

2023:PHHC:086192

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CR-3770-2023 (O&M)
Date of Decision:-07.07.2023

Additional Commissioner, Municipal Corporation, Chandigarh
... Petitioner

Versus

Subhash Chander ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ashish Rawal, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner – Municipal Corporation, Chandigarh assails order dated 20.5.2023 (Annexure P-1) vide which the learned Additional District Judge, Chandigarh has ordered for issuance of warrants of attachment of property of the petitioner (Judgment Debtor) upon filing of list of property by Decree Holder.
2. A few facts necessary to notice are that respondent Subhash Chander had been allotted a contract in respect of a parking site opposite Lake Club, Sector 5, Chandigarh for a period of one year commencing from January 15, 2005. He was required to pay a refundable security of Rs. 5 lacs, which was accordingly deposited. However, the said security was ordered to be forfeited vide order dated July 4, 2005 on the ground that he has been charging higher rates for parking of vehicles than the ones prescribed by the Chandigarh Administration.

3. Arbitration proceedings were initiated before the Arbitrator-cum-Commissioner, Municipal Corporation, Chandigarh who vide award dated 9.9.2005 rejected the claim of respondent for restoration of his license or for refund of the security amount.
4. Respondent filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Chandigarh. The learned District Judge, Chandigarh vide order dated 12.5.2011 (Annexure P-4) set aside the award of Arbitrator and remitted the matter back for a fresh decision. The operative part of the said award reads as under :-

“10. In view of the discussion made above, the award dated 9.5.2005 is hereby set aside on the grounds as mentioned in preceding paras, under Section 34 of the Arbitration & Conciliation Act, 1996. The matter is remitted back to the respondents for reconsideration. The final decision shall be taken within three months from the date of this judgment, failing which the petitioner shall be entitled to refund of security amount of Rs. 5 lacs alongwith interest at the rate of 9 percent per annum from the date of forfeiture of the security amount till the same is refunded. Record be sent back to the concerned quarters. Memo of costs be prepared. File is ordered to be consigned to the record room.”

5. The petitioner, aggrieved by the aforesaid order dated 12.5.2021 (Annexure P-4), preferred an appeal in this Court i.e. FAO No. 259 of 2013, which was disposed of vide order dated 8.7.2016 (Annexure P-5) in the following terms, as extracted from the aforesaid order :-

" In view of attenuating circumstances explained in the application as well as in the grounds of appeal, I deem it appropriate to direct the Arbitrator to conclude the arbitration proceedings within a period of two months from the date of receipt of the certified copy of the order by giving effective opportunities to the respondent(s)-

contractor to cross examine the witnesses of the Coporation in order to belie the allegations of over charges etc. and in case, the claim of the Contractor is found to be genuine, he should be refunded the security amount of Rs. 5,00,000/- alongwith interest owing to alleged suffering of loss.

However, keeping in view the fact the delay of 525 days in filing the appeal is enormous, I deem it appropriate to impose the cost of Rs.30,000/- which shall be condition precedent and the same shall be paid to the learned counsel for the respondent(s)-contractor in the High Court.

With the aforesaid observations, the appeal stand disposed of."

6. Although, an amount of Rs. 5 lacs was refunded to the respondent vide cheque dated 30.3.2013 but no interest had been paid. The petitioner, thereafter, filed an execution application seeking interest. Immediately thereafter, the petitioner transferred an amount of Rs.3,39,781/- in April 2018.
7. Since the execution application was pending and the amount had not been finally adjudicated, the learned Additional District Judge, Chandigarh had ordered for attachment of the property of the petitioner (Judgement Debtor) vide order dated 20.5.2023 (Annexure P-1) which is assailed by the petitioner by way of filing the instant petition.
8. This Court has heard the submissions addressed before this Court.
9. A perusal of the impugned order dated 20.5.2023 (Annexure P-1) shows that the same would entail attachment of property of the petitioner and the matter had been ordered to be fixed before the executing Court for 6.7.2023 for report regarding attachment but no information in this regard has been furnished to this Court. Needless to mention, the Executing Court would have taken care to ensure that the property commensurate with the amount

due is kept under attachment. In any case, since the amount involved, particularly balance amount which may still be due is not a huge amount, the petitioner instead of fighting the matter tooth and nail would be well advised to act as per Model Litigation Policy and resolve the matter at the earliest.

10. There is no infirmity in the order and the same is upheld. The petition, being sans merit, is dismissed.

07.07.2023

kamal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No