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

Date of decision: 21st March, 2024

\+ **EX.P. 17/2020**

VIPIN MALIK & ANR. ..... Decree Holders

Through: Ms. Aakanksha Kaul, Mr. Aman Sahani & Mr. Satya Sabharwal, Advs. (M- 042998201)

versus

PACL INDIA LTD. & ORS. ..... Judgement Debtors

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. **(Oral)**

1. This hearing has been done through hybrid mode.

2. The present execution petition under Order XXI CPC has been filed by the Decree Holders-Vipin Malik and M/s. Vipin Malik HUF seeking execution of the judgment and decree dated 5th September, 2019 as modified by the order dated 15th November, 2019 in ***CS(OS) 61/2017*** titled ***'Vipin Malik & Anr. v. PACL India Ltd. & Ors.'*** *(hereinafter, 'the suit')* against the Judgement Debtors-M/s. PACL India Ltd. and Mr. Gurmeet Singh. The operative portion of the judgement/decree passed by the Court reads as under:

> *"11. Consequently the decree is granted in favour of the plaintiffs and against the defendant No.1 company directing it to pay a total sum of Rs. 10,69,796/- as per the rent of the two flats along with the interest that has accrued thereon @12% from the date of accrual of the interest on the*

particular amount.
12. An affidavit of cost has also been submitted by the plaintiffs as per which the plaintiffs have spent a cost of Rs. 10,16,057 including the court fees. Thus the cost is directed to be paid to the plaintiffs within four weeks and in case the cost is not paid within four weeks, the plaintiffs would also be entitled to an interest @12% till payment."

3. The main reliefs sought in the present execution petition are as follows:

> *"Issue a direction to the Judgment Debtors to make payment of Rs. 2,14,36,537/- along with interest @12% per annum from the date of accrual of the interest on the particular amount and along with Rs. 10,16,057/- towards the cost in terms of judgment and decree dated 05.09.2019 as modified by order dated 15.11.2019"*

4. As per the execution petition, no appeal has been preferred against the decree dated 5th September, 2019 (as modified by the order dated 15th November, 2019*) (hereinafter, `the Decree').*

5. The suit arose out of two registered lease deeds dated 5th January, 2007 in respect of Flat No.1 and Flat No. 1A, both situated at 7th Floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, New Delhi *(hereinafter, 'subject property'*) entered into between the Decree Holders and the Judgment Debtor No.1 company-PACL India Ltd. As per the petition, both the lease deeds were entered into between the parties for a period of nine years from 23rd December, 2006 to 22nd December, 2015.

6. The initial monthly rent of Flat No. 1 of the subject property was set at Rs. 1,38,600/-, plus Rs. 5,000/- for car parking, while the rent of Flat No.

1A of the subject property was set at Rs. 66,800/-, also with Rs. 5,000/- for parking, both for the first three years. The lease deeds included a 22% rent increase after every three years. By the end of the term, rent for Flat No. 1 was stated to be Rs. 2,06,292/-, and for Flat No. 1A, it was Rs. 1,06,867/-, inclusive of parking fees. It is stated that from 23rd November, 2014, the Judgment Debtor No. 1 company ceased making rental payments, but continued occupying the subject properties. The Judgment Debtor No. 1 company also failed to cover house tax and maintenance charges as stipulated in the lease deeds. Despite repeated reminders, the Judgment Debtor No. 1 company did not settle the due payments to the Decree Holders as per the lease deeds.

7. Subsequently, the Decree Holders issued legal notices to Judgment Debtor No. 1 company on 2nd April, 2015, demanding the clearance of outstanding rental dues, along with outstanding common maintenance and service charges, within 15 days. They also stated their intention to terminate the lease deeds under clause 6 of the lease deeds, urging the Judgment Debtor to fulfil all obligations, including the payment of mesne profits until the subject properties were vacated and handed back peacefully.

8. Between 22nd April, 2015, and 23rd June, 2015, as per the petition, the Judgment Debtor No. 1 company, partially cleared its debts by paying Rs. 7,68,150/- and Rs. 3,97,929/- for rent from December, 2014 to March, 2015. However, following the last payment for March 2015, made in June, 2015, the Judgment Debtor No. 1 ceased further payments despite continued requests from the Decree Holders.

