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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **OMP (ENF.) (COMM) 89/2016**

Date of decision: 13th November, 2017

PRAMOD KUMAR MITTAL & ANR. ..... Petitioners

Through: Ms.Deepika V. Marwaha, Ms.Worthing Kasar, Mr.Vaibhav Prakash, Advs.

versus

M/S KIRI ASSOCIATES (P) LTD ..... Respondent

Through: Mr.Manish Kumar, Mr.Piyush Kaushik, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

IA No. 13008/2017

1. This application filed by the judgment debtor was listed on 9th November, 2017, when the arguments were heard in part. The decree holder, who was present on advance notice has also been heard in opposition of the application.

2. The judgment debtor by way of the present application, filed under Section 47 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has prayed for a

determination as to whether the decree holder is entitled to interest @ 14% per annum (simple interest) or Interest compounded annually.

3. It is further contended that though no averment with respect to the calculation of the interest have been made in the application nor any objection have been filed to the calculation filed by the decree holder on 23rd October, 2017, in terms of order dated 8th September, 2016 passed by this Court in OMP(I)(COMM) 341/2016, the judgment debtor had deposited a sum of Rs. 2 crores with the Registrar of this Court on 4th October, 2016. It is submitted that in terms of Order XXI Rule (1)(4) of the CPC no further interest would, therefore, be payable on this amount of Rs.2 crores and such interest shall cease to run.

4. The learned counsel for the judgment debtor submits that under Section 47 of the CPC, this Court shall have to go into all questions arising between the parties relating to the execution, deposit or satisfaction of the decree including the question whether the arbitration award (now a decree) awards Simple Interest or Compound Interest in favour of the decree holder. He places reliance on the judgment of Supreme Court in ***Topanmal Chhotamal v. Kundomal Gangaram & Ors***. AIR 1960 SC 388 and the judgment of Kerela High Court in ***Abdul Rahiman v. Parameswari Amma and Ors.*** (MANU/KE/0866/1998) to contend that where the decree is

ambiguous, it is the duty of the executing Court to construe the same.

5. In my opinion, the above two judgments have no relevance to the facts of the present case. The Sole Arbitrator had passed an award dated 7th November, 2014 in favour of the decree holder, the operative portion of which reads as under:-

> *"While in the normal course if the claimants conduct was free of blame and specific performance could not be granted for some valid reason, the claimant would have been at least entitled to the refund of the advance with interest at 18% p.a. However since some blame also attaches to the claimant's conduct the interest should be granted to the claimant on the advance amount at 14% p.a, particularly when the transaction is of real estate. This apart the Claimant would also be entitled to Rs. 251acs as damages and litigation costs. The interest would run from the date of the receipt of the amount of Rs.1.5 crores by the Respondent till the date of payment to the Claimant."*

6. The decree holder filed an application under Section 33 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking clarification/interpretation of the award especially in light of an apparent contradiction between paragraph 11 and paragraph 5 of the findings of the

Arbitrator in the award. The Arbitrator vide his order dated 8th December, 2014 clarified the award and passed the following directions/award

> "*While in the normal course if the claimants conduct was free of blame and specific performance could not be granted for some valid reason, the claimant would have been at least entitled to the refund of the advance with interest at 18% p.a. However since some blame also attaches to the claimant's conduct* ***the compound interest compounded annually*** *should be granted to the claimant on the advance amount at 14% p.a. particularly when the transaction is of real estate. This apart the claimant would also, be entitled to Rs. 2 5 lacs as damages and litigation costs. The interest would run from the date of the receipt of the amount of Rs. 1. 5 crores by the Respondent till the date of payment to the Claimant."*

7. It is therefore evident that the arbitrator had granted interest @ 14% per annum compounded annually in favour of the decree holder.

8. The matter did not rest here and the award was challenged by the judgment debtor before this Court by way of OMP(COMM) 203/2016. The same was dismissed by way of order dated 3rd June, 2016. Paragraph 17 of the said order is

relevant as the Single Judge also notes that compound interest has been awarded on the amount directed to be refunded by the Arbitrator. Paragraph 17 of the order is quoted herein below:

> "*17. Therefore, the Award has rightly been passed by the Tribunal in the said circumstances, which is not contrary to law. The relief of Specific performance was disallowed but seeing the misconduct, misrepresentation and non-disclosure of material fact as well as hiding and concealing the crucial facts and information, the <u>Tribunal had ordered the refund of the advance paid with compound interest</u> and also awarded compensation and the cost of the litigation. Thus, the Award is liable to be upheld as the same does not suffer from any infirmity."(emphasis supplied)*

9. The judgment debtor carried this order in appeal under Section 37 of the Act, which was dismissed by the Division Bench of this Court vide its judgment dated 3rd July, 2017. In paragraph 6, the Division Bench again noted that the arbitrator had awarded refund of advance amount of Rs. 1.5 crores with interest at the rate of 14% compound interest annually. Special Leave Petition against the above judgment was dismissed by the Supreme Court on 25th August, 2017.

