

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

DATE OF DECISION: 10th May, 2016

1. CM No. 3041 of 2016 in CWP No. 16208 of 2009 (O&M)

Ram Piari and another

.....Petitioners

versus

Union Territory, Chandigarh and others

..... Respondents

2. CWP No. 21646 of 2013 (O&M)

Ram Piari and another

.....Petitioners

versus

Union Territory, Chandigarh and others

..... Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. D.S.Rawat, Advocate,
for the applicant-petitioners.

Mr. Vishal Sodhi, Advocate,
for the non-applicants-respondents.

S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

Civil Misc. Application No. 3041 of 2016 in Civil Writ
Petition No. 16208 of 20098 and Civil Writ Petition No. 21646 of 2013
are disposed of by this common order and judgment as the facts relating
thereto are common and the issues arising therein are inter dependent.

2. In Civil Misc. Application No. 3041-2016, the petitioners
have sought an extension of two months and nineteen days to pay an
amount of Rs.55,15,448/- as directed by an order and judgment dated
01.03.2012 in Civil Writ Petition No. 16208 of 2009. The learned Judges

who passed the order and judgment dated 01.03.2012 are no longer Judges of this Court. Civil Writ Petition No. 21646 of 2013 challenges an order dated 21.08.2013 passed by the respondents cancelling the lease granted in the petitioners favour on account of the petitioners' having failed to pay the said sum of Rs. 55,15,448/- within the time stipulated in the said order and judgment dated 01.03.2012.

3. Thus if the Civil Miscellaneous Application for extension of time to pay the amount is allowed and the payment is made, the petitioners would be entitled to succeed in Civil Writ Petition No. 21646 of 2013 as the order challenged therein was only on the basis that the order dated 01.03.2012 in Civil Writ Petition No. 16208 of 2009 was not complied with.

4. In Civil Writ Petition No. 16208 of 2009 the petitioners had challenged an order dated 22.06.2005 whereby the lease in favour of the petitioners' of a semi industrial site was cancelled, an order in appeal dated 08.10.2008 passed by the Chief Administrator and the order passed by the Advisor affirming the order cancelling the lease. The Division Bench by the said order and judgment dated 01.03.2012 allowed the writ petition in the following terms:-

“Be that as it may but keeping in view the fact that the petitioners are ready and willing to pay the entire amount due, we set aside the orders dated 22.6.2005 (Annexure P-2); 8.10.2008 (Annexure P-2) & 8.7.2009 (Annexure P-4) and permit the petitioners to deposit the entire amount of Rs. 55,15,448/- within a period of one month. Respondents shall communicate within this period of one month, if any further amount is due and payable by the petitioners. On such communication, petitioners shall deposit the amount so due within one month thereafter. Disposed of accordingly.

5. In terms of the order and judgment dated 01.03.2012 an amount of Rs.55,15,448/- was to be deposited within one month i.e. by 01.04.2012. The petitioners, however, deposited the demand draft of a sum of Rs.55,20,000/- only on 19.06.2012 i.e. after a delay of two months and 19 days. After over a year the respondents by a letter dated 21.08.2013 cancelled the lease and returned the drafts on the ground that the payment was beyond the date stipulated in the order dated 01.03.2012.

6. The petitioners challenged the order dated 21.08.2013 by filing the above Civil Writ Petition No. 21646 of 2013. The petitioners would succeed in this writ petition only in the event of the time to make the payment as per order dated 01.03.2012 being extended and on their paying the amount within the extended period.

7. Considering the facts and circumstances of the case, we see no reason to deprive the petitioners the benefit of the order dated 01.03.2012 on account of the delay of 2 months and 19 days. The petitioners fairly stated that there was some difficulty in collecting the amount. There was no wilful default on their part. The respondents cannot be prejudiced if they are otherwise compensated by payment of interest as per the agreement.

8. The respondents would be entitled to interest for the delay. They would normally have been entitled to interest from 01.04.2012 i.e. the date stipulated for payment as per the order dated 01.03.2012. The respondents were not bound to accept the tender as it was not made in accordance with the order dated 01.03.2012. It was for the petitioners to

make an application for extension of time. If the application was rejected, there could be no question of the respondents accepting the tender/payment. The application for extension of time was made only recently. Thus although we propose to allow it, the respondents would normally have been entitled to interest from 01.04.2012 till the date of payment.

9. The petitioners are, however, entitled to a reduction in the rate of interest for the following reasons.

By an interim order dated 26.05.2015 in Civil Writ Petition No. 21646 of 2013, the Division Bench recorded the statement on behalf of the petitioners that they were prepared to deposit Rs.55,20,000/- with interest and other outstanding amount. To test the bona fides of the petitioners, the Division Bench directed them to produce a demand draft in the sum of Rs.60,00,000/- on the next date of hearing. By an order dated 31.07.2015, the Division Bench recorded that the demand draft had been handed over to the respondents' counsel who accepted the same without prejudice to the rights of the respondents in the pending writ petition. The Division Bench expressly stated that the respondents would be entitled to encash the demand draft subject to further orders to be passed by the Court.

In view of this order dated 31.07.2015, the respondents could have encashed and appropriated the payment without prejudice to their rights and contentions in the matter. They, however, did not do so. They retained the demand draft. If they were dissatisfied with the order, they ought to have challenged the same. They, however, did not question

the order dated 31.07.2015 and instead retained the demand draft. They merely moved an application for modification of the order by filing Civil Misc. No. 13837 of 2015. The only contention in this Civil Miscellaneous Application was that the value of the property was higher. It is not necessary to deal with that Civil Miscellaneous Application as it was only to modify an interim order which with the disposal of the petition comes to an end anyway. Even the demand draft forwarded by the petitioners on 19.06.2012 was returned by the respondents only after fourteen months. Normally a demand draft requires the payment of the amount to the issuing bank. The petitioners must, therefore, have been deprived the use of their money.

10. Equally however the petitioners also made no enquiry regarding the status of the matter. They would have had the drafts cancelled without prejudice to their rights after making an application for the same.

11. Thus interest ought to be paid to the respondents upto the date of payment as they have not had the benefit of the use of the money.

12. However, as the respondents retained the demand draft without informing to the petitioners that they did not intend encashing the same, it would not be fair to impose interest at 24% per annum as provided in the agreement.

13. In the result both the parties are responsible for the loss of interest on account of the amounts not being invested. The ends of justice would, therefore, be met by directing the respondents to pay interest only at 15% per annum throughout.

14. In the circumstances, the following order is passed:-
- i) Civil Miscellaneous Application No. 3041 of 2016 in Civil Writ Petition No. 16208 of 2009 is allowed subject to the petitioners paying by 31.08.2016 an amount of Rs.55,15,448/- together with interest thereon at the rate of 15% per annum from 01.04.2012 till payment.
 - ii) In the event of the amount being paid as aforesaid, Civil Writ Petition No. 21646 of 2013 shall stand allowed and the impugned order therein shall stand quashed and set aside. In the event of the petitioners failing to pay the amount as aforesaid, the writ petition shall stand dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

10th May, 2016
ravinder

(ARUN PALLI)
JUDGE