THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.9668 of 1992 (O&M)
Date of Decision:29.11.2016

M/s Ved Sons Engineers (P) Ltd. .....Petitioner

Vs.

Chandigarh Administration & ors. .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Anand Chhibbar, Senior Advocate
with Mr. Vaibhav Sahni, Advocate
for Mr. Subhash Anand.

Mr. A.S. Narang, Advocate and
Mr. Ankush Anand, Advocate for
Mr. Ashok Anand.

Mr. Suvir Sehgal, Standing Counsel
with Mr. I.P.S. Doabia, Advocate for
Chandigarh Administration.

Mr. Abhilaksh Grover, Advocate with
Mr. D.K. Singh, Official Liquidator.

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RAKESH KUMAR JAIN, J.(Oral)

This petition is filed by the Company. It is alleged that petitioner- Company was allotted Cinema Site being Site No.1, Sector 17-A, Chandigarh, for construction of a Cinema Hall by the Chandigarh Administration in the year 1975 on lease hold basis. The lease was for an amount of ₹35.10 lacs . The petitioner had initially deposited 25% of the lease money i.e. ₹8,77,000/- and remaining amount was to be paid in equal instalments which became due from the year 1976 onwards. The petitioner has averred that the remaining amount was paid by way of four instalments on 27.7.1981 of ₹14,51,445/-, 3.10.1981 of ₹3,00,000/-, 17.3.1982 of ₹4,00,000/- and 16.6.1982 of ₹4,81,054/- total amounting to ₹35.10 lacs.

Counsel for the petitioner has submitted that the plot in question was resumed two times, i.e. from 19.7.1977 to 11.06.1981 and 17.05.1982 to 10.3.1984 for the default in payment of the instalment. However, the said resumption orders were set aside by the Secretary, Department of Home, Chandigarh vide order dated 10.3.1984. The petitioner received a notice dated 27.3.1992 purported to have been issued under Section 15 of the Capital of Punjab (Development and Regulation) Act, 1952 (for short, `the Act') alleging that the partitions have made in the Shopping Complex which was ordered to be removed within seven days. The said notice was followed by another notice issued under Section 20 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (for short, `the Rules'). The petitioner submitted a reply to the notice dated 27.3.1992 alleging that the petitioner has been permitted to utilise the available space for restaurant and departmental complex and also emphasised that there is no violation of architectural control. The Petitioner, however, received letter dated 5.5.1992 by which it was asked to submit the revised plan and get it sanctioned for additions and alterations within three months. Though the time was granted upto 5.8.1992 to submit the revised plan but the petitioner received another notice on 14.7.1992 at 3.40 P.M by which the petitioner was allegedly threatened that the construction raised by it shall be demolished within 24 hours. Faced with the said threat, the present petition was filed in which the petitioner has challenged the validity of the notice Annexure P.2 dated 27.3.1992 and Annexure P.5 dated 14.7.1992. The respondents filed their reply. On 21.7.1992, at the time of preliminary hearing, notice was issued and demolition was stayed. During pendency of the writ petition, amended writ petition was filed by which paragraph 7-A was inserted and the prayer clause was amended and proceedings under Rule 12(3) of the Rules, Section 8-A of the Act was challenged. The respondents filed reply to the amended writ petition also and the stay has been ordered to be continued.

During the pendency of the writ petition, the petitioner- Company was wound up in Company Petition No.27 of 1983 dated 22.5.1996 and the assets of the petitioner were taken over by the Official Liquidator. The petitioner- Company filed an appeal against the order dated 22.05.1996 which was dismissed on 20.3.1997 and the matter reached up to the Supreme Court where a compromise was effected on 18.7.2006 between the petitioner- Company and the petitioner in the winding up petition i.e. Punjab National Bank and in view of the compromise, the dues of the Punjab National Bank were paid.

During the pendency of the writ petition, an application bearing No.23021 of 2008 was filed at the instance of Ashok Anand, Ex-Managing Director of the petitioner- Company, under Order 1 Rule 10, to be arrayed as co-petitioner. The said application was disposed of on 17.7.2009 with the following order:-

> "This application has been moved under Order 1 Rule 10 read with Section 151 CPC with a prayer to implead applicant Ashok Anand as one of the petitioner.
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> At the time of arguments, Mr. Narang states that instead

of petitioner, the applicant be ordered to be impleaded as one of the respondents.

It has been stated in this application that the applicant being former Managing Director of the Company, which has gone into liquidation, is interested in the winding up of the company.

In view of the prayer made, possibly no objection can be raised by the opposite party. Accordingly, this application is allowed and Mr. Ashok Anand son of late Shri Ved Pal Anand, House No.5782, Sector 38(A)(West), Chandigarh is ordered to be impleaded as respondent No.4 in the writ petition.

Registry to effect necessary changes in memo of parties."

