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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 14069/2018 & CM APPL. 54878/2018**
AIRPORTS AUTHORITY OF INDIA Petitioner
Through: Mr.Digvijay Rai and Mr.V.K.Arya,
Advocates.

versus

DELHI TOURISM & TRANSPORTATION DEVELOPMENT
CORPORATION LTD Respondents
Through: Ms.Shobhana Takiar, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER
% **26.12.2018**

CM APPL. 54879/2018 (*exemption*)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 14069/2018 & CM APPL. 54878/2018

The challenge in this petition is to an order dated 05.07.2018 by which the learned Trial Court has stayed the order dated 15.02.2017 of the Estate Officer, DTTDC, Dilli Haat, INA, New Delhi, directing the petitioner to pay an amount of Rs.43,70,727.08 as damages towards book value of the premises subject to the petitioner depositing 50% of the said amount which was to be kept in the court by way of an FDR. The challenge further is also to the order dated 13.12.2018 whereby the learned Trial Court recalled the order to the extent of the consent of the counsel but did not modify the condition of deposit of 50% of the amount.

The relevant facts arising in the present petition are that the petitioner had allotted a land measuring 900 square metres to the respondent on 06.08.1982 for a period of 30 years for construction of a Coffee Home opposite Terminal-II. On 04.07.1994 a License Agreement was entered into between the parties and the Coffee Home become operational in May, 1996. However, owing to certain losses, the Coffee Home was closed down in June, 2000. An Eviction Order under Section 28-D(1) of the Airports Authority of India Act, 1994 ('AAI Act') was passed and the respondent was declared as an unauthorized occupant of the premises and the premises was to be vacated within 15 days of the said order. An order under Section 28-G of the AAI Act was also passed directing the respondent to pay a sum of Rs.25,67,290/- to the petitioner and Rs.51,64,500/- to DIAL.

The land was handed over by the respondent to the petitioner on 19.12.2014 and the petitioner thereafter asked the respondent to remove his structure. On the respondent failing to do so, proceedings were initiated by the petitioner on 06.01.2015 under Section 28-E of AAI Act. On 27.05.2015 respondent submitted a salvage value of Rs.3,26,270/-. At the behest of the respondent, the proceedings were initiated by the Estate Officer under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('P.P. Act') on 26.09.2016 and on 18.01.2017 the petitioner herein was proceeded ex-parte. On 15.02.2017, the petitioner appeared and filed his vakalatnama and sought time to move an application for setting aside the ex-parte order. Vide order dated 15.02.2017, the Estate Officer directed the petitioner to pay an amount of Rs.43,70,727.08 as damages towards book *W.P.(C) 14069/2018*

value of the premises. Aggrieved with this, the petitioner filed an appeal before the District Judge on 06.04.2017 bearing PPA No.15/2017 and though notice was issued, stay was not granted. On 02.07.2018, a stay application was filed by the petitioner as recovery proceedings had been initiated. Vide order dated 05.07.2018 learned District Judge stayed the order dated 15.02.2017 but subject to deposit of 50% of the amount in question. In fact, the order records that the learned counsel for the petitioner had given his readiness and willingness to deposit the 50% amount although also recording his contention that no amount was due from the side of the Airport Authority. On 03.08.2018 the petitioner filed an application for recalling of the order dated 05.07.2018. In the application, it was stated that the learned Trial Court erroneously recorded statement of the counsel that he was willing to deposit the amount whereas no such statement was made or could have been made by the learned counsel as his client were disputing the liability to pay any amount.

After the notice having been issued on this application on 20.08.2018, the petitioner filed an application on 11.12.2018 for stay of warrants of arrest dated 30.11.2018. Vide order dated 13.12.2018 learned District Judge recalled the order qua the concession of the counsel, but did not recall the direction of deposit of 50% of the amount. Learned Trial Court stayed the warrants of arrest for a period of two weeks subject to deposit of 50% of the amount. Aggrieved by this, the present petition has been filed by the petitioner.

The contention of the learned counsel for the petitioner is that learned Trial Court had erred while recalling part of the order, in as much as, it is observed in the order that the application for recalling did not have a prayer for recalling of the direction for deposit of 50% of the amount whereas, in fact, the application contains such an averment and a prayer as well. It is also contended that the respondent, in fact, owes 98 lakhs to the petitioner and even otherwise in case the petitioner was to lose in the appeal before the learned Trial Court, it is a statutory body/public sector undertaking and would be able to pay the amount.

Per contra, learned counsel for the respondent has opposed the writ petition and submitted that there is no error in the order of the learned Trial Court. The direction is not to pay the 50% of the amount to the respondent but is only to deposit in the court and that too the same would be kept in an FDR and would earn interest. In case, the petitioner was to succeed before the learned Trial Court, he would get his money back with interest. She, however, submits that she has no objection, if the time period for deposit of the amount is extended up to the date when the learned Trial Court is opening after winter vacations in January, 2019.

I have heard learned counsels for the parties.

Having perused the orders dated 05.07.2018 and 13.12.2018, this court finds no error in the impugned orders. Since the issue involved was regarding damages under Section 7 of the PP Act, the learned Trial Court was well within its right to direct a deposit of 50% of the amount in court.

Learned counsel for the respondent is right in her submission that direction is only to deposit the money in the Court and that would be kept in FDR which would carry interest and no prejudice will be caused to the petitioner particularly in view of the fact that it is a public sector undertaking and not an individual. The concern of the learned counsel in the application for recalling was mainly that the learned Trial Court had recorded the consent of the learned counsel that he was willing to deposit the money but that part of the direction has been recalled by the learned Trial Court and in my opinion, rightly so. No error can be found with the other part of the direction.

There is, thus, no merit in the present writ petition and the same deserves to be dismissed. Accordingly, the writ petition is dismissed.

At this stage, learned counsel for the petitioner submits that time for deposit 50% of the amount is going to expire and prays for extension of time to deposit the same.

Learned counsel for the respondent at this stage fairly conceded that time for deposit of the amount may be extended up-to 03.01.2019 when the Trial Court is reopening after vacation.

Accordingly, the time for deposit 50% of the amount as directed by the learned Trial Court vide order dated 13.12.2018 is hereby extended up-to 03.01.2019. Till then the warrants of arrest issued against the petitioner would be stayed.

Learned counsel for the petitioner also prays for direction to the Trial Court for preponement of date of hearing fixed in the Trial Court.

Liberty is given to the petitioner to move an application before learned Trial Court for early hearing. Learned Trial Court is requested to consider the application for early hearing, if so filed by the petitioner, as per its convenience.

Dasti to the parties, under signatures of the court master.

JYOTI SINGH
(VACATION JUDGE)

DECEMBER 26, 2018
SSC

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