9. The Decree Holders wrote repeated letters calling upon the Judgment Debtor to pay the rental payments due under the lease deeds. It was finally,

informed by the Judgment Debtors on 31st December, 2015 that it is unable to pay the due amounts as its bank accounts were frozen by the CBI. The Judgment Debtors also did not hand over vacant and peaceful possession of the subject property. The Decree Holders then approached the ED and the CBI seeking release of funds under the lease deeds from the frozen accounts of the Judgment Debtors. During this process, the Decree Holders also became aware of the order dated 2nd February, 2016 passed by the Supreme Court.

10. Vide order dated 2nd February, 2016, in ***Civil Appeal No. 13301 of 2015*** titled ***'Subrata Bhattacharya v. Securities and Exchange Board of India'***, the Supreme Court had directed the Securities and Exchange Board of India *(hereinafter, 'SEBI')* to form a committee led by Retired Justice R. M. Lodha *(hereinafter, 'the Lodha Committee')*. The Lodha Committee was tasked with selling land purchased by Judgment Debtor No. 1 company to pay back its investors. The relevant extract of the said order reads as follows:

> *"...*
> *3. **The SEBI shall constitute a Committee for disposing of the land purchased by the Company so that the sale proceeds can be paid to the investors, who have invested their funds in the Company for purchase of the land. Hon'ble Mr. Justice R.M. Lodha, the former Chief Justice of India, would be the Chairman of the said Committee**. It would be open to the Hon'ble Chairman of the Committee to appoint such experts or other persons, as he might think it necessary, in consultation with the SEBI, so as to enable the Committee to sell the land and pay to the investors in a manner that might be decided by the said Committee.*

…

6. The CBI is directed to hand over the documents, after retaining their copies, which might be required by the SEBI, so as to enable the Committee to sell the land.

7 . The methodology with regard to recovery of amount by sale of the land and disbursement of the amount to the investors shall be overseen by the Members of the Committee.

8. Remuneration to be paid to the Chairman shall be determined by the Hon'ble Chairman himself after considering the quantum of work to be done by the Committee.

9. The work with regard to disposal of the land and disbursement of the proceeds to the investors be completed as soon as possible and preferably within six months from today.

10. The Registry is directed to forward copies of this order to Hon'ble Mr. Justice R.M. Lodha, the SEBI and the CBI. The Company and its Directors shall extend their cooperation to the Committee so that the Committee can function effectively to complete the work as soon as possible.

…

12. The amount, which is lying in the bank accounts of the Company and other cash belonging to the Company shall be released in favour of SEBI so that it can be used either for disbursement in favour of the investors or for incurring necessary expenditure. If any amount has been deposited by the Company or by its Directors or by any other person on behalf of the Company in any Court, the same shall be released in favour of the SEBI, who shall have a separate account so as to deal with the same. The Committee shall also decide as to whether the staff of the Company should be continued or relieved.

13. The decision with regard to sale of property of the

<u>Company by the Committee shall not be interfered with by any Court</u>."

11. Vide order dated 2nd May, 2016, in the said civil appeal, the Supreme Court granted interim relief in the following terms, in an application filed by the Judgement Debtor:

> *"Taken on board.*
> *By way of interim relief, prayer (a) is granted."*

Prayer (a) granted by the Supreme Court vide order dated 2nd May, 2016 reads as under[1]:

> *Prayer 'a' in the application before the Hon'ble Supreme Court was as under:-*
>
> ***<u>"(a) pass an order directing that no Civil Court or other Authority or Forum shall entertain any suit or other proceedings in respect of any claim or related matter(s) pertaining to PACL Ltd. and/or its Directors/Promoters/ Group Companies / entities/ individuals etc., arraying therein as parties/Defendants/Respondents the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd.), and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India and further no injunction shall be granted by any Court or other Authority or Forum in respect of any action taken or to be taken by the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd.) and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India, with respect to claims and/or matter(s) relating to investments/deposits etc. in/ with PACL Ltd. or its Directors/Promoters/Group/ Companies/Entities/Individuals etc."</u>***

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[1] Extracted from ***Gurmeet Singh v. CBI (Bail Appl. 1707/2016, decision dated 6th March, 2017)***

12. The Decree Holder No. 1, through letters dated 4th May, 2016, and 10th May, 2016, then requested the Lodha Committee to release funds for rental arrears related to the subject properties. However, in responses dated 6th May, 2016, and 3rd June, 2016 respectively, the Lodha Committee clarified that its mandate was solely to liquidate properties to reimburse the investors, indicating that the claims of the Decree Holders were beyond its purview.

