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

Date of decision: April 23, 2015

\+ **EX.P. 287/2012**

M/S. DEWAN CHAND .....Petitioner/ Decree holder
Through: Mr.T.P.S.Kang, Advocate

versus

UNION OF INDIA & ANR. ..... Respondents/Judgment debtors
Through: Mr.R.V.Sinha, Advocate with Mr.A.S.Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. This Ex. Petition has been filed by the decree holder seeking execution of order and judgment dated July 20, 2012 passed in OMP 183/2003.

2. The brief facts are, inter se disputes between the parties were adjudicated by the sole Arbitrator in terms of award dated December 31, 2002 whereby the learned Arbitrator has awarded an amount of Rs.32,17,871.50/- with future interest at 18% per annum on the awarded amount. The objections to the said award u/s 34 of the Arbitration & Conciliation Act were rejected by the Single Judge of this Court vide its order dated July 20, 2012 in OMP 183/2003. The learned Single Judge while disposing of the OMP 183/2003, was of the view that as regards

any further amount that may be payable to the petitioner it would be open to petitioner to file an execution petition in accordance with law including the claim with regard to bank charges and deferential interest.

3. It may be noted here, during the pendency of the aforesaid OMP, 183/2003, this court had granted permission to the petitioner in the OMP i.e. the Judgment Debtor herein to deposit the awarded amount in the court within two weeks. On such deposit the petitioner herein was given permission to withdraw the same on furnishing appropriate bank guarantee to the satisfaction of the Registrar of this Court with undertaking that in case the petition u/s 34 of the Act is allowed then the entire amount received by the decree holder along with interest shall be deposited back in the Court. It was also directed that the bank guarantee be kept alive until the disposal of the petition.

4. On September 24, 2013 when this petition was listed this Court had passed the following order:

> *"1. After some arguments, learned counsel for the Decree Holder (DH) says that there were three issues raised in the captioned petition. These being:*
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> *(i) payment of interest on interest for the period 08.05.2004 to 12.02.2013;*

(ii) payment of interest for the period, the format in which the bank guarantee had to be furnished, was not finalized – the period being: ten (10) months and twenty three (23) days; and

(iii) payment of bank charges and interest for keeping the bank guarantee alive.

2. In so far as the first two aspects are concerned, Mr. Kang says that he does not wish to press the same and the same are, accordingly, given up.

2.1 In so far as the last aspect is concerned, Mr.Kang says that he would require some time to examine the issue as to whether this court, in a case of conditional withdrawal of the decretal amount deposited by the judgment debtor in the course of execution of an award/decree, could direct payment of bank charges and interest paid for the purpose of keeping the bank guarantee alive."

5. From the above it is clear that the only aspect which requires consideration of this Court in this petition is whether the petitioner in these proceedings is entitle to the payment of bank charges and interest for keeping the bank guarantee alive.

6. Learned counsel for the petitioner has drawn my attention to page 9

of the reply affidavit filed by the petitioner to the affidavit by way of calculation filed by respondent No. 2. According to him, between the period May 8, 2004 till Feb, 2013 the bank guarantee furnished for the amount withdrawn by the decree holder from this Court was renewed/extended on eight occasions. He would state on every occasion the petitioner had to incur an expense of Rs.1,12,625/-. According to him, the total amount on all the eight occasions was Rs. 10,13,620/- and the petitioner is entitled to the amount. The judgment debtors in their reply have disputed the claim of the petitioner for this amount.

7. Mr. T.P.S. Kang, learned counsel for the petitioner would reiterate the submissions made in the petition as well as in the reply affidavit. According to him even though the learned Arbitrator has not awarded this amount but this amount has accrued to petitioner in view of subsequent developments taken place during the pendency of the OMP in this Court. He states that the petitioner withdrew the amount on the direction of the Court by giving a bank guarantee for the amount so released in his favour. He would also state that the learned Single Judge of this court while disposing OMP 183/2003 had protected the right of the petitioner to claim the bank charges and deferential interest by filing an appropriate execution petition in accordance with law. He would state that the present petition has been filed pursuant to the order of the

Single Judge dated July 20, 2012 whereby the learned Single Judge while dismissing the objections had granted liberty to the petitioner to claim the bank charges and deferential interest in the execution petition. The learned counsel for the petitioner would state that he is confining his relief to the bank guarantee charges only.

8. On the other hand, Mr.R.V. Sinha, learned counsel for the respondents would submit that the amount of bank charges as being claimed by the petitioner would not be payable to the petitioner as the same were not awarded by the learned Arbitrator and the said amount being not part of the decree, such a claim in these proceedings is not tenable. He would rely upon a judgment of Division Bench of this Court in the Case of ***Engineering Projects (India) Ltd. Vs. Arvind Construction Company, EFA(OS) No. 4/2008 decided on May 29, 2009*** in support of his contentions. He would state in the aforesaid case, this Court has disallowed a similar claim.