Respondent No.4 has allegedly filed an application CA No.223 of 2015 in CP No.27 of 1983 for revival of the Company on the ground that all secured creditors have been paid except for the dues of the Chandigarh Administration. It is also submitted by Mr. Chhibbar, appearing on behalf of the petitioner, that the petitioner is praying for its revival in the separate proceedings and the funds lying with the Official Liquidator accrued from the assets of the Company in liquidation, are sufficient to discharge the liability of the petitioner- Company insofar as the dues of Union Territory are concerned. It is further submitted that the petitioner-Company is liable to pay dues of the respondent with simple interest only whereas the respondent- Administration is asking for payment of the dues with compound interest. According to the petitioner, the dues calculated with compound interest comes to ₹3,61,92,523/- as on 15.8.2015 as per the affidavit of the respondent, whereas the dues calculated by simple interest comes to ₹2,27,64,746/- on 5.9.2016. The issue thus involved in this case, to be adjudicated, is as to whether the respondent is entitled to claim the dues with compound interest or it has to be paid with simple interest?

Counsel for the petitioner-Company has relied upon a Division Bench judgment of this Court rendered in the case of <u>Progressive Cooperative House Building Society (Retd.) v. Union Territory of Chandigarh and another</u>- CWP No.16327 of 1999 decided on 22.12.2014, to contend that Rule 12(3-A) of the Rules does not contemplate charging of compound interest. It is further contended that in the absence of any provision of the Act or the Rules, the respondent cannot ask for compounding of interest and thus petitioner is liable to pay only simple interest. Shri Shegal, learned senior standing counsel for the UT could not cite a law to the contrary to the judgment relied upon by the petitioner in the case of <u>Progressive Cooperative House Building Society (Retd.) (supra)</u> in which this Court has specifically dealt with Rule 12(3-A) of the Rules which is also invoked by the respondent in the present case. Thus, in view of the law settled by the Division Bench of this Court in the case of <u>Progressive Cooperative House Building Society (Retd.) (supra)</u>, this Court has no hitch in holding that the respondent cannot ask for compound interest on its amount due and to claim it from the petitioner the amount of ₹3,61,92,523/- as on 15.8.2015 rather would be entitled to claim the amount of ₹2,27,64,746/- as determined on 5.9.2016 which is calculated on applying element of simple interest. In order to wriggle out of the decision of this Court rendered in the case of <u>Progressive Cooperative House</u>

Building Society (Retd.) (supra), counsel for the Chandigarh Administration has submitted that the judgment will not apply to the pending case and would have prospective effect. The argument raised does not appeal to common sense and is thus rejected. As a matter of fact, the dicta of law, laid down by this Court in the said case, is that if the charging of compound interest is neither provided in the Act nor in the Rules then it cannot be asked for which means it is a declaration of law which has to apply to all the pending cases and not in the cases to be decided only after decision of the case of Progressive Cooperative House Building Society (Retd.) (supra) on 22.12.2014 onwards. Mr. Shegal has submitted that the petitioner was given a notice on 21.4.1976 (Annexure P.1) in respect of structural change/ partition in the Cinema building in terms of Section 15 of the Act. It is further submitted that no permission has been granted to the petitioner to construct the building because the site plan has not been sanctioned. In this regard, reference is made to the notice dated 5.5.1992 issued by the Estate Officer, UT, Chandigarh asking the petitioner to submit revised plan and get it sanctioned for the additions and alterations being made in the Cinema building.

Counsel for the petitioner-Company has submitted that the petitioner may be allowed to submit the revised plan which may be considered in accordance with law. It is also submitted that since the Company has not been revived so far, therefore, the petitioner by itself would not be in a position to submit the revised plan and for that matter, it is prayed that the petitioner be allowed sufficient time to submit the revised plan after the Company is revived. Mr. Sehgal, appearing on the other hand, has submitted that the respondent has no objection if the revised plan is submitted after the revival of the Company as the same shall be considered by the respondents in accordance with law prevailing at that moment. However, it is submitted that in case the revised plan is not accepted or not submitted or if submitted not sanctioned, then the respondents would take appropriate legal action in terms of the provisions of the Act and the Rules.

After hearing learned counsel for the parties and keeping in view the aforesaid facts and circumstances, I am of the considered opinion that the notices issued to the petitioner (Anexures P.2 to P.5) have to be kept in abeyance because action was proposed on the ground that the petitioner-Company has not submitted revised plan for the purpose of internal constructions. It is needless to mention that in case revised plan is submitted by the petitioner- Company within 60 days after its revival, the same shall be considered in accordance with law by the respondents within a period of two months thereafter and pass appropriate orders.

Till then, notices Annexures P.2 and P.5 shall remain in abeyance.

With these observations, the present petition is hereby disposed of.

C.M. Nos.4202/2008 and 14274 of 2015 are also disposed of having become infructuous.

November 29, 2016 **(RAKESH KUMAR JAIN)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No