10. The judgment debtor, thereafter, filed a review petition being RP No. 441/2017 in the appeal dismissed by this Court vide judgment dated 3rd July, 2017. One of the grounds urged therein was that the Division Bench had failed to consider the challenge to rectification of the award under Section 33 and the imposition of compound interest in the facts and circumstances was unjustified. The Division Bench vide its order dated 3rd, November, 2017 dismissed the Review Petition. As far as the challenge to the award of compound interest is concerned, the Division Bench held as under:-

> "*This Court is of the opinion that no ground for review has been made out. The relevant discussion is Paras 9 to 12 of the main judgment shows that these questions were agitated and considered on merits. So far as the issue of rectification goes, this aspect was not urged in the appeal at the time the main judgment was delivered. <u>Even otherwise, unless the appellant is able to satisfy that the grant of such compound interest was patently illegal or contrary to the contract under Section 28(3), the Court could not have substituted its view in reference to that of the Arbitrator</u>.*" *(emphasis supplied)*

11. The reliance of the learned counsel of the judgment debtor on paragraph 6 of the award dated 7th November, 2014, in view of my above discussion is totally misplaced as much water has flown thereafter in the form of clarification by the arbitrator, dismissal of objections by the single Judge of this Court, dismissal of appeal by the Division Bench, dismissal of

SLP by the Supreme Court and dismissal of Review Petition by the Division Bench of this Court.

12. As far as the plea of the judgment debtor premised on the deposit of Rs. 2 crores made by it with the Registrar General of this Court pursuant to order dated 8th September, 2016 is concerned, in my opinion the same is also unfounded. It is first to be noted that this deposit was made not in the execution petition but in a petition filed under Section 9 of the Act. Secondly, at that stage, as has been recorded in the order dated 8th September, 2016, the counsel for the judgment debtor had submitted that the order challenging the dismissal of its objections under Section 34 of the Act has been challenged before the Division Bench in an appeal. It was only to balance equity and safeguard the interest of the decree holder that an ad-hoc amount of Rs. 2 crores was directed to be deposited by this Court. No release of this amount was, however, directed in favour of the decree holder. The above amount was eventually released in favour of the decree holder only pursuant to the order dated 11th July, 2017, which again records the objection of the judgment debtor to such release. The relevant portion of the order dated 11th July, 2017 is reproduced herein below:-

> "*Learned counsel appearing for the respondent submits that the respondent seeks to file a Special Leave Petition before the Supreme Court and the amount be not released. No purpose would be served in keeping the present petition pending. Objections to*

the Award have already been dismissed and the appeal against the said order has also been dismissed.

Accordingly, petitioners are permitted to withdraw the sum of Rs.2 crores in equal proportions, which is lying deposited in court along with accumulated interest in terms of direction of this court dated 8.9.2016. This withdrawal would be subject to any orders that the Supreme Court may pass in case any SLP is filed by the respondent.” (emphasis supplied)

13. Order XXI Rule 1 of the CPC provides for mode of payment of money by the judgment debtor in satisfaction of the decree. Such payment can be made out of Court or through deposit into Court whose duty it is to execute the decree. As noted above, the deposit was not made to the Court executing the decree but to the Court exercising its jurisdiction under Section 9 of the Act. Secondly, Order XXI Rule 1 would require an unconditional deposit of the decretal amount by the judgment debtor. In the present case, the deposit was not unconditional in satisfaction of the decree but only to prevent an adverse order being passed under Section 9 of the Act and pending the appeal that had been filed by the judgment debtor before the Division Bench of this Court.

14. The judgment debtor has placed reliance on the judgment of the Supreme Court in the case of ***Bharat Heavy Electrical Ltd. vs. R.S. Avtar Singh and Co.*** (2013) 1 SCC 243 to contend

that once a deposit is made under Order XXI Rule 1(1)CPC, Order XXI Rule 1(4)CPC mandates that the interest shall cease to run. The said judgment would not be applicable in the facts of the present case inasmuch as in the case before Supreme Court the amount deposited by the judgment debtor was withdrawn by the decree holder from the date of service of notice as contemplated in Order XXI Rule 1(2) of the CPC.

15. I may here quote the provisions of Order XXI Rule 1 of the CPC;

[1. Modes of paying money under decree-(1) All money, payable under a decree shall be paid as follows, namely:-

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or
(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or
(c) otherwise, as the Court which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgement due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:-

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money-remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

16. A reading of Order XXI Rule 1(2) would show that a notice of deposit has to be given by the judgment debtor to the decree holder. The relevance of this notice is to put the decree holder to notice that the amount has been deposited and if he so

desires, can be withdrawn from the executing Court. As noted above, in this case the intent of deposit by the judgment debtor was not to ensure a release of the same to the decree holder but only as a security in terms of the order dated 8th September, 2016 passed by this Court. It is only with the deposit being made under Sub-Rule (1) of Rule 1 and notice thereof being sent under Sub-Rule (2) of Rule 1 of Order XXI CPC that sub-rule (4) of Rule 1 of Order XXI of CPC would be applicable and interest will cease to operate.

17. Similarly, reliance of the judgment debtor on the judgment of this Court in ***Engineering Projects (India) Ltd. Vs. Arvind Construction Company Ltd.*** MANU/DE/0744/2009 would be of no relevance to the facts of the present case. In fact, this Court, in the above judgment has held that the payment made for obtaining a stay of the decree before the Appellate Court cannot be said to be an amount paid under Order XXI Rule 1 of the Code of Civil Procedure towards satisfaction of the decree. Payment under Order XXI Rule 1 CPC satisfies a decree holder whereas a deposit in the Court to avoid execution keeps the amount beyond the reach of the decree holder and leaves him waiting for its release. In the present case, this is exactly the factual position.

18. The learned Counsel for the decree holder has drawn my reference to the judgment of the Supreme Court in **PSL *Ramanathan Chettiar & Ors. vs. O.R.M.P.R.M Ramanathan***

Chettiar AIR 1968 SC 1047, Paragraph 12 and 13 of which are quoted hereinbelow:-

> "***12.*** *On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 Rule 1 CPC in satisfaction of the decree.*
>
> ***13.*** *The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor."*

20. It is clear from the above judgment that where any deposit is made to purchase peace by way of stay of execution of the decree, even if the decree holder is entitled to pray for a release of the said amount on certain terms, this would not be a

deposit in terms of Order XXI Rule 1 CPC in satisfaction of the decree.

21. Reliance has also been placed by the counsel for the decree holder on the judgment of this Court in ***Delhi Development Authority vs. Bhai Sardar Singh and Sons 2009 (158) DLT 8; M/s Dewan Chand vs. Union of India*** (judgment dated 23rd April, 2015 in Execution Petition 287/2012); and ***South Delhi Municipal Corporation vs. M/s Radhey Shyam*** 2015 (1) RLR 424 to the same effect.

22. The learned counsel for the judgment debtor contends that there was no embargo on the decree holder withdrawing the amount of Rs. 2 crores that had been deposited by it in this Court. On the other hand, the counsel for the decree holder submits that even on 11th July, 2017, after dismissal of the appeal of the judgment debtor, when the decree holder had made a prayer for release of the amount, there was opposition on part of the judgment debtor and, therefore, it cannot be said that this amount could have been released in favour of the decree holder at an earlier date. I agree with the submission of the learned counsel for the decree holder. Be that as it may, as discussed above, the deposit itself was not in terms of Order XXI Rule 1 and therefore the question whether the decree holder could have sought the release of the same or not is of no consequence.

23. In view of the above discussion and finding, the application is dismissed with cost of Rs. 10,000/- to be paid by Judgment Debtor to the Decree Holder.

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1. Pursuant to Order dated 3rd August, 2017, warrants of attachment of the accounts, term deposit and fixed deposit of the judgment debtor ***M/S KIRI ASSOCIATES (P) LTD***. with Bank of India, East of Kailash, New Delhi for a sum of Rs. 2,75,00,000/- were issued. The counsel for the decree holder has filed on record a calculation sheet showing that an amount of Rs. 2,35,25,365/- would be due and payable under the decree/award till 7th November, 2017. The learned counsel for the judgment debtor submits that in terms of order dated 11th July, 2017, the amount that was released in favour of the decree holders should have been appropriated towards principal and interest. I fail to appreciate the said objection as this would have no effect on the amount remaining payable under the Decree/ Award. The Decree Holder also points out that reference to "equal proportions" in order dated 11th July, 2017 is to the two petitioners. In any case, no objection to the calculation sheet has been filed before me till date. The learned counsel for the decree holder states that as on date this amount would be Rs. 2,35,71,997/- .

2. In view of the above, I direct the Bank of India, East of Kailash, New Delhi to release a sum of Rs. 2,35,71,997/- in

favour of the Decree Holders in equal proportion from the Accounts, term deposits and fixed deposit of the judgment debtor ***M/S Kiri Associates (P) Ltd. with Bank of India, East of Kailash, New Delhi.***

3. The amount shall be released within a period of two weeks of service of copy of this order. The remaining amount lying in the accounts of the judgment debtor shall be released in its favour or in accordance with its directions.

4. With the above direction, the petition is disposed of.

5. Dasti.

NAVIN CHAWLA, J

NOVEMBER 13, 2017/NK