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

+ CM(M) 93/2024, CM APPL. 2787/2024 (stay) and 2788/2024
(exemption)

SCHOLAR ALLEY PVT. LTD.

..... Petitioner

Through: Mr. Vishal Sharma, Ms. Priyanka
Mandal and Mr. Shashank Aggarwal,
Advs.

versus

RAHUL BANSAL & ANR.

..... Respondents

Through: Mr. Hitesh Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **15.01.2024**

CM No. 2788/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 93/2024, CM APPL. 2787/2024 (stay)

3. This petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 11.01.2024 passed by the learned District Judge-Commercial Court-05 (Central), Tis Hazari Court [in short 'learned Executing Court'] in Ex. No. 206/2023 titled as "Mr. Rahul Bansal v. Scholar Alley Pvt. Ltd." vide which the learned Executing Court had allowed the amount of two demand drafts for a sum of Rs. 1,43,24,202/- to be transferred to the account of decree holder/respondents herein in equal proportions on the application moved on behalf of the decree holder/respondents herein under Section 151 CPC for release of the



deposited amount in favour of the award holder in the proportion of 50% each.

4. The petitioner herein is the objector/judgment debtor before the learned Trial Court / learned Executing Court and the respondents herein are the non-objectors/ decree holders.

5. Issue notice.

6. Learned counsel for the respondents is appearing on advance notice and accept notice.

7. It is submitted on behalf of the petitioner that an arbitral award was passed against the petitioner on 19.12.2022 against which he had filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act”). Pursuant to the order dated 06.12.2023 of learned Trial Court, the petitioner herein filed two applications under Section 36 and 34(3) of the Act read with Section 5 and 14 of the Limitation Act before the learned Trial Court. The arguments were not heard on the applications on account of adjournment requested on behalf of respondents to file reply, thus, the matter was adjourned for 11.12.2023 at 2 PM.

8. It is further submitted that on 11.12.2023, arguments again could not be addressed as the adjournment was requested on behalf of the petitioner and the matter was adjourned to 15.12.2023 post lunch for arguments. On 15.12.2023, an adjournment was requested by the counsel for the petitioner on the health grounds, the matter was listed on 19.12.2023 for arguments by the learned Trial Court. Learned counsel submits that on 19.12.2023, the arguments were addressed, however, on the same date, the learned Trial Court informed that the matter is under transfer to some other court and it was posted for 22.12.2023. On the said date of hearing, the learned



Presiding Officer was on leave and the matter was adjourned to 08.01.2024. It is also submitted that the petitioner herein moved an application to make certain necessary changes with respect to the Sections in objections filed under Section 34 of the Act.

9. In the meanwhile, on 11.01.2024 an application was moved on behalf of the respondents under Section 151 CPC before the learned Executing Court for release of the decretal amount as deposited in the court which came to be allowed by the learned Executing Court without even issuing notice to the petitioner herein. Aggrieved by the said order, the petitioner filed the present petition for setting aside of the impugned order dated 11.01.2024 and for liberty to address arguments on the objection filed under Section 34 of the Arbitration and Conciliation Act.

10. The aforesaid submissions are refuted on behalf of the respondents by submitting that vide order dated 17.10.2023 of this Court, the order of the learned Executing Court was stayed with limited direction to the learned Executing Court for not to release the amount of Rs. 1.43 crores only up till 06.12.2023 so that the petitioner has the liberty to address arguments on the interim application. It is submitted that the petitioner herein has flouted the said directions and had time and again sought adjournments before the learned Trial Court. Therefore, the petition be dismissed at the threshold.

11. Perusal of the record shows that on 11.12.2023, on the request of the petitioner which was not opposed by respondents, adjournment was allowed by the learned Trial Court and the matter was adjourned to 15.12.2023. However on 19.12.2023, the learned counsels for the parties were heard on the interim application but as the matter had to be transferred to another court, it was posted for 22.12.2023 before the District Judge, Commercial



Court-08. On the said date the Presiding Officer was on leave, thus the case was listed for 08.01.2024, wherein the matter was listed on 15.01.2024 at 2 PM for arguments which is now to be taken up at 5 PM (as informed by the learned counsel for the petitioner).

12. It is to be noted that in the execution proceedings, arrest warrants were issued against the petitioner herein by learned Executing Court vide order dated 27.09.2023. To assail the order, the petitioner herein has filed CM(M) 1637/2023 before learned Predecessor Bench. That petition came up for hearing on 05.10.2023 wherein the petitioner gave an undertaking to deposit the decretal amount before the learned Executing Court in Execution Commercial No. 206/2023 within a week i.e., on or before 12.10.2023 in a Fixed Deposit maintained by a nationalised bank. Accordingly, learned Predecessor Bench on 05.10.2023, stayed the arrest warrants issued vide order dated 27.09.2023 until 12.10.2023 making it clear that if the FDR for the decretal amount drawn in favour of the learned Executing Court is not deposited on or before 12.10.2023, the stay order shall stand vacated automatically without seeking any clarification from this Court. The matter was directed to be listed before the Executing Court for verifying compliance by the petitioner on 13.10.2023 and was listed before this Court on 17.10.2023. On 17.10.2023, the petitioner herein made a statement that he has deposited the decretal amount of Rs. 1, 43,00,000/- before the Executing Court but the same may not be released to the respondents until 06.12.2023 so as to enable the petitioner herein to have its interim application adjudicated upon by the learned Executing Court. Accordingly, the petition was disposed of with a limited direction that the amount of Rs. 1.43 crores will not be released by the Executing Court until 06.12.2023 so



as to enable the petitioner herein to have his interim application adjudicated upon the concerned Executing Court. The learned Executing Court was requested to hear and decide the interim application filed by the petitioner on 06.12.2023 which was the next date fixed before learned Executing Court.

13. In the aforesaid facts and circumstances, the decretal amount already stands deposited in pursuant to the directions of this Court, the only issue persisting is with respect to release of the said deposited amount in favour of respondents. It is not disputed that on 19.12.2023, the arguments on interim application were addressed on behalf of the parties. However, as the matter was transferred to another court, the same came to be adjourned. Accordingly, the learned Executing Court is directed not to release the amount of Rs. 1.43 cores (arbitral amount) to the respondents till 19.01.2024. The parties will make their respective submissions before the learned Trial Court on 19.01.2024 at 2 PM for which no adjournment shall be sought by any of the party on the said date of hearing. In case any adjournment is requested by the petitioner on that date, the limited stay granted today shall stand vacated automatically without seeking any clarification from this Court.

14. With these directions, the present petition stands disposed of.

SHALINDER KAUR, J.

JANUARY 15, 2024
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