

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

CR No.6859 of 2017 (O&M)
Date of decision: 12th March, 2018

Reliance Retail Limited & another

... Petitioners

Versus

Shalimar Estates (P) Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. K.S. Nalwa, Mr. Ashish Chopra, Mr. Mukul Aggarwal
Advocates for the petitioners.

Mr. Anand Chhibbar, Senior Advocate and
Mr. Puneet Bali, Senior Advocate with
Mr. Vaibhav Sahni, Advocate for the respondent.

FATEH DEEP SINGH, J.

This revision is sought by the judgment debtor against the decree holder challenging the orders dated 14.09.2017 (Annexure P1) of the Court of learned Additional District Judge, Panchkula passed during the proceedings in execution application, wherein the Court by the impugned order has after framing of issues, misconceived holding that the same shall be adjudicated without recording of evidence of the parties and did not frame proper issues which needs to be determined.

Upon hearing Mr. Ashok Aggarwal, Senior Advocate assisted by Mr. K.S. Nalwa, Mr. Ashish Chopra, Mr. Mukul Aggarwal Advocates representing the petitioners; Mr. Anand Chhibbar, Senior Advocate and Mr. Puneet Bali, Senior Advocate assisted by Mr. Vaibhav

Sahni, Advocate appearing on behalf of the respondent as well as on perusal of the records of the case.

The brief background which led to filing of the execution is that the petitioner/judgment debtor M/s Reliance Retail Limited entered into a lease-agreement with the respondent/decreed holder M/s Shalimar Estates (P) Limited on 24.01.2007 (Annexure P2) in respect of their Shalimar Mega Mall and the terms and conditions of the lease were duly incorporated therein. It is during the course of time, a dispute arose between the parties and which was referred to arbitration commensurate with the stipulations of the lease-agreement. The Arbitrator passed Award dated 07.09.2011 regarding which the judgment debtor had filed FAO which stood dismissed by this Court on 20.12.2012 and similarly the SLP was dismissed by the Hon'ble Supreme Court of India on 07.04.2017. It was during the course of execution proceedings, the Court vide impugned orders framed following issues and passed the impugned order that all these points shall be adjudicated without recording evidence of the parties:

“1. Whether after passing the award dated 07.09.2011, tendering the keys of the tenanted premises in the Executing Court, to impress upon the decree holder, to receive the keys, it amounted to actual physical possession of the tenanted portion/demised premises to the decree holder and which particular dated is to be counted for the purpose of delivery of

possession of the demised premises by the judgment debtor to the decree holder?

2. *Whether the entitlement of the judgment debtor to remove the fit-outs after making the full payment would merely amount to giving the decree holder right of lien over the fit-outs?*
3. *Whether the issue/dispute regarding mode, manner and time of surrender of possession could be adjudicated upon by the Executing Court, especially when the said issue/dispute does not form part of the Award and at best, can be said to be arbitrable in terms of agreements dated 24.01.2007 and 15.05.2007 and accordingly, referable to arbitration in terms thereof?*
4. *Whether the judgment debtor is not liable to pay any interest on the amount quantified under the Award, after the date of deposit of the said amount in terms of the orders passed by the Hon'ble Supreme Court dated 01.02.2013?*
5. *Whether, the decree holder can claim compensation in terms of the rent for the premises, forming part of the Mall, after the entire Mall had been sealed by the Government Authority?"*

Appreciating the submissions of the two sides, the Award clearly stipulates and is not disputed as to the grant of interest till the Award and thereafter till handing over of possession. It is the case of the revisionist that they have sent keys on 14.11.2011 to the decree holder

through registered post but he refused to take back and rather sent it back and that their conduct to hand over possession and efforts are further reflective from the application under Section 9 of the Arbitration Act earlier filed by the judgment debtor to return keys and which stood declined vide orders dated 21.12.2011 (Annexure P17) wherein on the said date decree holder refused deposit of the keys in the Court. Though it is squarely accepted that a sum of Rs.16,32,18,865/- was deposited by the judgment debtor in the Court on 05.02.2013 (Annexure P7) and which by the orders of the Court were put by way of FDR and whether that tantamounts to satisfying of the Award and that the money so deposited along with interest accrued amounting to Rs.19,32,18,747/- was received by the decree holder which learned counsel for the respondent does not disputes and therefore, a material question over the refusal to receive the keys; acceptance of the Award amount and removal of fitments has been the rallying point before this Court.

Though on behalf of the respondent, Mr. Puneet Bali, Senior Advocate assisted by Mr. Vaibhav Sahni, Advocate has sought to controvert these submissions that since the judgment debtor had failed to comply with the Award in handing over the possession by not removing the fitments, the Award cannot be held to have been satisfied and which on the other hand is sought to be opposed by the revisionist on the ground that from 26.06.2007 to 02.08.2007 the work had stopped for which the judgment debtors were not entitled to pay the lease amount on account of denial of usage of the premises.

