

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 9153 of 2017 (O&M)

Date of Decision: 22.12.2017

M/s Salient Crafts

.....Petitioner

Versus

M/s Tets-N Rai International and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ajay Bhardwaj, Advocate
for the petitioner.

ANITA CHAUDHRY, J

This revision has been preferred against the order dated 14.12.2017 passed by Civil Judge (Sr. Division), Gurugram whereby application filed by the petitioner for refund of Rs. 50,50,000/- deposited by respondent No.1, has been dismissed.

I have heard the counsel for the petitioner at length.

The regular second appeal filed by M/s Salient Crafts was dismissed by this Court on 20.10.2016. While dismissing that appeal, there were directions to the plaintiff to pay an additional amount of Rs. 25.00 lacs as compensation to the petitioner/defendant No. 1. The plaintiff's suit was for specific performance had been decreed. He deposited the balance sale consideration as well as the additional amount ordered by the High Court. The decree holder claimed some deduction namely the cost of litigation, dues paid to the HSIIDC, TDS and house tax. He also produced the receipts showing payment.

impugned order. It reads as under:-

3. *It has been submitted by the Learned Counsel for JD No.1 that the JD No.1 has no objection for deduction of the cost. However, the amount of Rs.16,62,554/- claimed by JD No.2 is disputed. There was no such condition in the agreement with the JD No.2 that the enhanced compensation maintenance charges, TDS etc. were to be paid by JD No.2. Since the JD No.1 is in possession of the suit property, he is liable to clear all dues. Similarly, in regard to the house tax of Rs.2,24,840/- there was no such condition. Also, the TDS can be deducted after the payment of Rs.45.5 lacs to the JD No.1. The said amounts can be recovered from the JD No.1 afterward and the entire amount of Rs.45.5 lacs be released to JD No.1. The possession be delivered only after the same, otherwise the JD will face severe difficulties in withdrawing the amount. Also, it has been submitted by JD No.1 that issues be framed to decide the deductions and payments to be made to the parties after evidence is led by the parties.*

4. *Rebutting the abovesaid arguments, the Learned Counsel for DH has submitted that the JD No.1 is moving frivolous applications, just to delay the execution proceedings. Despite the order dated 20.10.2016 of The Hon'ble High Court of Punjab and Haryana and the judgment and decree being upheld upto The Hon'ble Apex Court of India, the JD No.1 is delaying the execution, simply to continue his possession over the suit property and enjoy the fruits of the same. As directed by The Hon'ble High Court vide order dated 20.10.2016 in R.S.A. No.1401 of 2010, the JD No.1 was required to complete all the formalities for getting the sale deed executed from the original allottee JD No.2, in the name of the Decree Holder. However, the JD No.1 did not comply with the orders of The Hon'ble High Court of Punjab and Haryana and the DH had to file the present execution. The JD No.1 was directed to get the sale deed executed, by this Executing Court but he did not*

comply and the L.C. executed the sale deed. Now he is moving frivolous applications to delay the delivery of possession to the Decree Holder.

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10. It has been submitted by the Learned Counsel for JD No.1 that issues be framed in this case to decide the abovesaid deductions, and the amounts to be released to different parties. It is well settled preposition of law that where there is no question of fact involved and all the facts are admitted, issues need not be framed. In the present execution there is no dispute, as to which party has paid the abovesaid charges of HSIIDC which is detailed as below:

- (i) Rs.16,62,554 has been paid to HSIIDC by JD No.2, receipt placed on record.*
- (ii) Rs.50,500, TDS paid by Decree Holder, receipt placed on record.*
- (iii) Rs.2,24,840, house tax charges, paid by Decree Holder, receipt placed on record.*
- (iv) Rs.2,15,389, cost awarded to the Decree Holder by The Trial Court and the First Appellate Court.*

The Executing Court ordered the release of the amount which had been deposited in favour of JD No. 1 and gave them liberty to file an application for withdrawal of the amount and at the same time it ordered warrants of possession for 15.1.2018.

The main stress of the petitioner was that the petitioner had been running the industry for a number of years and they would take time to wind up their business and they may be given time till March 2018 to vacate the premises.

The agreement for performance of which suit had been filed, was executed in January 1994. The decree holder has not been able to

noted the conduct of JD No. 1 in the order. This petition is another ploy to delay the disposal. A strange request was made before the Executing Court for framing issues. The party could not claim right to lead evidence. There were no disputed facts. The Executing Court had commented on the conduct of JD No. 1, he was enjoying the property for the last 23 years and was still not ready to comply with the judgment affirmed by the Apex Court.

By filing this petition, the attempt of the JD is to delay handing over the possession and it has to be rejected.

The petition is dismissed in *limine*.

(ANITA CHAUDHRY)
JUDGE

December 22, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No