

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

**CR No.3324 of 2016 (O&M)
Date of decision:16.05.2016**

Dr. S.S.Zombade

... Petitioner

Vs.

Jagdeep Singh Virk

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Avnish Mittal, Advocate and
Mr. Yogesh Chaudhary, Advocate
for the petitioner.

AMIT RAWAL J.

Petitioner - Dr.S.S.Zombade instituted an execution petition bearing No.33 of 2012 for execution of the award dated 10.05.2010 passed by the Arbitrator and on the contrary, J.S.Virk also filed execution petition bearing No.39 of 2013 claiming such relief.

It would be apt to give preface of the matter before pondering upon the submissions of Mr. Avnish Mittal.

Petitioner and respondent were directors of M/s Poshak Agrivet Pvt. Limited Karnal. The certain dispute arose and the matter was referred to the Arbitration Tribunal and the Award dated 10.05.2010 came to be passed. The relevant portion of the Award reads thus:-

“1.) The running business under the name and style of M/s Poshak Agrivet Pvt. Ltd. (earlier named M/s Poshak Feeds (India) Pvt. Ltd.) shall belong to Dr. S.S.Zombade and his group of persons. Mr. Rajinder Kumar and other related /connected persons of Mr. Jagdeep Singh Virk shall transfer their respective shares to the group persons of Dr. S.S.Zombade in favour of whomsoever Mr. S.S.Zombade desires to be transferred, at face value of share. That all assets and liabilities of the company M/s Poshak Agrivet Pvt. Ltd., henceforth shall be of the company and directly or indirectly the group persons of Mr. Jagdeep Singh Virk that Mr. Rajinder Kumar and others, shall not have any claim whatsoever.

2) That M/s Poshak Agrivet Pvt. Ltd. (earlier named M/s Poshak Feeds (India) Pvt. Ltd.) shall transfer the property named as Peonth Farm after getting the same free from any kind of Bank encumbrance latest by 31.12.2011 to Mr. Jagdeep Singh Virk who shall have the right to acquire the same in any name as he so wishes and all expenses related to the transfer shall be born by him. The details of this part of award has been made known to parties verbally.

3. That Dr. S.S.Zombade, the Executive Director of M/s Poshak Agrivet Pvt. Ltd. (earlier named M/s Poshak

Feeds (India) Pvt. Ltd.) shall make his earnest efforts to get Heena Banquet property released from the Bank as a collateral security offered latest by May, 2011. However, the possession of this property w.r.t. basement only which is under the use of the company shall be handed over to Mr. Jagdeep Singh Vrik latest by 31.07.2010.

4. That vacant possession of property at 71/3 Mile stone G.T.Road which is under the use of M/s Poshak Agrivet Pvt. Ltd. (earlier named M/s Poshak Feeds (India) Pvt. Ltd.) shall be handed over to Mr. Jagdeep Singh Vrik latest by 31.03.2012. No damage or alienation will be done to the sheds, go-downs and buildings at site and the same shall be passed on to Mr. Jagdeep Singh Virk and at the time of handing over the possession there will not be any kind of charge on this property. That the premises is on license to the company from Mr. Jagdeep Singh Virk at a monthly charge of Rs.65,000/- and the same shall be regularly paid every month by the company and the arrears as on date shall be cleared immediately. That formal license deed can also be got executed by Mr. Jagdeep Singh Virk from the company.

Further in case the property is held beyond 30.06.2011 then the monthly charge shall be Rs.1.00 lac per month till 31.03.2012. Although parties have made

their intention clear on this issue. However, in the circumstances prevailing at that time, a further grace of license for a period of 3 months can be availed by the company at a monthly charge of Rs.1,25,000/- payable to Mr. Jagdeep Singh Virk.

5) That credit balances of Mr. Jagdeep Singh Virk and his group creditors as per list enclosed shall be cleared at the earliest convenience of both the parties. That the decision in this regard has been accepted by both the parties as conveyed to them.

