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

\+ EX.F.A. 11/2024

ABHISHEK MEHRA & ORS. ....Appellants

Through: Mr. Aman Bhalla, Advocate

versus

JLG RETAILS LTD & ORS. .....Respondents

Through: Mr. Anurag Parashar, Advocate

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **21.11.2024**

1. The instant appeal under Order XXI Rule 103 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) has arisen out of the impugned order dated 18.11.2023 passed by the Additional District Judge, Patiala House Courts, New Delhi, dismissing the execution petition bearing no. Ex. 69/2017 preferred by the appellants/decree-holders, on the ground that the award was satisfied and no further amount was found to be due against the respondents/judgment-debtors.

2. Learned counsel appearing on behalf of the appellants/decree-holders contends that the Executing Court has gravely erred in accepting the calculations of Nazir and has misinterpreted the terms of the arbitral award dated 11.11.2011, subsequently rectified on 16.11.2011, by ignoring the fundamental purpose of the award in favour of the appellants/decree-holders. According to him, the amount of security to be adjusted as per the award was adjustable only on the date of full and final payment made to the

appellants/decree-holders and not on part-payment. Moreover, it is stated by him that even the approach of the Executing Court is contrary to the judgment rendered by this Court on 26.09.2018 in Ex.F.A. 23/2018, whereby, it was held that the appellants/decree-holders were entitled to receive the payment of Rs. 7,23,391/- on 19.01.2012, without prejudice to their rights and contentions.

3. Furthermore, learned counsel appearing for appellants/decree-holders contended that on 19.01.2012, only a sum of Rs.7,23,391/- was paid against the amount awarded. Therefore, according to him, on 19.01.2012, it was not open for the respondents/judgment-debtors to claim an adjustment of security of Rs.16,46,400/- as was directed by the award. He, then, explains that adjustment of the security amount on part-payment reduces the balance amount and, therefore, the interest was paid only on the due amount, whereas, the interest should have continued to accrue on the entire amount including on the security amount, so long as the full and final payment was not made.

4. I have considered the aforesaid submissions and have perused the record.

5. The facts in the instant case would indicate that as per the arbitral award dated 11.11.2011 and the modified award dated 16.11.2011, an amount of Rs. 25,25,977.28/- was to be paid to the appellants/decree-holders by the respondents/judgment-debtors. Admittedly, the award stated that the security amount of Rs.16,46,400/- was to be adjusted as the said amount had earlier been paid by the respondents/judgment-debtors. On 19.01.2012, a part-payment of Rs.7,23,391/- was accepted by the appellants/decree-holders, *albeit* without prejudice to the rights and

contentions. On 27.04.2018, an execution petition for further recovery was filed by the appellants/decree-holders, and the same was dismissed in light of the receipt-cum-undertaking dated 19.01.2012. However, on an appeal preferred by the appellants/decree-holders, this Court, *vide* order dated 26.09.2018, set aside the order dated 27.04.2018 and held that the receipt of the part-payment was without prejudice to the rights of appellants/decree-holders, thus, did not completely discharge the respondent/judgment-debtor. Challenging the aforesaid order, SLP No. 4923/2019 was preferred by the respondents/judgment-debtors which came to be dismissed by the Supreme Court on 15.03.2019. Consequently, the execution proceedings were restored and an order for the issuance of warrant of attachment against the respondents/judgment-debtors was passed.

6. After the issuance of warrant of attachment, the respondent/judgment-debtors deposited three demand drafts totaling Rs. 18,81,000/-, which were also accepted by the appellants/decree-holders. The Executing Court, thereafter, directed the parties to file their fresh calculation and also directed Nazir to file a calculation sheet as conflicting calculation sheets were filed by the respective parties. Nazir submitted his report validating the calculation sheet of respondents/judgment-debtors and confirmed that the decree stood satisfied. The appellants/decree-holders then moved an application raising objections against the report submitted by Nazir, and *vide* the impugned order, the Executing Court found that the award was satisfied and accordingly, the order for consignment of the record was passed.

7. On the conspectus of the aforesaid set of facts, it transpires that the security amount of Rs.16,46,400/- was adjusted on 19.01.2012, i.e. the date

of part-payment of Rs.7,23,391/- and thereafter, against the remaining sum, interest was levied.

