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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.1865 of 2016 (O&M)

Date of decision:11.04.2016

M/s Aricent Technologies (Holdings) Limited ... Petitioner

versus

M/s Durga Softelecom Private Limited Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashok Aggarwal, Senior Advocate,
with Mr. Aashish Chopra, Advocate,
for the petitioner.

Mr. Ashish Aggarwal, Senior Advocate,
with Mr. Harpal Singh Baidwan, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

CM No.7527-CII of 2016

Application is allowed, as prayed for. Annexures R-1
and R-2 are taken on record.

Civil Revision No.1865 of 2016

1. The revision petition is against an order disposing of a review application for the order passed on 22.12.2015. The order contained an alleged concession made by the defendant that he would bring the rent amount on the next date of hearing. The exact

words directed to the defendant are, “the defendant shall also bring the rent amount on the next date of hearing as undertaken by him in the court today.”

2. The application was filed by the defendant to contend that there had been no such undertaking and the order ought to be therefore modified. The court proceeded to pass the order wherein it has made the following observations, in its bid to reconstruct the events that are took place on 22.12.2015. The relevant portions are, “After the Court had dictated the aforementioned order on December 22 in the open Court in the presence of the parties and their respective counsels, the learned counsel for the plaintiff urged that all the issues concerning the defendant company had been addressed by the Court but their issue regarding the payment of rent had not been addressed. At this juncture Shri J.K. Dang, Advocate, the learned counsel for the defendant company assured the Court that the rentals shall be paid on the next date of hearing and he simultaneously instructed his client to fetch the amount due on the next date of hearing. At that juncture, the learned counsel for the plaintiff leapt on the opportunity and insisted that the undertaking given by the opposite party be also mentioned in the order. Mr. Dang then asked the Court to record the fact in the order since his client had the intention to pay the amount. It was in this scenario that the contentious line regarding payment of rent was recorded in

the order of December 22. It does not lie in the mouth of the defendant company to come up and say that his recorded statement of December 22 does not mention of any commitment to pay the rent.”.

3. The learned senior counsel the petitioner/defendant contended that the court was not justified in recording a statement of what was never made and that therefore the defendant should be relieved from an alleged undertaking to pay rent upto December 2015. The learned senior counsel contended that there could be no such obligation arising under the contract which according to him stood rescinded and he cannot therefore be compelled to make the payment of rent in the manner directed. The grievance was that the trial Judge was not disposing of the application for injunction filed by the plaintiff but was giving direction which cannot be issued in a suit which is otherwise incompetent.

4. Even before issuing notice, I had directed the party to whom a statement was attributed that he had given an undertaking to pay the rent and, therefore, an affidavit was filed that runs as follows:-

“2. That it is stated that neither any such undertaking and/or statement, as recorded in the aforementioned order dated December 22, 2015, had been given nor it could be even remotely said to have been given, on

behalf of the Defendant/Petitioner, especially when it is *inter alia*, the case of the Petitioner that the suit, seeking declaration and permanent injunction, has not only been filed on basis of forged and fabricated document, but is even not maintainable, more so also when the suit is neither for ejectment nor for recovery of rent.

3. That it is further stated that the Defendant/Petitioner had at no point in time instructed and/or authorised its counsel, appearing before the Ld. Trial Court, to make any such statement and/or give undertaking on basis of which it has got recorded that “*the Defendant shall also bring the rent amount on the next date of hearing as undertaken by him in the court today*”.”

5. The counsel for the respondent/plaintiff argued before me that the proceedings before court are unquestionable and the statement on facts as to transpired here recording in the judgment are conclusive of the facts so stated and no one can attribute such statement by affidavit or other evidence. This has been set forth in **State of Maharashtra Versus Ramdas Shrinivas Nayak and another-AIR 1982 (SC) 1249** and followed by this court in **Milkha Singh and others Versus Nirmal Singh and others-2007(4) R.C.R. (Civil) 842**. The same position was also reiterated in yet another

judgment in **Central Bank of India Versus Vrajlal Kapurchand Gandhi and another-AIR 2003 (SC) 3028**. In all these decisions, the course suggested has been that a party who is aggrieved must apply to have it corrected even when it is still fresh in the minds of the judges. **State of Maharashtra** (supra) sets out also of what would result if no such step is taken. That itself will necessarily end there. The judgment continues to state “ a party may resile and an Appellate Court may permit him, in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice, but he may not call in question the very fact of making the concession as recorded in the judgment.”

