

2023:PHHC:116203

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

CR-6222-2022 (O&M)
Date of Decision:- 04.09.2023

Mohit Jain and others

... Petitioners

Versus

Kanchan Bala Jain and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Shikhar Sarin, Advocate, for the petitioners.

Mr. Atul Goyal, Advocate, for respondents No.1 to 4.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner (JD) assails order dated 12.12.2022 (Annexure P-4) passed by the learned Additional District Judge, Ludhiana whereby an application filed by him under the provisions of Section 33 read with Section 35 of Stamp Act, praying therein for passing an order to impound the arbitral Award dated 5.7.2010 being under-stamped has been declined.
2. A few facts necessary for disposal of the petition are that a dispute amongst members of the same family regarding property led to initiation of arbitration proceedings which resulted in passing of award dated 05.07.2010 (Annexure

P-1). As per the said award, the petitioner/JD was to transfer certain properties to the respondents. The respondents had already transferred certain properties in favour of the petitioner before passing of the award in question. The relevant extract of Award reads as under :

- “ In the view of above I am convinced that the claimants have proved their claims and I do hereby award and determine that the respondents will perform the following.
- a) The respondents are held to be responsible, being owners, for the all the assets and liabilities of M/S BHARAT ENGINEERING. AGENCIES and they are directed to return the share capital of Kanchan bala jain, as per the account books, failing which the same can be got recovered from the assets of respondents.
 - b) The respondents are directed to immediately transfer the land and building situated at 408, Industrial Area-A, Ludhiana Measuring 1209 Sq.Yds., to petitioners and in an alternative the petitioners are declared owner in possession of ½ share of factory land & building situated at 408 industrial area-A Ludhiana as shown red in the map attached as annexure to this family settlement in possession of Sureyaa Knitwears Ltd measuring 1209 sq.yds.**
 - c) The respondents are directed to immediately transfer the Property at college Road Ludhiana, to petitioners and in an alternative the petitioners are declared owner of Property at college Road Ludhiana as specified at 6(b) of the agreement and they can get the sale deed executed and respondents have been left with no right what so ever over the property.**
 - d) The respondents are directed to make the payment of 50% refund of income tax for the financial year 2007-08, as and when received and in an alternative Kanchan jain can directly apply for the refund to income tax authorities, on the basis of present award or in an alternative in case the respondents fail to make the payment, the same can be got recovered from the assets of respondents.

- e) The respondents, Parmod Kumar Jain is directed to make the payment of the amount 1,00,00,000/- along with the interest @18% p.a., in case of delayed payment, from the date of amount becoming due, till the time same is not made and in case of non payment, the same can be recovered from the assets of Parmod kumar jain.
- f) The respondents are directed to deliver the original document of properties to Claimants and further ownership of Surya Florist Shop, College Road, be transfer Immediately, within 15 days from the receipt of present award.
- g) The respondents are directed to deliver the ½ share of the petitioner in seized/forfeited money of Income tax case for the financial year 2007-08.
- h) The respondents are directed to deliver to the petitioner the rent of Surya Florist shop, for the month of April 2010 and further the tenant Nishant Jain is directed to make the payment of rent to the Petitioners, as per the documents.
- i) The respondents are directed to pay Rs. 10,000/- as the cost of arbitration proceeding and Rs. 22,000/- as the legal fee of the lawyer.
- j) The claimants shall be entitled to recover all costs and expenses that may be incurred in seeking recovery of the amount awarded from the respondents jointly and severally.”

3. Pursuant to passing of said award, the award holder/decreed holder filed an execution petition before the executing Court. During the pendency of the said execution petition the petitioner/JD moved an application under Section 33 read with Section 35 of the Stamp Act seeking a direction that the Award in question be impounded being insufficiently stamped. The contention raised therein by the JD was the Award in question was required to be stamped and registered in terms of Section 17(1) of the Registration Act. The

aforesaid contention was however, turned down by the executing Court while observing as under:

“Therefore, such a document is covered under the exception provided under Section 17 of the Registration Act, as it provides for execution of the document which will further create the right. In the present case also, the award itself had not declared the parties as owner of the disputed property rather it had directed judgment debtor to execute the transfer deed in the favour of the decree holder on which stamp duty will be automatically payable. Further the award had on default in alternative declared the parties owner to the extent of half share each. It is pertinent to mention here that if a document which is not registrable because a direction has been given to the parties to execute further document and on their failure of doing so had declared the parties owners to the extent of half share. Hence the document which is not registrable on the direction will not become registrable because one of the party had defaulted to comply with the direction and that also the JD. Hence there are no merits in the present application and the present award is not registrable nor attracts stamp duty.”

4. Vide short order of even date i.e. 12.12.2022 (Annexure P-5), the execution was also disposed of by passing the following order:

“Vide my separate orders of even date passed separately, the application for setting aside ex-parte order dated 27.7.2022, has been allowed, whereas the application of JDs w/S 33 read with Section 35 of the Stamp Act and the objections filed by JDs have been dismissed.

Since, the Arbitrator vide Award dated 5.7.2010, has directed the respondents, JDs herein to transfer the land and building situated at 408, Industrial Area-A, Ludhiana and at College Road, Ludhiana, but JDs had failed to comply with the same, therefore, the Revenue Authorities are directed to change their revenue records as per the directions given, in the alternative as per Award dated 5.7.2010 in regard with property situated at Industrial Area-A, Ludhiana and College Road, Ludhiana after charging the requisite stamp duty etc. as per law from the parties. With these directions, the execution stands

disposed of with further liberty to the parties that still if any grievance is there, the parties are at liberty to file execution afresh or any appropriate application. File be consigned to the record room.

Pronounced in open court.”

5. The learned counsel representing the petitioner has vehemently argued that since the respondent/DH is seeking execution of the award in question and the same has not been stamped, the same cannot be acted upon unless and until it is properly stamped and registered. The learned counsel submitted that he has no objection in case the award is got stamped and registered even as of now in terms of orders dated 12.12.2022 (Annexures P-4 and P-5).
6. On the other hand, learned counsel for the respondent has submitted that as per the award in question, the petitioner was required to execute the transfer documents in the first instance and upon his failure the respondent was given liberty to approach the revenue authorities to get the needful done for making requisite entries. Learned counsel has further submitted that the award in question has been upheld by this Court. Learned counsel submits that the petitioner is neither coming forward to execute transfer documents nor is expressly denying to execute the transfer documents in accordance with law.
7. This Court has considered the rival submissions.
8. This Court finds that the executing Court has correctly observed that it is upon failure of the petitioner to transfer the property in question that the award in question will be treated as a declaration. There is no infirmity in impugned order. The petition, as such, is dismissed with liberty to the respondents to take necessary steps for the purpose of getting requisite changes effected in the revenue record by paying the requisite registration

stamp duty in accordance with law and in accordance with the impugned orders Annexures P-4 and P-5.

04.09.2023
mohan

(GURVINDER SINGH GILL)
JUDGE

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