

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

**Civil Revision No.227 of 2020
Date of Decision:14.1.2020**

Shri Suresh Garodia

...Petitioner

Versus

Mr.Niyaz Ahmed Khan and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: M.Qayam-Ud-Din, Advocate with
Mr.Nikhil Chhoker, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. The decree-holder is before this Court in a petition under Article 227 of the Constitution of India partially assailing the order dated 3.11.2019 passed by the learned District Judge, Gurugram on the ground that it has been passed with material irregularity by failing to exercise jurisdiction vested in him under Order 21 Rule 22 (1)(a) of the CPC. The Judge is seized of an execution application filed by the petitioner for issuing warrants of attachment against the respondents in implementation of the order passed by the Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 (for short, 'Arbitration Act') as amended up to date. The Arbitration Act confers power on the principal Civil Court at Gurugram to supervise and enforce the orders under Section 17 of the Arbitration Act, where the venue of arbitration is within his jurisdiction although the corpus/property lies in the State of Assam.

2. The interlocutory order under Section 17 of the Arbitration Act was passed by the Arbitrator on 3.11.2019 granting interim measures of

protection over matters falling in direction 10(a) therein related to shares with which the petitioner has no immediate concern, where the arbitrator held that he had no hesitation in allowing the application (S.17) restraining the respondents, their servants, nominees, directors and share holders of M/s Starline Hotels Limited situate at GS Road, Christian Basti in front of Mizoram House, Guwahati, Assam from doing the following acts :-

“(a) Transferring, alienating or creating any third party interest in 2,80,000 shares of the Company bearing distinctive numbers.

Xx xx xx xx

as also mentioned in the list attached as Annexure A to the application under section of Arbitration and Conciliation Act, 1996 as amended up to date to any person in any manner till final disposal of the claim petition;...”

3. And more importantly, to abide by the following directions contained in Para No.10(b) of the order of the Arbitrator restraining the respondents from :-

“Selling, transferring, leasing, alienating or parting with possession or creating any third party interest in the immovable property of Starline Hotels Limited being the “Hotel Grand Starline” situated at GS Road, Christain Basti in front of Mizoram House, Guwahati (Assam)-7881005 in any manner whatsoever till final disposal of the claim petition and charge is hereby created on the immovable property of Company Starline Hotels Limited being the “Hotel Grand Starline” situated at GS Road, Christian Basti in front of Mizoram House, Guwahati (Assam) 781005 to the tune of Rs.16,14,23,116.70 (Rupees Sixteen Crore Fourten Lakh Twenty Three Thousand One Hundred Sixteen and Paise Seventy) being the balance sale consideration of transfer of 2,80,000 shares of Starline Hotels Limited and other claims in favour of the claimant and the charge be registered with the office of the concerned Registrar of Companies.”

4. The arbitrator in sub para. (c) of his order, was conscious of the fact that an order of attachment before judgment is harsh and cannot be

resorted to in a routine manner. In the light of this principle on the facts of the case he observed as follows:

“I am conscious of the fact that an order of attachment before judgment is a harsh step and same cannot be resorted to in a routine manner. This permission is empowered with drastic and extra ordinary power and such power should not be exercised mechanically or merely for the asking. Tribunal should be satisfied about existence of a prima facie case and should also be satisfied that with a view to obstruct or delay the execution of any decree, the respondent was about to dispose of the whole or any part of subject matter of proceeding.”

5. Mr.Qayam-Ud-Din, learned counsel for the petitioner relies on Order 21 Rule 22 (1)(a) of the CPC to submit that the approach of the learned District Judge, Gurugram was erroneous in issuing notice to the judgement debtors, vide order dated 18.12.2019, whereas it should have issue warrants of attachment in execution of the order dated 3.11.2019 passed under Section 17 of the Arbitration Act by the sole Arbitral Tribunal, Gurugram. The District Judge, Gurugram, had the jurisdiction vested in him to pass such an order and there was sufficient reason in the order in execution to support warrants of attachment before passing of the final arbitral award. The relevant rule is prescribed in Order 21 Rule 22(1(a) of the CPC as relied upon by the petitioner, is reproduced below:-

“Order 21 Rule 22 (1)(a): Notice to show cause against execution in certain cases-

(1) Where an application for execution is made-

(a) more than(two years) after the date of the decree or...

(b) xxxxxx

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him.”

The legal position flowing from the rule appears to be that where an application for execution is made within two years from the date of decree (the interim award being an interlocutory decree and the award treated as a decree under the Arbitration Act), then a notice was not required to be issued to the person against whom execution was applied for and notice is necessary only upon the expiry of two years from the date of decree that such notice is required to be issued. That situation has not arisen in this case as the application was filed far short of two years.

6. Learned counsel cites a precedent of this Court in CR No.1604 of 2015, “Parminder Singh Sandhu vs. Maninder Singh.” to support his contention. That case arose out of an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, against the respondents for ejectment from the demised premises on the ground of non-payment of rent and sub-letting. The Rent Controller made provisional assessment of rent and came to the conclusion that the total arrears of rent were assessed to a certain figure directing the tenant to pay the amount by a fixed date. The tenant defaulted and did not vacate the premises. The landlord filed an application for execution of the order. The executing Court issued notice to the tenant. This approach of the executing court was held to be erroneous and perverse as it was against the provisions of Order 21 Rule 22 CPC. This Court held that the executing court was legally bound to issue warrants of possession directly for delivery of possession of the demised booth to the decree-holder instead of a simple notice.

7. In that case, warrant of possession was issued but there is hardly any difference to the mind of this court on principle between a warrant of possession and a warrant of attachment under Order 21 Rule 22

of the CPC. There must evidently be a decree or award, interim or final and executable in law that will attract the provisions of the aforesaid rule of procedure and, accordingly, the law in *Parminder Singh Sandhu's case* (*supra*) in its ratio would apply to this case with equal force. That case was decided in limine without notice or opportunity of hearing afforded to the respondents in view of the mandate of Order 21 Rule 22 (1)(a) of the CPC.

8. Learned counsel submits that delay in such cases can be fatal to the cause and the corpus may be lost before the award sees the light of day. And if at this stage, the measures of preservation of the corpus of the arbitration issued under Section 17 of the Arbitration Act are not implemented in the letter and spirit of Order 21 Rule 22 (1)(a) CPC, then it may defeat the very purpose of the arbitration.

9. Accordingly, this petition is allowed. The directions of the arbitrator in Para 10(b) of the order dated 3.11.2019 are made operational and part of the impugned order dated 18.12.2019 passed by the learned District Judge, Gurugram is modified for the reasons discussed above, that is, omission to apply the provisions of Order 21 Rule 22 (1)(a) of the CPC. The Learned District Judge, Gurugram will consider issuing warrants of attachment in respect of the property mentioned in the order dated 3.11.2019 and decide the case as expeditiously as possible, and in the meanwhile, the corpus of the arbitration shall be kept in the status quo so that its character is not changed to the mostly irretrievable detriment of the petitioner.

January 14, 2020

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Whether speaking/reasoned

Whether reportable-

(RAJIV NARAIN RAINA)
JUDGE

Yes

Yes