8. The submission made by learned counsel for the appellants/decree-holders that the aforesaid adjustment of security amount should have been deferred only on the date of final payment, falls short in light of the award dated 11.11.2011. In paragraph No.102 of the award, the Arbitral Tribunal has made the following pertinent observations with respect to the relief granted to the parties, which reads as under: -

> *102. The claimants have been found to be entitled to Rs. 53,109.689 on account of rent up to April 2009. Rs. 19,53,029/- on account of rent from May 2009 till the date of vacating the premises, Rs. 80,736/- on account of maintenance charges and Rs. 45, 143/- on account of interest till the date of filing of this claim.* ***Thus an AWARD of Rs 21,32,017.68 p*** *is passed in favour of the claimants and against the respondents/judgment-debtors. The claimants are also entitled to the costs of these proceedings proportionate to the sum awarded. The respondents/judgment-debtors are also liable to pay interest 15% on this amount pendent-lite and future interest till the date of payment. The respondents/judgment-debtors will be entitled to. adjust the amount or security i.e. Rs. 16,46,400/- while paying the amount payable under this award".*

9. In paragraph No.89 of the said award, it is recorded by the Arbitral Tribunal that undisputedly, the respondents/judgment-debtors had deposited a sum of Rs.16,46,400/- as refundable security, and the said amount remained with the appellants/decree-holders. Paragraph No.89 of the said award, reads as under: -

> *"89. There is no dispute that the respondents/judgment-debtors had deposited a sum of Rs. 16, 46,400/as refundable security. This amount is still with the claimants"*

10. In light of the aforesaid, the Court fails to understand as to why an amount which was already paid to the appellants/decree-holders and was

with them, should carry any interest against the respondents/judgment-debtors. The adjustment was accorded by the Arbitral Tribunal itself, and only the remaining sum was left to be recovered.

11. The Executing Court has rightly held that once the security was adjusted and the remaining balance was correctly calculated, the appellants/decree-holders had no reason to continue the execution proceedings. The Court noted that the security amount had been paid to the appellants/decree-holders on 01.11.2007, and was utilized by the appellants/decree-holders, who enjoyed interest on it for more than 16 years. Despite being interest-free, the Court observed, the appellants/decree-holders benefited from the interest over the security amount since the date of the award. Furthermore, it was also held that the sum of Rs.18,81,000/- paid on 31.05.2019, in addition to the part-payment of Rs.7,23,391/-, settled the entire amount which was due, including the adjusted security and interest. The fact that the amount of Rs.7,23,391/- or any subsequent amount paid to appellants/decree-holders was accepted without prejudice or otherwise, would be of no significance.

12. The averment of the appellants/decree-holders that the adjustment of the security amount is to be granted once the entire amount is paid, is also patently unconvincing as the adjustment of the security was granted by the award dated 11.11.2011, and the language used in the award cannot be stretched to the extent to infer that the security was adjustable only at the satisfaction of the entire award. Any other interpretation would mean extrapolation of the award which is not permissible in execution proceedings.

13. The decision of this Court which is sought to be relied upon by the appellant/decree- holder is only to the extent of setting aside the earlier order of the Executing Court, whereby, the execution proceedings were closed while treating payment of Rs.7,23,391/- to be the full and final payment, which was accepted without prejudice to the rights by the decree holder. It is also pertinent to note that paragraph No.102 of the award dated 11.11.2011, to the extent of allowing the security amount to be adjusted has not been interfered with. The findings given by this Court earlier, therefore, will have to be construed in the context that they were essentially rendered, and cannot be of any help to the appellants/decree-holders to claim unjust enrichment.

14. The Executing Court has rightly held that appellants/decree-holders are only trying to gain from the respondents/judgment-debtors, the interest on the outstanding amount even though the full and final payment was made on 31.05.2019. Given that the arbitral award had been fully satisfied, there existed no legal or equitable basis for the appellants/decree-holders to initiate further proceedings to claim any additional amounts. The Executing Court has correctly termed this as unjust enrichment on the part of appellants/decree-holders.

15. In the view of the facts and circumstances *in toto*, the Court does not find any reason to interfere into the impugned order.

16. Accordingly, the execution appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 21, 2024/*p'ma*