9. Having considered the submissions made by the learned counsel for the parties, it is clear that the bank charges were not part of the arbitration award. The question that would arise is, in view of order dated July 20, 2012, OMP 183/2003 whether the award of the learned Arbitrator stood modified. No doubt the learned Single Judge had observed that the bank charges can be decided in execution proceedings.

It would be appropriate to state that learned Single Judge had never decided the claim of the petitioner on bank charges. The said claim, if filed, was to be considered in accordance with law. The observation of the learned Court cannot be construed as a modification to the Arbitral Award which in the view of this Court was dismissed on merits. It is a settled position of law, the deposit of the awarded amount in the Court does not amount to be a payment in satisfaction of the decree/award under Order 22 Rule 1 of the Code of Civil Procedure 1908 unless it is an unconditional payment by judgment debtors. There is no dispute on that account. The position of law in this regard is well settled. The Supreme Court in the case of ***P.S.L. Ramanathan Chettiar and Ors. Vs. O.Rm.P.Rm. Ramanathan Chettiar, AIR 1968 SC 1047*** has held as under:

> *"12. On principle, it appears to us that the facts of a judgment- debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree- holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment- debtor from taking it out by furnishing other security, say, of immovable property,' if the court allows him to do so and on his losing the appeal*

putting the decretal amount in court in terms of Order 21 rule 1 C.P.C. in satisfaction of the decree.

13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment debtor in case of his success in the appeal. Pending The determination of the same, it was beyond the reach of the judgment-debtor.

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The last contention raised on behalf of the respondent was that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21 rule I C.P.C. and as such, there is no question of the stoppage of interest after the deposit.

10. Even this Court in the case of ***South Delhi Municipal Corporation Vs. Radhey Shyam Through its Proprietor Sh. Radhey Shyam*** has held as under:

"17. In our view, the act of making payment to the decree holder under Rule 1 of Order XXI CPC would require a positive act on the part FAO(OS) 93/02 & EFA(OS) 9/07 Page 14 of 19 of the judgment debtor of either depositing into the Court whose duty it is to execute the decree‖ or to make payment out of court to the decree holder through a postal money or through a bank or by any other mode wherein payment is evidenced in writing, unless the Court which made the decree otherwise directs. The payment made under a decree, to fall within the ambit of Order XXI Rule 1 CPC has therefore, necessarily, to be an unconditional payment by the judgment debtor to the decree holder either directly, or indirectly through the medium of the Court whose duty is to execute the decree. Mere deposit of the decretal amount in a Court, other than an executing Court can never amount to payment‖ and even where the decretal amount is deposited in the executing court, the judgment debtors liability to pay interest does not cease until notice contemplated by subrule(2) of Rule 1 of Order XXI is given. This is evident from sub-rule(4) above. Order XXI Rule 1 CPC does not contemplate the decree holder having to chase the judgment debtor to realize the decretal amount by seeking attachment of one or the other accounts of the judgment debtor or the properties of the judgment debtor. If resort to the execution process of the Court is required to be made by the decree holder, and the decretal amount is recovered in pursuance of the order of

attachment of the accounts of the judgment debtor, and/or sale of assets of the judgment debtor, such realization of the decretal amount would not amount to payment of the decretal amount under Rule 1 of Order XXI".

11. When this Court had granted permission on March 04, 2004 to the judgment debtor to deposit the awarded amount in the Court and pursuant thereto the amount was deposited, the Court had two options either to continue the deposit in the Court or in the alternative permitting the petitioner to withdraw the amount. The Court decided to resort to the latter option in order to balance the equities, inasmuch as in the eventuality the judgment debtor succeeds in the objections and the award of the Arbitrator is set aside, the judgment debtor would be entitled to the amount to be released to the petitioner. To safeguard the interest of the judgment debtor, the Court had directed the decree holder herein to give the bank guarantee on the amount released. As per the statement, the amount was released pursuant to the order of the Joint Registrar dated May 25, 2005, but, the said payment cannot be construed as payment towards the decree. If that be so, the bank guarantee charges, surely, are not towards the payment in satisfaction of the decree/award under Order 22 Rule 1 CPC. This is what has been held by the Division Bench of this Court in the case of ***Engineering Projects (India) Ltd.***

(supra). The relevant observation in para 18, wherein, a claim for charges incurred for furnishing bank guarantee was made, are "the respondent cannot charge the bank guarantee charges which bank guarantee was furnished to withdraw the amount, but the payment cannot be construed as a payment towards the decree".

12. The aforesaid observation of the Division Bench would become relevant for the purpose of this case. No doubt, it is true that the decree holder has incurred the charges because of the litigation initiated by the respondent, but in view of the above conclusion of this Court in the ***Engineering Projects (India) Ltd. (supra),*** the petitioner is not entitled to the bank guarantee charges as incurred by it for keeping the bank guarantee alive on withdrawal of the amount deposited by the respondents.

13. The present petition is dismissed.

(V.KAMESWAR RAO)
JUDGE

APRIL 23, 2015
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