IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

265 **CR No.1842 of 2019**
Date of Decision : 15.05.2023

M/s V2 Retail Ltd. ....Petitioner

VERSUS

Sanjeev Kumar Jain ....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikram Singh, Advocate for the petitioner.

Mr. Alok Mittal, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. This is a revision petition under Article 227 of the Constitution of India challenging the order dated 15.05.2012 whereby objections filed by the petitioner herein *qua* the execution petition were dismissed and the order dated 06.11.2018 vide which the application for review of the order dated 15.05.2012 was also dismissed. Thereafter, the appeal against both the orders dated 15.05.2012 and 06.11.2018 was dismissed vide order dated 26.11.2018.

2. The brief facts relevant to the present *lis* are that the petitioner herein approached the respondent for leasing out the premises in question in November 2005. A memorandum of understanding was entered into on 23.11.2005 and the property was leased in favour of the petitioner w.e.f. 01.02.2006 on payment of monthly rent of Rs.6,87,000/-. A civil suit for possession by way of ejectment was filed by the respondent herein being Civil Suit No.38 of 2007 before the Civil Judge (Sr. Division)-cum-ACJ, Gurugram. An *ex parte* decree was passed for possession and recovery of rent from the petitioner vide judgment and decree dated 27.07.2010.

Subsequently, the respondent herein filed an execution petition. During the pendency of the execution petition, a settlement dated 26.04.2011 was entered into between the parties. As per the settlement deed, copy whereof has been appended with the petition as Annexure P-3, it was agreed to settle all the disputes. Para 1 of the settlement deed reads as under :

> *"1. That the parties have settled all the issues qua rent, damages, interest, security, possession, service tax, TDS and the dispute qua civil suits bearing Civil Suit No.38 of 2007 and all disputes pursuant to the MOU dated 23.11.2005. Pursuant to this settlement deed, Lessee/Judgment Debtor No.1 and the confirming party have agreed to pay a consolidated sum of Rs.1,64,08,983/- (Rupees one crore sixty four lacs, eight thousand, nine hundred and eighty three only) to the Lessor/Decree holder settling all the dues qua rent, damages and the dispute of the above mentioned civil suit and bearing Civil Suit No.38 of 2007 and the execution pending as on the date of execution of this settlement deed which includes the amount of Rs.18,91,017/- which has been paid separately and the Lessor/ Decree Holder has agreed to relinquish all his claims qua rent, damages, interest and all or any right/title/interest under the decree/order dated 27.7.2010 passed in the above mentioned civil suit bearing Civil Suit No.38 of 2007. The amount of security of Rs.21,13,000/- shall also be retained by the Lessor/Decree holder besides payment of sum of Rs.1,64,08,983/- by Lessee/Judgment Debtor No.1 to the Lessor/Decree Holder and Lessee/Judgment Debtor No.1 shall be left no claim on this amount of security. The amount of Rs.1,64,08,983/- is being paid by Lessee/Judgment Debtor No. 1 and the confirming party*

> *to the Lessor/Decree Holder in the following manner………………."*

Para 2 of the settlement deed reads as under :

> *"2. The TDS amounts (as reflected in the TDS certificates) and service tax shall be paid by the Lessor/Judgment Debtor No.1 pro-rata to the payments made by the Lessor/Judgment Debtor No.1."*

3. It is an admitted case that an amount of Rs.1,64,08,983/- stands paid in terms of the settlement deed and the dispute now remains qua the service tax paid by the respondent herein which is to be recovered from the petitioner.

4. Learned counsel for the petitioner would contend that the Courts below have erred in holding that the petitioner was liable to pay service tax inasmuch as the matter stood settled between the parties and Clause 1 of the settlement deed was qua the rent, damages, interest, security, possession, service tax and TDS etc. and once the term 'service tax' was included in the settlement deed the settlement amount of Rs.1,64,08,983/- would include the amount of service tax also.

5. *Per contra* learned counsel for the respondent has vehemently contended that Clause 2 of the settlement deed clearly states that the service tax shall be borne by the lessee/judgment debtor pro-rata to payment made by the lessor/judgment debtor. It is further the contention that the word 'lessor' had inadvertently been written and the word should have been 'lessee/judgment debtor'. Learned counsel for the respondent has further pointed out that in para 11 of the order of the Executing Court it has been noticed that though the word 'lessor' has been recorded in Clause 2 but during arguments it was admitted by the counsel for the JD i.e. petitioner

herein that the word 'lessor/JD No.1' has been recorded due to a typographical mistake/oversight. It has further been contended that the Courts below have rightly held that the judgment debtor would be liable to pay the service tax.

6. I have heard learned counsel for the parties.

7. In the present case the terms of the settlement are very clear and merely because there is a typographical mistake in para 2 of the settlement deed, which has also been admitted by counsel for the petitioner herein before the Executing Court, the burden of the service tax cannot be shifted upon the respondent. There is no ambiguity in the clauses of the settlement which clearly state that the burden of service tax would be borne by the judgment debtor i.e. petitioner herein.

8. In view of the above, I do not find any illegality or infirmity in the impugned orders passed by the Courts below. The present revision petition, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
15.05.2023 **JUDGE**
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO