In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 8709 of 2016
Date of Decision:2.11.2017.

Ramesh Kumar

---Petitioner

vs.

Reliance General Insurance Company Limited

---Respondent

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Harkesh Manuja, Advocate
for the petitioner

Mr. Ashwani Talwar, Advocate
for the respondent

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Rekha Mittal, J.

The present petition directs challenge against order dated 4.10.2016(Annexure P-9) passed by the Civil Judge (Junior Division), Gurgaon whereby the execution petition filed by the petitioner in terms of award dated 17.12.2013 passed by the Permanent Lok Adalat Public Utility Services, Gurgaon (in short “the Lok Adalat”) has been disposed of being fully satisfied.

Counsel for the petitioner has submitted that the petitioner filed an application in July 2013 before the permanent Lok Adalat for issuance of direction to the respondent to pay Rs. 5,80,000/- alongwith interest @ 12% per annum from the date of theft of Mohindra Balero bearing registration No. HR-26-BG 5655. After due contest, the application was decided vide award dated 17.12.2013 and the respondent was directed to pay an amount of Rs. 5,79,000/- within a period of 40 days from the date of handing over the documents referred to in the award failing which the respondent being liable to pay interest at the rate of 9% per annum from the date of institution till payment. It is further argued that as the petitioner complied with direction of the award in respect of handing over documents as well as getting the vehicle transferred in the name of the respondent on or before 27.7.2015 and the respondent handed over cheque of Rs. 5,79,000/- beyond the period of 40 days from the date of necessary compliance by the petitioner, the petitioner is entitled to interest at the rate of 9% per annum on the amount of Rs. 5,79,000/- in terms of the award passed by the Lok Adalat. It is further submitted that the Executing Court seriously erred by rejecting plea of the petitioner and disposing of the execution petition as fully satisfied.

Counsel for the respondent, on the other hand, would urge that the respondent does not dispute its liability to pay interest at the rate of 9% per annum on the sum awarded in favour of the petitioner from the date of filing of the petition till decision on 17.12.2013 and for the period from 6.9.2015 till 24.9.2015 but the respondent is not liable to pay interest with effect from 17.12.2013 till 6.9.2015 as the petitioner cannot take advantage of his failure to hand over the documents till 27.7.2015.

I have heard counsel for the parties, perused the paper book particularly the award dated 17.12.2013, statement of Jatinder Saini, Advocate for the petitioner recorded on 24.9.2015 and the order impugned.

Before adverting to the submissions made by counsel for the parties, it is appropriate to extract a relevant part of the award passed by the Lok Adalat, reads as under:-

> "So as a result of above discussion we direct the respondent to pay Rs. 5,79,000/- (Rs. Five Lac and Seventy Nine Thousand only) to the applicant within forty days of completion of the formalities/requirements by the applicant. The applicant is directed to get RC of the vehicle transferred in favour of the respondent. The applicant is further directed to execute indemnity bond, subrogation letter and undertaking in favour of the respondent to this effect that applicant will not have any right, title or interest to the vehicle in question and applicant is entitled to receive the same as per order of the trial court. These documents will be handed over to the respondent against receipt or will be dispatched through registered post and then payment of the amount will be made by the respondent to the applicant within forty days failing which respondent will be liable to pay interest at the rate of 9% per annum from the date of institution till payment."

Indisputably, the petitioner handed over the documents namely indemnity bond, subrogation letter and undertaking in favour of the respondent prior to 27.7.2015. Even the registration of the vehicle in question was transferred in favour of the respondent prior thereto. There is also no denial that as necessary compliance was made by the petitioner upto 27.7.2015, the respondent was obligated in terms of the award to make payment of Rs. 5,79,000/- without inviting liability to pay interest within a period of 40 days with effect from 27.7.2015. It is also not disputed that cheque bearing No. 431292 dated 1.9.2015 for Rs. 5,79,000/- was received by counsel for the petitioner on 24.9.2015, as per statement recorded by the executing court. As the respondent handed over the cheque in respect of payment of Rs. 5,79,000/- on 24.9.2015, the respondent evidently failed to make payment within the stipulated period of 40 days from the date of completion of formalities by the petitioner. In the given circumstances, the respondent cannot escape its liability to pay interest at the rate of 9% per annum on the amount of Rs. 5,79,000/- in terms of the award passed by the Lok Adalat. In this view of the matter, the executing court has committed a serious error apparent on the face of record denying interest in terms of the award and disposing of the execution petition as fully satisfied.

With the aforesaid observations, the petition is allowed, the impugned order is set aside and the proceedings are restored on the Board of the executing court for execution of the award even with regard to payment of interest in terms of award dated 17.12.2013.

Before parting with this order, it is pertinent to mention that the respondent may take recourse to appropriate legal remedy, if any, for modification of the award dated 17.12.2013.

(Rekha Mittal)
Judge

2.11.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No