

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

% *Judgment Reserved on: May 15, 2013*
Judgment Pronounced on: July 01, 2013

+ **Ex.P. No.40/2011**

NATIONAL COOPERATIVE CONSUMER FEDERATION OF
INDIA LTD Decree Holder
Through Ms.Anju Bhattacharya, Adv. with
Ms.Shipalika Dalmia, Adv.

versus

KIDAR NATH BABBAR Judgment Debtor
Through Mr.Ashwani Sharma, Adv. for JD
with JD in person.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition concerns the execution of an arbitral award, passed by the learned sole Arbitrator, Dr. Y. K. Aggarwal, adjudicating a dispute between the parties, related to the recovery of possession of the applicant's premises (from the respondent in the present petition): No. B-19 (Basement, western portion measuring 11363 sq. ft.), Okhla Industrial Area, Phase-I, New Delhi-110020. The arbitrator found in favour of the claimant, wherein, the respondent was *inter alia* directed to:

- a. Handover the possession of the vacant premises to the claimant
- b. Monthly rent of ₹2,27,260/- (plus service tax) as per the lease agreement dated 1st August 2007, from the expiry of the same (31st July 2010, w.e.f. 1st August 2010)

- c. Mesne profits of ₹1 lac per month, w.e.f. 11th September 2009, which is the date of submission of the claimant.
2. This award was challenged under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the Act') but was dismissed due to the lack of pecuniary jurisdiction of the court. The award had therefore become final on 8th December, 2010. When the award was sought to be executed in accordance with Section 36 of the Act, an application, E.A. 466/2011 was filed by the judgment debtor which raised a dispute with regard to the handing over of the possession of the premises to the Decree Holder. A Local Commissioner was appointed by this Court vide order dated 11th August 2011, in order to ascertain the state of the premises under dispute. As per the report of this Commissioner, the property was found abandoned, locked with the key of the decree holder.
3. As per the affidavit of the judgment debtor, the possession of the land was handed over to the decree holder on 30th May, 2011 itself. The learned counsel for the judgment debtor relied on an unsigned, unmarked letter supposedly from the judgment debtor to the decree holder which states that possession had been transferred, as the items on premises were transferred. The court, vide its order dated 8th December, 2012 was not convinced by the argument, stating that, the removal of objects on the premises does not amount to the transfer of the property.
4. This matter is before the Joint Registrar, in order to ascertain the final amount payable to the applicant. The Joint Registrar directed the judgment debtor to pay ₹44,81,911/- to the DH vide order dated 10th May 2012. This did not include the adjusted sum of ₹9,30,098/-, as requested by the judgment debtor since it was made with respect to the eastern portion of the premises and not the western portion. In objection, the judgment debtor

stated that he was never in possession of the western portion of the premises and so, questions the order of the JR which directs payment in this regard. Each party was therefore directed to file an affidavit regarding how the amount due should be calculated.

5. The affidavit on behalf of the judgment debtor states that, the judgment debtor had vacated the premises on 31st May, 2011 itself and that the decree holder was aware of this fact, since his office was situated on the same property. Further, the judgment debtor submits that he had already occupied another property (No. D-23, Okhla Industrial Area, Phase-I, New Delhi) and had already paid ₹5 lakhs as the security deposit for the same. Therefore, the judgment debtor states that the decree holder misled the court by submitting that the judgment debtor had neither vacated the premises, nor handed over possession of the same to the decree holder.

6. The affidavit on behalf of the decree holder states that, the amount of ₹9,30,098/-, which was already paid by the judgment debtor was toward electricity, water charges, property tax and other facilities for the eastern portion of the property only, and cannot be adjusted within the main amount of the award. The decree holder further states that the western portion of the property was under unauthorized possession by the judgment debtor, for which he is required to pay rent, damages and mesne profits. The amount as under the arbitral award dealt only with the eastern portion of the property, which was the sole subject matter of the same. Therefore, the decree holder submits that the judgment debtor must pay the necessary amount for its illegal possession and use of the western portion of the property.

7. The allegations of the judgment debtor however will be untenable in light of the fact that, during execution proceedings, the court cannot go into the merits of the dispute. Allegations of illegal possession are tantamount to

the same. The arbitral award in its entirety should be given effect to; disputes regarding the property situated in the western wing of the premises cannot be considered at this juncture.

8. In view of the above facts and circumstances of the case, it is clear that the decree holder was entitled to cover a total sum of ₹44,81,911/- from the judgment debtor.

9. The judgment debtor has filed an affidavit regarding details of his movable and immovable properties as per orders of the court. One final opportunity is granted to him to pay the said amount due within four weeks from today to the decree holder otherwise necessary orders of attachment of moveable and immovable property would be passed on the next date. In case the said payment is not made, he shall remain present before the Court in person on the next date.

10. List on 8th August, 2013.

(MANMOHAN SINGH)
JUDGE

JULY 01, 2013