13. As a result, the Decree Holders filed applications in the aforementioned civil appeal before the Supreme Court, seeking grant of relief for the recovery of unpaid rent, car parking fees, municipal taxes, and damages for illegal occupancy, along with interest, arguing these costs ought to be considered essential expenses until the subject properties were vacated and returned. These applications were withdrawn on 6th September 2016. The said order reads as follows:

> *"<u>I.A.Nos.8, 11, 15 & 16 in CA No.13301/2015</u>:*
>
> *The learned counsel for the applicant seeks permission to withdraw these applications, so as to take alternative legal recourse.*
> *Permission is granted.*
> *Applications stand disposed of as withdrawn."*

14. The present suit was then instituted before this Court being ***CS(OS) 61/2017*** titled ***'Vipin Malik & Anr. v. PACL India Ltd. & Ors.'*** seeking recovery of outstanding payments for the rent, maintenance, service charges and other liabilities.

15. Simultaneously, while the suit was pending, order dated 15th

November, 2017 in ***I.A. 75361/2017*** was passed by the Supreme Court which reads:

> *"I.A. No. 75361/2017*
> *Mr. Aggrawal, learned counsel appearing for the PACL, seeks two weeks' time to seek instructions as to whether the premises which are let out by the applicant to PACL are required by the PACL and whether it is possible to vacate and give back the possession thereof to the applicant.* ***The application stands adjourned for two weeks.****"*

16. The Decree holder then took possession of both the flats on 11th January, 2018.

17. On 25th March, 2019, the Supreme Court dismissed the applications filed by the Decree Holders in the following terms:

> ***"IA 75361/2017 and 26147/2018***
> *Mr. R.S. Suri, learned senior counsel appearing on behalf of the applicant states that in pursuance of the order dated 15 November 2017 passed by this Court in I.A. No. 75361/2017, the applicant has taken the possession of flat No. 1 and Flat No. 1A situated on 7th Floor of Dr. Gopal Das Bhawan, 28, Barakhamba Road, New Delhi – 110 001.*
>
> *The grievance which has been urged before this Court is that the applicant is unable to secure access to the lift on the seventh floor and it is apprehended that this is in pursuance of a direction which may have been issued by the Justice Lodha Committee.*
>
> *Learned counsel appearing on behalf of the SEBI has resisted the submission stating that no such direction has been issued. This is evident from the letter dated 6 May 2016 addressed by the Committee to the applicant. Learned counsel states that the reason for the denial of access to the lift by*

the owners may be the non- payment of maintenance charges.

***We find no merit in the grievance of the applicant. Be that as it may, from the record it also emerges that in pursuance of an order passed by this Court on 6 September 2016, the applicant has instituted a suit before the Delhi High Court being If the applicant has any grievance in respect of the unavailability of the lift facility, it is open for him to pursue such remedies as are available in law. We are not inclined to issue any direction*.**

The Interlocutory Applications are accordingly, dismissed."

18. In the meantime, the suit for recovery before this Court, being ***CS(OS) 61/2017*** was decreed on 15th November 2019. The ld. Single Judge in the said suit considered the fact that an application was filed by the Decree Holders before the Lodha Committee to liquidate the lands of the Judgment Debtors. Vide judgment dated 15th November, 2019, this Court observed as follows:

