

CR No.7252 of 2018(O&M)
Date of Decision: 16.05.2019

Versus

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. Adarsh Jain, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the orders dated 10.07.2018 and 15.09.2018 passed by Civil Judge (Junior Division), Faridabad vide which objections filed by the judgment debtor were allowed thereby directing the decree holders/petitioners to pay the interest as claimed by the judgment debtor and further application for recalling of order dated 10.07.2018 was dismissed.

[2]. Perusal of the record would show that plot No.M15 in

Project Parklands, Faridabad having the access through 24 meters road as shown in lay out plan was allotted to the petitioners who made the payment except an amount of Rs.12,74,971/-. The aforesaid amount was not paid as the builder/respondent did not provide the access (24 meters wide road as per lay out plan) to the plot in question. Due to defiance services on the part of the respondent, the aforesaid amount was not paid. Respondent terminated the allotment of the petitioners on 05.07.2018 for want of payment.

[3]. Petitioners filed petition under Section 22C(I) of the Legal Services Authorities Act and the same was allowed vide order dated 03.08.2015. Direction was issued to the respondent to restore the allotment of plot No.M15 in Project Parklands, Faridabad launched by the respondent after recalling the letter of termination dated 05.07.2013. Petitioners were held liable to make the payment of outstanding arrears including the amount of Rs.12,74,971/- besides other arrears arising out of builder buyer agreement executed between the parties. With the aforesaid direction, the petition was disposed of.

[4]. Thereafter, the petitioners filed execution petition for execution of the order dated 03.08.2015 as the judgment debtor did not comply with the aforesaid direction. In the execution petition, the judgment debtor/respondent filed objections on

14.03.2018.

[5]. Executing Court vide order dated 10.07.2018 accepted the objections of the judgment debtor/respondent on the premise that the judgment debtor/respondent had already provided *rasta* to the decree holder and therefore, decree holder is liable to pay the outstanding amount as alleged by the judgment debtor. A Local Commissioner was also appointed in the execution. The report of Local Commissioner was relied wherein it was recorded that two *rastas* are leading to the plot of the decree holder. One *rasta* is shown in blue colour and same exists on 24 meters sector road. On this *rasta*, there is patch which is shown in red colour on which no *pacca* road is existing. It was so because of dispute with HUDA and that is why, the road work could not be completed on this patch. Second *rasta* is a village *rasta* starting from 24 meters wide road and is shown in green colour. This *rasta* is *pacca* road and is 12 meters wide road. This *rasta* merges with 24 meters second road on which the plot of the decree holder situated. On the basis of report of the Local Commissioner, the execution Court accepted the objections filed by the judgment debtor.

[6]. Lok Adalat passed the award directing the decree holders/petitioners to pay the outstanding arrears including the amount of Rs.12,74,971/- besides other arrears arising out of

builder buyer agreement. Since there was dispute with HUDA in respect of 24 meters wide road having *pacca* road at the portion shown in red colour, therefore, the executing Court took notice of the alternative connectivity in the form of 12 meters wide road as shown in blue colour. The award passed by the Lok Adalat is suggestive of the fact that the decree holder was held liable to pay the outstanding arrears along with other arrears arising out of builder buyer agreement. From the award itself, the relief clause can be appreciated from two point of views. Firstly, withholding of an amount of Rs.12,74,971/- was on account of non-fulfillment of terms of builder buyer agreement as 24 meters road was not provided. Decree holder is liable to pay the outstanding arrears along with other arrears arising out of builder buyer agreement as per Clause 12 of the agreement. Since 24 meters wide road has not been provided, therefore, it cannot be said that the judgment debtor has complied with terms and conditions of builder buyer agreement. Since the Lok Adalat has directed the petitioner to make payment of outstanding arrears including Rs.12,74,971/- besides other arrears arising out of builder buyer agreement, therefore, if the aforesaid requirements are considered in conjunction with each other, it can be appreciated that the outstanding liability of the petitioners as on the date of termination of allotment on

05.07.2013 can be made good. Secondly, if in addition to an amount of Rs.12,74,971/-, some other outstanding arrears were due as on 05.07.2013, the petitioners shall pay the same. If no such dues were outstanding on 05.07.2013, then the respondent shall feel contended with the amount in question. The award of Lok Adalat does not show that any interest is payable on the outstanding amount.

[7]. The *rasta* which has been provided as shown in blue colour in the site plan prepared by the Local Commissioner appears to be zigzag having some turns in order to reach the plot of decree holders/petitioners. The provision of 24 meters wide road was the condition of the allotment and the same was not fulfilled. Withholding of the amount of Rs.12,74,971/- by the decree holders at one point of time appears to be justified as terms and conditions of the allotment were not complied with by the judgment debtor. With the provision of alternative connectivity, it would remain debatable as to whether judgment debtor has complied with terms and conditions of the allotment letter with some force as was promised to the decree holder. The payment of penal amount as a consequence of non-payment of dues would not be attracted as the decree holders alone were not responsible for causing such delay, judgment debtor was equally responsible for not providing 24 meters wide

road as agreed in the lay out plan. Even such road has not been provided so far due to pending litigation with HUDA.

[8]. The *rasta* which has been shown by the Local Commissioner is not as per the lay out plan as promised by the judgment debtor as the same passes through villages and having curves at different places. The judgment debtor is not entitled to any interest on the amount in question as the passage i.e. 24 meters wide road has not been provided as per lay out plan. The impugned order granting interest on the outstanding amount would not be in consonance with the award of the Lok Adalat wherein no such amount on outstanding arrears was awarded. Direction was issued to the decree holder to make payment of outstanding arrears including an amount of Rs.12,74,971/- besides other arrears arising out of builder buyer agreement executed between the parties.

[9]. It would be in the fitness of things if this Court takes notice of all these attending circumstances in which both the parties were prevented from going upon their promises by paying the dues by the decree holders and constructing the road by the judgment debtor.

[10]. This revision petition can be disposed of by directing the respondent to accept an amount of Rs.12,74,971/- and any other amount which was outstanding in addition to the aforesaid

amount as on 05.07.2013 without insisting upon any interest on the said amount.

[11]. With the aforesaid modification, this revision petition is disposed of.

16.05.2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No