

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO. 64 OF 2016

IN

CHAMBER SUMMONS NO. 104 OF 2015

IN

EXECUTION APPLICATION NO. 1783 OF 2015

Sezal glass Limited & Ors.

...Appellants

Versus

S.E. Investments Limited

...Respondent

Mr. Pradeep Sanchetti, Senior Counsel, Ms. Aradhana Bhansali & Mr. Amit Kolekar, i/b Rajani Associates, for the Appellants.

Mr. Ramesh Jain, a/w Ms. Deepali Jadhav & Mr. Gaurav Choubey, for Respondent No. 1.

CORAM : A.S. OKA &
A.A. SAYED, JJ.

DATE : 20th June 2016

P.C. :

1. Heard learned Senior Counsel for the Appellants(Judgment Debtors). In Execution of the Award dated 31st December 2013 passed by the sole Arbitrator, Warrant of Attachment dated 7th October 2015 under Rule 46 of Order XXI of the Code of

Civil Procedure, 1908 (for short 'said Code') was issued.

2. A Chamber Summons was taken out by the present Appellants containing two substantive prayers which are as under :-

“a) the Hon'ble Court be pleased to pass an order, allowing the present Chamber Summons in the Execution Application No. 1783 of 2015, by scaling down the claim amount from Rs. 4,33,75,992/- (Rupees four crores thirty three lakhs, seventy five thousand nine hundred ninety two only) to Rs. 75,00,000/- (Rupees seventy five lakhs only) together with a compound interest of two percent (2%) p.m. calculated with effect from order dated March 22, 2014 for delay in payment of the aforesaid claim amount, which figure has specifically been arrived by virtue of settlement of disputes between the Applicant No. 1 and the Respondent before the Hon'ble Metropolitan Magistrate Court, Dwarka, New Delhi in Case No. 823/14/12, Case No. 824/114 and Case No. 817/14, as more particularly recorded in the common order dated March 22, 2014 passed by

Hon'ble Metropolitan Magistrate Court, Dwarka, New Delhi;

b) in the alternative, this Hon'ble Court be pleased to pass an order, allowing the present Chamber Summons in the Execution Application No. 1783 of 2015 only to an extent of Rs. 2,65,72,369/- (Rupees two crores sixty five lakhs seventy two thousand three hundred sixty nine only), since the Respondent has illegally claimed Rs. 4,33,75,992/- (Rupees four crores thirty three lakhs, seventy five thousand nine hundred ninety two only) by levying interest on the penalty amount, which is against the public policy.”

3. By the impugned order dated 13th January 2016, the said Chamber Summons was dismissed by the learned Single Judge.

4. The learned Senior Counsel appearing for the Appellants invited out attention to the compromise which was recorded before the learned Metropolitan Magistrate, Dwarka, New Delhi. He submitted that there is an agreement to pay interest at the rate of 2 percent per month compounded on the agreed amount of Rs. 75,00,000/-. He submitted that for the delay in payment of Rs.

75,00,000/-, the Appellants were ready to compensate the Decree-holder by paying interest. He submitted that though the amount shown in the Awards may be of Rs. 4,33,75,992/-, it was agreed between the parties to pay a sum of Rs. 75,00,000/- as full and final settlement. Hence, the execution for recovery of the entire amount cannot proceed. His submission is that the Award is unconscionable and not executable.

5. We have considered the submissions. Firstly, it is from the impugned order that there was no case made out before the learned Single Judge that the Award was unconscionable and therefore, was not executable. The settlement which is relied upon before the learned Single Judge was the one recorded by learned Metropolitan Magistrate, Dwarka, New Delhi on the basis of the statement of Shri. Umesh Chandra Gupta on behalf of the Decree-holders. The said statement reads thus :-

*“C.C.No. 823/14/12, 824/114 & 817/14 SE
INVESTMENT VS.
22.03.2014*

*Statement of Sh. Umesh Chandra Gupta, AR for the
complainant.*

On.S.A.

I am AR for the complainant in the present matter. The matter has been amicably settled with the accused persons in all the then connected cases, i.e. 823/14/12, 824/114 & 817/14 for total sum of Rs. 75,00,000/-. The settled amount shall be paid as per the schedule mentioned in the document (Mark-A) filed by the complainant today at the court, because of default of any one installment, the accused persons would be liable to pay interest on outstanding amount @ 2% p.a. compounded and if the total agreed amount is not cleared within the scheduled time period of August, 2014, then in that extent, the amounts already paid shall be forfeited. The parties further agree that:

All the matters included the present proceeding, the arbitration award dated 31.12.2013 passed by Sole Arbitrator, Mr. Rakesh U. Upadhyay, advocate; petition preferred u/s 9 of the Arbitration and Conciliation Act, 1996, civil as well as criminal proceedings arising from the agreement dated 20.02.2010 shall stand satisfied and be withdrawn after the last payment on

20.08.2014.

RO & AC.

(BABRU BHAN)
MM/DWARKA
DELHI/25.10.2013

Statement of Sh. Samiron, Ld. Counsel for the accused

(EnrL.No.:D-1819/2008)

At Bar.

*I on behalf of the accused persons agree upon the terms
of settlement mentioned above in the statement of AR for
the complainant today.*

RO & AC.

(BABRU BHAN)
MM/DWARKA
DELHI/22.03.2014"

6 . A document is tendered on record which is marked "X1"
for identification. The document marked "X1" is a printout of e-mail
dated 31st March 2014. The material part of the said document reads
thus:-

*"PLEASE SEE THE AMENDED PROPOSAL AMENDMENTS
HIGHLIGHTED.*

Payment of Rs. 75 Lakhs lump sum amount towards the

total dues payable to M/s. S.E. Investments Ltd. In the following manner.

<i>On April 10, 2014:</i>	<i>Rs. 18,75,000/-</i>
<i>On May 30, 2014:</i>	<i>Rs. 18,75,000/-</i>
<i>On June 30, 2014:</i>	<i>Rs. 18,75,000/-</i>
<i>On July 30, 2014:</i>	<i>Rs. 13,75,000/-</i>
<i>On August 20, 2014:</i>	<i>Rs. 5,00,000/-</i>
<i>Total</i>	<i>Rs. 75,00,000/-</i>

Please note in the event of default in payment of any one installment, M/s. Sezal Architecture Glass Ltd. is liable to pay interest on the outstanding amount @ 2% per month compounded, and if the total agreed amount is not cleared within the schedule time period of August 30, 2014, then in that event the amounts already paid shall stand forfeited. The parties further agrees that:"

7. Thus, for the payment of the sum Rs. 75,00,000/-, installments were provided ending with the installment of Rs. 5,00,000/- payable on or before July 20 August 2014.

8. In the event of default in payment of any one installment, interest was payable by the Appellants on the

outstanding amount at the rate of two percent per month compounded. In the event the entire agreed amount was not cleared on or before 20th August 2014, it was agreed that the amount already paid the Decree-holder shall be forfeited. There is a categorical statement recorded by the learned Magistrate even of the Appellants that they were agreeable for the settlement recorded in the statement of Shri. Umesh Chandra Gupta.

9. Learned Single Judge in paragraph 2 of the order has recorded the statement made by the learned Counsel appearing for the Appellants/Judgment Debtors on the instructions that no payments whatsoever were made in terms of the aforesaid arrangement agreed before the learned Magistrate. Hence, it cannot be said that the Award under execution cannot be executed. In fact due to the default on the part of the Appellants, it was very much executable.

10. As far as the submission made in the alternative to permit the execution only to the extent of 2,65,72,369/- is concerned, the learned Single Judge in paragraph 4 of the impugned order has dealt with the said contention. There is no basis for the said contention, as it is contrary to the Award under execution.

11. We find no error in the impugned order. Hence, there is no merit in the Appeal and the same is accordingly, dismissed.

[A.A. SAYED, J.]

[A.S. OKA, J.]