6.) That Weighing Bridge named Ganesh Dharam Kanta on 71/3 Mile Stone G.T.Road which is under the use of M/s Poshak Agrivet Pvt. Ltd. (earlier named M/s Poshak Feeds (India) Pvt. Ltd.) shall be given possession to Mr. Jagdeep Singh Vrik against payment of Rs.3,50,000/- which payment shall be made independent to any other clause or this award by the Referees. That any amendment w.r.t. this part of the award of the Referees may be done by mutual consent of the parties.

7) That Dr. S.S.Zombade and his company shall be responsible for payment of all Govt. Dues, Electricity Bills and any kind of Exps./liability of past or future pertaining to business of the company and the premises where business is being carried. In case Electric connection

remaining as such with the company, for any infringement or penalty, Mr. Rajinder Kumar, Mr. Jagdeep Singh Virk or any related person of their groups shall not be responsible.

8) *That cars and vehicles shall be held as business assets of the company M/s Poshak Agrivet Pvt. Ltd.. However, cars in use by Mr. Jagdeep Singh Virk and Ms. Sumita Singh Virk, henceforth shall be their exclusive property for which formalities/documentation will be signed in their favour as and when desired by them.*

9) *That both parties and their respective family groups and related parties shall help each other for keeping sweet and smooth relations. In case of any misunderstanding or confusion both parties shall be free to approach us in sorting out the same if at all any arises between them.*

Further Mr. Jagdeep Singh has ensured through Referees/Arbitrators that he will always be very positive and constructive towards Dr. S.S.Zombade for his future Bank relation and other related matters.

10) *That for the purpose of any clarification/confusion on any of the paras of this award the party/parties can approach the Referees, to clarify the same.”*

From the perusal of the aforementioned terms and

conditions of the Award, vacant possession of the property at 71/3 Mile Stone G.T.Road which was under the use of company aforementioned, was to be handed over to Mr. Jagdeep Singh Virk latest by 31.03.2012 and during that interregnum, no damage or alienation was to be done to the sheds, go-downs and buildings at site. At the time of handing over the possession, there shall be no charge on the property. It was also reflected that premises was on license to the company from Mr.Jagdeep Singh Virk at a monthly charge of ₹65,000/- which was held to be regularly paid every month by the company and the arrears as on date was to be cleared immediately. It was also held that in case the property was held beyond 30.06.2011, monthly charge would be increased ₹1.00 lac per month till 31.3.2012.

Mr. Avnish Mittal and Mr. Yogesh Chaudhary, learned counsel appearing on behalf of the petitioner in execution application No.33 of 2012 submit that respondent willingly disobeyed the award by dispossessing the petitioner on 26.09.2010 and took away the land building and stocks from the property with the help of vagabonds and police. The matter reached to this Court and this Court, vide order dated 18.10.2011, ordered for restoration of the possession and owing to the dispossession, the decree holder suffered losses and therefore, JD is liable to execute the award by giving company back to the decree holder in running condition and as well as, transfer the shares of JD and his group of persons and

also to hand over the assets, machinery, stocks, company record with equipments, live stock, weigh bridge and vehicles etc, existing on 26.09.2010 and shall perform the obligations only when the aforementioned conditions are fulfilled. He further submits that High Court order has not been complied with and contempt petition is also pending adjudication. The petitioner on account of the mis-conduct and omission of the respondent could not be shunted out and therefore, he may be held entitled to use the company for the period mentioned in the award. Even the company did not run for that period and much losses have been caused. He further submits that in pursuance to the receipt of the execution petition, the trial Court framed the issues in both the execution petitions and the matter in first execution petition reached upto this Court filed by the petitioner and this Court set aside the findings of the Executing Court qua framing of the issues but however issues framed in the second execution application filed at the instance of the respondent remained intact and therefore, the objecting Court was well within its jurisdiction to call upon the parties to lead evidence, in essence, could not have dismissed the same in most fallacious and summary manner. He has further drawn the attention of this Court to the order dated 18.10.2011 passed in C.M.No.14302 of 2011 in CWP No.18105 of 2010, wherein, this Court did not believe the factum of handing over of the possession, in essence, the petitioner has been left high and dry in drawing the benefit of the award and therefore,

