

CWP-6208-2017 (O&M)

Date of decision : October 05, 2021

M/s Advance India Projects Ltd.

.....Petitioner

Versus

Permanent Lok Adalat (PUS) and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. B.S. Sudan, Advocate for the petitioner.

Mr.R.S. Mamli, Advocate for respondent No. 2.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This writ petition has been filed by the petitioner for setting aside of award dated 15.12.2016 passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon.

Brief facts necessary for adjudication of the matter are that respondent No. 2 had filed an application under Section 22C of Legal Services Authority Act, 1987 with the averments that he had booked a flat with the present petitioner in July, 2012 by paying due amount of Rs. 9 lakhs. Another instalment of Rs.9 lakhs was deposited by him on 17.10.2012. Therefore, total amount of Rs.18 lakhs stood deposited by respondent No. 2 towards the basic sale price of the flat. However, neither letter of allotment was issued nor construction raised, due to which respondent sought refund of the amount with interest. Learned Permanent Lok Adalat directed refund of amount of Rs. 18 lakhs to respondent No. 2 with interest at the rate of 9% per annum. Aggrieved therefrom present writ petition was filed.

Learned counsel for the petitioner is unable to deny that at the time of issuance of notice of motion in this petition on 20.04.2017, it is specifically

observed by the co-ordinate Bench that petitioner does not have any right to retain sum of Rs. 18 lakhs, which has been deposited by respondent No. 2 in October, 2012 towards the basic sale price of the flat but since respondent No. 2, it is stated, may not have complied with contractual obligations of having deposited Rs.30,04,041/- alongwith tax and interest to the petitioner despite reminders, grant of interest of 9% on the amount to be repaid, may be debatable.

Notice of motion was issued to explore the possibility of an amicable settlement pertaining to service tax and interest amount. Petitioner was directed to deposit a sum of Rs. 10 lakhs with the Executing Court with recovery of remaining amount to remain stayed. It is further observed that petitioner should be ready to deposit remaining amount of Rs.8 lakhs by 18.07.2017. Sum of Rs. 10 lakhs was deposited before the learned Executing court which has, however, not been disbursed to respondent No. 2 till today. Though learned counsel for the petitioner has sought to argue that the petitioner is not liable to refund the amount which it has deposited towards service tax, I do not find any merit therein as deposit of service tax was a liability to be discharged by the petitioner. In case, petitioner has not been able to fulfil his obligation towards respondent No. 2, it is not entitled to withhold the amount of service tax, which it may have paid to discharge its own liability.

During the course of hearing of this writ petition, it is agreed between the petitioner and respondent No. 2 that the entire amount of Rs.18 lakhs shall be refunded to respondent No. 2, however, the rate of interest shall be modified from 9%to 6.5%. Admittedly, the amount of Rs.10 lakhs stands deposited before the learned Executing Court/Permanent Lok Adalat (Public Utility Services), Gurgaon pursuant to order dated 20.04.2017. Same be released to respondent No. 2.

Petitioner undertakes to deposit remaining amount of Rs.8 lakhs alongwith interest

at the rate of 6.5% within two weeks of receipt of certified copy of this order. Needless to say, interest of 6.5% on Rs. 10 lakhs till the date it was deposited, pursuant to order dated 20.04.2017, shall also be deposited by the petitioner. In case, the entire amount due is not deposited within a period of two weeks of receipt of certified copy of this order, petitioner shall be liable to pay interest at the rate of 9% per annum on the amount due.

Present petition is, accordingly, disposed of.

October 05, 2021
Rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No