

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

C.R. No.1936 of 2018

M/s Aricent Technologies (Holdings) Ltd

...Petitioner

Versus

M/s Durga Softelecom Pvt Ltd and Ors.

....Respondents

Date of Order: 11.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Ashish Chopra, Advocate and
Mr. Prateek Sodhi, Advocate for the petitioners.

Mr. Trideep Pais, Advocate and
Mr. Pranav Jain, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Present revision petition is directed at the instance of the petitioner against the impugned order dated 17.1.2018 whereby the Additional District Judge-cum-Judge, Special Commercial Court at Gurugram has disposed of two applications out of which one moved by the plaintiff with the prayer to direct the respondent to accept the keys of the suit property was dismissed and the other preferred by the defendant for appointment of Local Commission for ascertaining the damage to the premises much less of possession of the demised premises, has been allowed.

Learned counsel for the petitioner submitted that the petitioner-plaintiff instituted the suit on 20.4.2017 (P.29) wherein the respondents filed written statement and counter claim dated 03.7.2017 (P.30). An application (P.32) seeking indulgence of the Court for issuing directions to the respondent-counter claimant to accept the keys was accompanied along with the suit. However, counter claimant also moved application for

appointment of the Local Commissioner.

Defendant No.1/counter claimant filed two separate replies (P.34 and P.35) to the aforesaid applications. The impugned order came to be passed on 17.1.2018 (P.36).

Learned counsel for the petitioner submitted that the court below has gravely erred in dismissing the application of the petitioner. The applications could have been disposed of in plain and simple manner. By referring to para 32 of the impugned order, it has been submitted that the observations as recorded by the court below was not required to be incorporated as they arose for some order pertaining to some other suit. Once the request of the counter claimant/respondent for appointment of the Local Commissioner had been allowed, the application for handing over the keys of the demised premises should not have been dismissed. In pursuant to the said order, the Local Commissioner had already inspected the premises on 25.1.2018 and submitted his report on 02.2.2018. He submitted that permission may be granted to the petitioner to file objections if need be.

Per contra, learned counsel for the respondent-counter claimant submitted that reference to Annexure P.18 with regard to “de-bonding” should not have been noticed. It was next contended that there was no occasion for the court below to refer to the question of de-bonding as it was subject matter of evidence to be noticed at the appropriate stage but not in the manner as indicated above. He submitted that the Local Commissioner has already inspected the premises in the presence of the parties by taking keys attached to the suit and opened the premises. Possession of the premises has been handed over to the respondent/counter claimant on that date. The counter claim pertains to certain damages and mesne profits,

which would obviously be subject matter of evidence to be decided at appropriate stage. He thus urged for upholding of the impugned order under challenge as no useful purpose would be served as the revision petition in part has already been rendered infructuous.

I have heard learned counsel for the parties and appraised the paper book.

The manner and mode in which the impugned order has been passed, has already been noticed by this Court while issuing notice of motion on 22.3.2018. This Court does not deem it appropriate to comment upon as the concerned Officer, who has delivered the findings, has already been transferred. Para 32 of the impugned order, as conceded by learned counsel for the respondent, pertains to some other suit and in such circumstances, the impugned order is liable to be set aside.

Be that as it may, it is pertinent to mention that following events have taken place in the case in hand:

- i. Inspection of the premises by the Local Commissioner on 25.1.2018;*
- ii. Local Commissioner was handed over the keys attached to the suit;*
- iii. Premises have been inspected on 25.1.2018*
- iv. Possession of premises along with keys had been handed over to the respondent/counter claimant, which were accepted by the respondent.*

In such circumstances, the court below, in my view, should not have dismissed the application (P.32) for handing over the keys to the respondent. Accordingly, the impugned order under challenge viz-a-viz dismissal of the application (P.32) is set aside.

Consequently, present revision petition is disposed of with the

observation that both the parties shall be at liberty to file objections, if they deem it appropriate to the report of Local Commissioner. Any findings arrived at before the trial Court while referring to certain documents would be rendered obiter as the documents have yet to be proved in accordance with law. Any of the observations qua merit of the matter recorded by the trial Court vide the impugned order is not sustainable and the same are set aside. It is directed that the trial Court after undertaking the exercise of admission and denial as per law shall frame the issues from the pleadings of parties so that the litigation is restricted only to disputed facts and documents.

May 11, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No