award has become un-executable for the time being. The other application bearing Nos.14961-62 of 2011 in the aforementioned writ was filed and this Court, vide order dated 04.11.2011, Annexure P7 issued a direction to the Superintendent of Police, Karnal that the company represented through Dr.Shivaji S.Zombade be physically handed over the possession and in case, it is found lock, the same be broken and also directed to file an affidavit. Attention of this Court was also drawn to the order dated 21.10.2011 (Annexure P-8) passed in civil miscellaneous application no.14589 of 2011 in CWP No.18105 of 2010, wherein, an application was moved at the instance of respondent no.6, (respondent herein) for clarification and modification of the order dated 18.10.2011. This Court clarified, it relates to the property leased out against the company (respondents No.6&7 in the writ petition) and prohibition was for causing any disturbances for re-entry into possession in relation to the property that was rented out to the first petitioner-company (therein) and any other property or assets which come within the boundary wall shall not be included. The impugned order is completely silent on the specific claim of the petitioner regarding assets of the company. He further submits that as regards the weighing bridge, the Lower Appellate Court committed grave illegality by accepting the vague statement of the respondent, regarding payment of ₹3.50 lacs to be sufficient compliance of the arbitration award, whereas, no evidence has been taken on record with regard to the payment. Even receipt of

payment of ₹30.50 lacs allegedly shown to have been made in cash and photocopy Ex.R32 (Ex.P25) with the present petition is not strict compliance. He further submits that even affidavit filed by the Superintendent is pending adjudication and report of the DSP and SP noticed in impugned order is insignificant and possession is not of company but that of respondent as the respondent was also one of the directors. The petitioner-decree holder in execution petition bearing No.33 of 2012 has failed to enjoy the possession and urges this Court for setting aside of the impugned order.

In support of his aforementioned contention, he relies upon the following judgments of the Hon'ble Supreme Court in **Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. & others 2011 AIR SC (Civil) 1394** and in **Civil Appeal No.3334 of 2014 titled as Ranjit Kumar Bose and another vs. Anannya Chowdhury and another, decided on 07.03.2014** to contend that in matter of tenancy matter cannot be adjudicated through Arbitration.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that there is no merit in the aforementioned contention and as well as, in the revision petition, for, nothing prevented the petitioner to place on record the material before the Executing Court, i.e., balance sheet and account statements of the company to show that whether the company had actually run the business or not. Whereas, grievance of the petitioner is that there is complete defiance of the directions issued by this

Court contained in the aforementioned writ petition for which contempt petition is pending adjudication. Whereas, on the contrary, Executing Court noticed that several spot inspections were done by the DSP, SP Kanal and Commissioner, Municipal Corporation and others. As per the status report, company is in possession of the rented portion. Rather, decree holder failed to correctly identify the rented portion and refused to make any statement. Both JD and his wife stated that they are not in possession of the rented portion. All documents show that JD was never in possession of the rented premises, in essence, had handed over the possession in compliance of the directions issued by this Court. In my view, the petitioner has withheld the best evidence from the notice of this Court and as well as, of the Executing Court. Had there been any truth, he would have been audacious enough to place on record the balance sheet, account statements or any other orders of the company having obtained by the Registrar of the Company to the company stated to be registered. In fact, as per the award, the petitioner was required to hand over the possession upto 31.03.2012 and that period is over. No purpose would be achieved in putting back the clock. Even in the order dated 18.10.2011, this Court noticed that property according to him is in possession of the company and the said statement was affirmed by this Court.

Nothing prevented the petitioner to place on record any other evidence to belie the alleged receipt of ₹3.50 lacs with regard

to weighing bridge, thus, contention of Mr. Mittal, is hereby repelled. There is also no force in the submission that in the second execution application, the Court ought to have granted the opportunity to the parties to lead evidence and the said objections have also been disposed of by issuing directions in a summary manner, for, once this Court had already set aside the order of the Executing Court in execution application filed by the petitioner qua framing of issues, the Executing Court has rightly exercised the jurisdiction in deciding the second execution application in the manner and mode as noticed above. It is too late in a day to challenge the authenticity of award being without jurisdiction owing to ratio decidendi culled out in the judgments cited (supra) as no objection under Section 34 of Arbitration and Conciliation Act, 1996 had been file but on the other hand sought execution of the same.

In view of the aforementioned observations, there is no illegality and perversity in the impugned order, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2016
savita