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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 3rd February, 2020

+ **CM(M) 52/2020 and CM APPL. 2330/2020, 2331/2020**

BHUPINDER KALRA Petitioner

Through: Ms. Babita Seth, Advocate (M:
9811235539).

versus

PARAMJIT KAUR & ORS Respondents

Through: Mr. Anil Gera, Advocate (M:
9810195475).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. The present petition has been filed challenging the impugned order dated 21st October, 2019 by which the Executing Court has decided the application filed by the Petitioner – Mr. Bhupinder Kalra seeking certain directions in respect of the moveables lying in the tenanted premises. The background of the petition is that a MOU was entered into between the Respondent – Smt. Paramjit Kaur and the Petitioner in respect of a decree passed in Civil Suit No. 4/2013. In the said MOU dated 18th September, 2018, the Petitioner agreed to pay to the Respondent a sum of Rs. 15,00,000/- in various instalments of approximately 20 cheques, which were given to the Respondent. Apart from the said payment of Rs. 15,00,000/-, it was also agreed between the parties that after ten payments were made and the said cheques were encashed, the Petitioner would be entitled to lift the goods from the tenanted premises. The clauses in the agreement are as under:

“Whereas a decree has been passed in Civil Suit No. 4

of 2013 against the Second Party and the First Party has filed an execution application against the Second Party and in terms thereof, the goods in the form of movable properties belonging to Second Party attached as per list made at that time and the said goods are in possession with First Party.

Whereas now during the pendency of execution proceedings, the parties to the suit have decided to resolve their differences amicably on the intervention of respectable of both the parties and have agreed, to reduce the terms and conditions as under: -

i) That notwithstanding the decretal amount along with interest and costs as mentioned in the execution application amounting to a sum of Rs....., the parties have decided to fully and finally settle the amount at a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs) inclusive of costs of litigation, interest etc. It is stated that no other amount over and above Rs.15,00,000/= (Rupees Fifteen Lakhs only) lakhs shall be payable by the Second Party to the First Party. The Second Party has tendered 20 postdated cheques to the First Party @Rs.75000/- per cheque payable each month starting from September 2018.

ii) That in consideration of the settlement & consequent realization of 10 (Ten) post dated cheques as detailed above the Decree Holders shall permit the Judgment Debtor of uplift the attached goods, the condition of which has been verified by the Judgment Debtor prior to the execution of tis Memorandum of Understanding. ...”

2. The said MOU which was a settlement between the parties was recorded before the Court on 19th September, 2018. In the application, the parties again agreed that after ten cheques were encashed, the Petitioner would be entitled to lift the goods. The statements of all the parties were also

recorded before the Executing Court.

3. A notice was sent on behalf of the Petitioner on 17th September, 2019 calling upon the Respondent to suggest the date, time and place convenient for lifting of the goods. An application was thereafter moved seeking directions in the following terms.

“In the light of the aforesaid facts and circumstances, it is most respectfully prayed that necessary directions may kindly be issued on requisition of the file to the DHs to allow the JDs to take away all the attached goods lying in their possession without any further delay and till then directing them to not to present any of the remaining 9 cheques.”

4. In reply to the said application, the Respondent took the stand that the entire moveables which were lying in the premises (approximately 60 units) had been handed over to the Petitioner's son. Reliance was placed on a receipt dated 18th September, 2018 wherein the Petitioner's son - Mr. Rishabh Kalra has signed a receipt *“I have received material (60 units)”*.

5. The Executing Court, considered the application filed by the Petitioner and rejected the same on the ground that the execution is for the payments which were to be made by the Petitioner and not in respect of the goods which were to be lifted. The Petitioner is aggrieved by the said order and has filed the present petition.

6. Ld. counsel for the Petitioner submits that the Executing Court has an obligation to decide the application of the Petitioner as the compromise/MOU imposed obligations on both the parties. The Executing Court could not have completely rejected the Petitioner's prayer for return of goods simply relying upon the receipt.

7. Reliance is also placed on the fact that the notice was issued by the Petitioner to the Respondent calling upon the Respondent to inform of the date and time for lifting of the goods.

8. On the other hand, Id. counsel for the Respondent submits that the Petitioner's son had taken all the goods which is evident from the receipt. The receipt was concealed before the Executing Court. In the petition, the Petitioner has tried to explain the receipt, however, the signatures on the receipt are not disputed. Under these circumstances, the Executing Court's order does not warrant any interference.

9. The Court has perused the MOU, there is no doubt that on the one hand, the cheques of Rs. 15,00,000/- have been given and the same have to be encashed. As on date only three cheques are remaining to be encashed. The obligation to give the goods was also there, however, the Petitioner's son admits to signing the receipt. The explanation given by the Petitioner is that the receipt was signed prior to the MOU being signed and hence, the MOU should prevail. A perusal of the petition itself shows that in respect of the receipt, the following is the stand of the Petitioner:

“8. As the petitioner was not available, the son of the petitioner was negotiating the settlement with the respondents and on 18.09.2018 executed and signed the Receipt [Annexure A to the Reply filed by the Respondents to the Application U/S 151 CPC filed by the respondents] for having received the attached goods and handed over the receipt to the Respondents. But the fact remain that no inventory was prepared. No attached goods were returned to the Petitioner.”

10. There is a clear dispute between the parties as to whether the goods were received by the Petitioner or not. The Petitioner was clearly in the

wrong by not disclosing the signing of the receipt in the first place. It was not until the reply filed by the Respondent, that the Court was informed of the said receipt. The actual question as to whether goods have in fact been returned or not would have to be adjudicated by the Executing Court. Accordingly, the application of the Petitioner seeking permission to lift the goods is remanded back to the Executing Court which would record the statements of parties and decide the application afresh.

11. It is made clear that in view of the signature on the receipt not being denied, the remaining payments in terms of the MOU shall be made irrespective of the decision in the application which has been filed by the Petitioner. Parties to appear before the Executing Court on 27th February, 2020 when the application of the Petitioner shall be decided afresh.

12. The observations made in the impugned shall not come in the way of the independent adjudication of the said application.

13. In these terms, the petition with all pending applications is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 03, 2020
MR/A.S.