Going through these submissions, the very question of stoppage of work and its consequential affect on the working of the judgment debtors, if any, is a prior incident to the Award which was passed on 07.09.2011 and therefore, deemed to have been adequately taken note of and considered by the Arbitrator. With the dismissal of SLP on 07.04.2017, the findings of Award have been upheld. The issues framed by the Court below certainly do not take into consideration all these points of dispute to comprehensively adjudicate the claims and counter-claims arising in execution application. The claim of judgment debtors that they had sent the keys on 14.11.2011 to the decree holder through registered post, for which reliance is placed on Annexure P16 but the decree holder refused to receive the same and rather sent it back and thus, the decree holder cannot be allowed to take undue benefit of his own act and conduct and therefore this aspect needs to be gone into in detail.

Though application under Section 9 of the Arbitration Act filed by the judgment debtors for deposit and thus return of the keys of the leased premises, which was declined vide orders dated 21.12.2011 (Annexure P17) and the fact that in the said very proceedings it was the categorical stand of the decree holder to refuse for the deposit of the keys, are matters of much significance affecting the outcome of the execution application resulting in material consequences for the parties on the two sides.

The third and the most important aspect is deposit of the amount in Court and withdrawal of this amount of Rs.19,32,18,747/- by the decree holder tantamounts to relinquishment of the rights of the decree holder arising out of the Award and thus, satisfaction of the Award in entirety. The other rallying point that has arisen in the arguments addressed by the two sides is the very question which decree holder claims that on account of non-removal of the fitments, the possession cannot be deemed to have been delivered which is denied by the judgment debtors and therefore, such an issue whether removal of the fitments have been made or not, is a moot point that needs to be adjudicated and which can only be done by evidence of the parties.

Thus from it all, it crystallizes and flows that the points that needs to be determined by the executing Court are to the effect: Whether the act and conduct of the judgment debtors in sending by registered post the keys and refusal by the decree holder to receive the same and returning it back as well as the filing of application under Section 9 of the Arbitration Act moved by the judgment debtor for deposit of the keys and its return, and the stand of the decree holder in that application refusing deposit of the keys which led to passing of orders dated 21.12.2011, the same tantamounts to handing over of constructive possession of the leased premises to the decree holder by the judgment debtors. The act of decree holder in frustrating the efforts of the judgment debtor to hand over possession of the premises and its effect as well as the executing Court to adjudge the actual date of handing over of possession needs to

be gone into. Further, the withdrawal of the amount of Rs.19,32,18,747/- by the decree holder tantamounts to satisfaction of the Award at the behest of the decree holder and their right to further agitate recovery of further amount in pursuance of the Award is a legitimate one or not. The factum whether the judgment debtors have removed the fitments from the leased premises or not and if so, the date and time when the same were removed. Since all these issues are based on facts necessitating evidence to comprehensively adjudicate the same.

Since it is a question over payment or adjustment of the amount awarded under the Award and which payment of money under a decree is governed by Order XXI Rule 1 CPC as well as Order XXI Rule 103 CPC, Section 47 CPC provides the questions which are to be determined by the Court executing the decree and which lays down that all such questions relating to execution, discharge or satisfaction of a decree shall be determined by the Court executing the decree and not by a separate suit and thus, it enjoins that the executing Court ought to have framed and dispose off objections and counter-objections, if any, comprehensively to determine this factual imbroglio and after recording the evidence ought to have given its opinion which the Court below has not done so.

Since as per the Award, the decree holder shall be entitled to compensation as determined in each of the claims for the period after the date of the Award and till the demised premises remain in possession of the respondent along with payment of interest etc. In the light of these

claims and counter-claims, whether constructive possession has been handed over by these acts of the judgment debtors and whether refusal of the decree holders to receive the keys and the factum of removal of the fitments by the judgment debtors, are matters which can only be gone into comprehensively by leading evidence which is very essential for the executing Court to adjudicate in the execution proceedings.

The premise on which the learned Court below has framed issues certainly does not considers all these relevant points for determination in its issues and which can only be comprehensively done so after the parties are afforded opportunity to lead evidence. Since the matter is prolonging for a long time and this Court even vide orders dated 04.10.2017 had directed disposal of the matter urgently, it would be in the fitness of things to allow the instant revision petition directing the executing Court to frame issues afresh in accordance with the points of determination as given above and to afford one opportunity to each of the parties to lead evidence in their favour and thereafter, to dispose off the application in question strictly in accordance with law. The revision petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

March 12, 2018

rps

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