6. I had reproduced the portion of what was stated in the order passed on 22.12.2015. It is pure and simple a direction that the defendant shall bring the rent amount on the next date of hearing as undertaken by him in the court. It would seem though the party was present in court and they gave an undertaking. When an application for recall was made and the court was passing an order, the court recalled the incident differently. It was not prepared to go as far as to state that the party made that undertaking. On the other hand, it was trying to explain that the counsel made the assurance. The plaintiff on that stage appeared to have leapt at the opportunity and insisted that the undertaking given should be recorded in the

order. If that was the incident, then the order passed on 22.12.2015 must have been that the rent was to be brought as undertaking by the counsel. If the order passed on 22.12.2015 did not say that, then there became a need for the Judge why he observed so. It happens in courts at several times that we interchanged the presence of the counsel for the party and vice versa. Since the party invariably speaks through counsel, the counsel himself is at some times referred to as a party and if the court was saying that the rent shall be paid as undertaken by the defendant, it was just as well possible that the court was merely referring to the undertaking as given by the counsel. The court did not explain the observations made already on 22.12.2015 in that fashion. On the other hand, it attempted to bring certain aspects which were more than what the original order contained. The court observed in the subsequent order that when the counsel for the plaintiff wanted the undertaking to be recorded in the order, the counsel asked the court could record the fact since his client had the intention to pay the amount. Here is a new twist. If the counsel was asking the court to record the undertaking because the party had the intention to pay the amounts, it was not an undertaking by the counsel on behalf of the party but it was an exposition of the counsel that the party after all had the intention to pay. Such an observation of the court is more a matter of actual inference either by the counsel or by the court than

expressed words so stated by the party.

7. Counter to the affidavit given by the defendant before this court at the time when notice was issued, the respondent has stated that the counsel for the defendant did not give an undertaking but it was the party Shri Sanjeev Garg, who was authorized signatory of the defendant along with Rajinder Locham and Gourav Singhal who had conferred with the advocate and the advocate after consulting the representatives of the defendant had readily agreed and undertaken before the court to bring the arrears of rent in the court. The nature of proceedings that was said to have taken place, as set forth in para 3 of the reply brings out certain things which are not even in the order passed by the Judge. The Presiding Officer had not stated anywhere on 18.02.2006 explaining his own order that the counsel conferred with 3 of the persons present in court and the counsel gave such an undertaking. The explanation given by the respondent is out of sync with the observations made by the Presiding Officer.

8. I am not prepared to go as far as to state that there is any deliberate attempt on the part of the petitioner to state that the court has recorded it wrongly. The court had recorded what it believed was correct. It assumed that the defendant had given an undertaking. When the defendant sought for recall of the order and stated that he did not give such an undertaking, the Presiding Officer stated that

the counsel had asked the court to record the undertaking since the party had an intention to bring the rent. How the counsel elicited such intention is not clear. If the counsel had any such belief for him to make such statement, then the affidavit of the party before this court itself is sufficient answer that he did not instruct his counsel to make such an undertaking. It is evidently a case of miscommunication that has led to a belief that there had been an undertaking to pay the rent.

9. Not all is lost to the plaintiff. The suit is for a declaration that the plaintiff is an owner of movable goods, machinery etc. and no goods, machinery etc. could be transferred by the defendant before the agreed period of lease for 15 years. There is also a prayer for injunction that the defendant shall not vacate. In all cases where direction to pay rent is sought if it is disobeyed, it can allow for eviction forthwith. Here is a peculiar situation where the plaintiff would not want the defendant to vacate, for, it would mean loss of revenue. I am not prepared to comment on the tenability of the reliefs claimed that might affect the progress of the suit or the disposal of the application under Order 39 Rules 1 and 2 CPC. The problem has started only because the court was not prepared to take the decision on the applications pending but was nibbling at the peripheries and giving directions which, in my view, were inappropriate. I would hold that the court while disposing of the

application for review reiterated that the direction was being given upon a commitment made by the defendant and the defendant Company is legally and morally bound to honour the commitment. I find this observation to be an expression of miscommunication of what really was sought to be conveyed and I will relieve the petitioner of the obligation to deposit the rent. The petitioner will face the consequences of his own lapse if the plaintiff can establish the rights of what it is asserting through the plaint. The order impugned is set aside in so far as it gives a direction reiterating the deposit of rent. I give the direction to the trial court to dispose of the application of injunction within 30 days as mandated under Order 39 Rule 3-A CPC on receipt of copy of this order and report to this court.

10. Civil revision is disposed of as above.

(K.KANNAN)
JUDGE

11.04.2016
sanjeev