitioner contends that the payment of the balance 75% on 07.06.2006 was made within the period stipulated in clause 4 of the letter of allotment. The respondents on the other hand contend that there was a delay of one day as the period of 90 days expired on 06.06.2006. If the respondents are right as a result of the days delay in payment of the balance consideration, the petitioner would have to pay interest on the balance consideration for a period of 61 days and not just for one day.

5. Mrs. Gandhi, the learned senior counsel appearing for the petitioner, contended that the words "within a period of 90 days from the

date of auction" would exclude the day the auction was conducted namely 09.03.2006. In that event the payment would be within the period stipulated in the letter of allotment. Mrs. Gandhi's submission is well founded. The words "within a period of 90 days from the date of auction" would require the exclusion of the day of the auction.

6. Clause 9 of the General Clauses Act reads as under:

> "9. Commencement and termination of time:-
> (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to". (2) This section applies to all Central Acts made after the third day of January, 1968, and to all Regulations made on or after the fourteenth day of January, 1887."

7. We will for now ignore the word "within" in the above expression. In that event Mrs. Gandhi's submission is supported by the judgment of the Supreme Court in *M/s. Saketh India Ltd. and others vs. India Securities Ltd., 1999 (3) SCC 1.* After reviewing the authorities, the Supreme Court held:

> "**6.** Similar contention was considered by this Court in the case of *Haru Das Gupta* v. *State of W.B.* [(1972) 1 SCC 639 : 1972 SCC (Cri) 368] wherein it was held that the rule is well established that <u>where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded;</u> the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was 5-2-1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated 5-5-1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle, the Court referred to the principle followed in English courts. The relevant discussion is hereunder:

> (SCC p. 641, para 5)
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> "*5.* These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. (See *Goldsmiths' Co.* v. *West Metropolitan Rly. Co.* [(1904) 1 KB 1, 5 : 72 LJKB 931 : 89 LT 428] , KB at p. 5.) This rule was followed in *Cartwright* v. *MacCormack* [(1963) 1 All ER 11, 13 : (1963) 1 WLR 18] : All ER at p. 13, where the expression 'fifteen days from the date of commencement of the policy' in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in *Marren* v. *Dawson Bentley & Co. Ltd.* [(1961) 2 QB 135 : (1961) 2 All ER 270] , a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also *Stewart* v. *Chapman* [(1951) 2 KB 792 : (1951) 2 All ER 613] and *North, Re, ex p Hasluck* [(1895) 2 QB 264 : 64 LJQB 694] .) *Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day*. [See *Halsbury's Laws of England*, (3rd Edn.), Vol. 37, pp. 92 and 95.] There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."
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> **7.** The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to"."

8. Faced with this, Mr. Sharma, contended that the above expression begins with the word "within". He submitted that in view thereof the judgment of the Supreme Court would not apply.

9. The submission is not well founded. The word "within" is only the command requiring the petitioner to pay the amount within 90 days from the date of the auction. It does not prescribe the time. If we were to consider the word "within" as including the date of the auction and the word "from" excluding it, there would be an inherent conflict in the expression itself. The

word within, therefore, only indicates that the amount ought to be paid within 90 days from the date of the auction. In that event the judgment of the Supreme Court would cover the case in the petitioner's favour.

10. The doubt, if any, is set at rest by another judgment of the Supreme Court in *ECON Antry vs. ROM Industries Ltd and another, Manu-SC-0865-2013*. The Supreme Court affirmed the above judgment and cited with approval the following passages from Halsbury's law of England:

> "207. The general rule in cases in which a period is fixed <u>within</u> which a person must act or take the consequences is that the day of the act or event from which the period runs should not be counted against him. This rule is especially reasonable in the case in which that person is not necessarily cognizant of the act or event; and further in support of it there is the consideration that in case the period allowed was one day only, the consequence of including that day would be to reduce to a few hours or minutes the time within which the person affected should take action.
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> 208. In view of these considerations the general rule is that, <u>as well in cases where the limitation of time is imposed by the act of a party as in those where it is imposed by statute, the day from which the time begins to run is excluded;</u> thus, where a period is fixed within which a criminal prosecution or a civil action may be commenced, the day on which the offence is committed or the cause of action arises is excluded in the computation."
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> ....
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> **25.** Having considered the question of law involved in this case in proper perspective, in light of relevant judgments, we are of the opinion that Saketh lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import USA does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly." (emphasis applied).

Thus, even if we were to ignore the word "from", it would make no difference. The word "within" would also necessitate the exclusion of the day of the act or event, in this case the date of the auction namely 09.03.2006 from which the period runs. Moreover, this rule of limitation applies to statutes and to acts of parties such as contracts.

10. Thus, looked at either way the date of the auction being the day of the act or the event from which the period runs should not be counted.

11. The least that must be said in favour of the petitioner is that the clause is capable of more than one interpretation. The agreement was admittedly drafted by the respondents. Following the rule of *contra preferendum*, the clause must be read in favour of the petitioner in any event.

12. In the circumstances, the writ petition is allowed by declaring that the payment was made by the petitioner within the stipulated period and by restraining the respondents from encashing the bank guarantee dated 04.12.2013.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

21.12.2015 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

NOTE: Whether to be reported to the Reports? Yes