> *"3. With effect from 23rd November, 2014 the company failed to pay the agreed monthly rent despite occupying the two flats and also failed to pay the agreed common maintenance and service charges as applicable under the Flat Buyer Agreement as well as payable under the lease deeds. The plaintiffs also prayed to the Joint Director/Deputy Director (Enforcement), Enforcement Directorate, Jaipur for release of the arrears of rent qua the two flats whereafter the company paid a rent of ₹7,68,150/- qua Flat No.1 and ₹3,97,929 for Flat No.1A for the months of December, 2014 to March, 2015. Thereafter again the company defaulted and despite letters, no rent as agreed was paid resulting in the plaintiffs writing repeated letters dated 18th November, 2015 and 29th*

December, 2015. ***On 31st December, 2015 the company informed by two separate letters that it is unable to pay the rent as their accounts were frozen by the CBI and the rents would be paid in due course however, company was silent about the handing over the peaceful vacant possession of the two flats. The plaintiffs also filed an application before the Committee headed by Hon'ble Justice (Retd.) Mr. R.M. Lodha, which was constituted by the Hon'ble Supreme Court in proceedings against the defendant company requesting for release of the rentals however, it was clarified that the committee's function was to dispose of the properties of the company so that the sale proceeds could be paid to the investors and thus the application of the plaintiffs was withdrawn on 6th September, 2016. Hence the present suit****."*

4. Summons to the defendant No.1 company was issued by this Court vide order dated 13th February, 2017, however, company could not be served as it had become defunct and as noted above a committee was constituted to dispose of its property. ***On an application filed by the plaintiffs seeking notice to implead the committee as defendant, the application was dismissed for the reason the Hon'ble Supreme Court had directed that no proceedings qua the Committee can be entertained by any Court, forum or authority. Thus the company was served through publication in the newspaper****.*

19. The decree was then granted as per order dated 15th November, 2019, the operative portion of which reads:

"2. From the foregoing paragraphs of the judgment dated 5th September, 2019 it is clear that the decree has been passed in favour of the plaintiffs and against the defendant No.1 company for a total sum of ₹1,20,56,110/- and ₹20,65,110/- in relation to Flat

No.1 and for a sum of ₹62,45,520/- and ₹10,69,796/- in relation to Flat No.1A based on the calculation of the rentals, damages and service tax/GST. Thus paragraph-11 of the judgment dated 5th September, 2019 would now read as under:

> ***"Consequently the decree is granted in favour of the plaintiffs and against defendant No.1 company directing it to pay a total sum of ₹2,14,36,537/- (that is a sum of ₹1,41,21,221/- for Flat No.1, ₹73,15,316/- for Flat No.1A as per the rent of the two flats along with damages, service tax and GST) and interest @12% per annum from the date of accrual of the interest on the particular amount."***

20. The present execution petition seeks to execute the said judgment/decree. According to the ld. Counsel for the Decree Holders, the only lands and assets of the Judgment Debtors known to the Decree Holders are those under the control of the Lodha Committee, and there are no other assets that the Decree Holders are aware of.

21. The ld. Counsel has also handed over certain documents related to an application dated 26th November 2019 filed by the Decree Holder before the Lodha Committee. In response to the said application, the Committee vide letter dated 1st January, 2020 stated as follows:

"Sub.: Application of payment from the accounts of PACL Limited

Ref: Judgement dated September 05, 2019 and order dated November 15, 2019 passed by Hon'ble high Court of Delhi | CS (OS) 61/2017 .

1. The Justice (Retd.) R M Lodha committee in the matter of PACL Limited (hereinafter, "Committee") is in receipt of your letter dated November 26, 2019 forwarding judgement dated September 05, 2019 and *order dated November 15, 2019 of High Court of Delhi in CS(OS) 61/2017 in the matter of Vipin Malik & Anr. Vs PACL Limited & Ors. seeking decretal amount of Rs. 2,14,35,536/- towards arrears of rent, damages, and GST with 12% interest from the date of accrual of interest for particular amount along with Rs. 10,16,057 towards the cost from the Committee.*

2. In this regard, please note that the Committee in the matter of PACL Limited, accordance to the orders of Hon'ble Supreme Court of India dated February 02, 2016 in CA 13301 of 2015, is only concerned with sale of properties of PACL Limited and effecting refund to investors of PACL Limited. The Committee is not concerned with matters not connected either to sale of properties or effecting refund to investors. A copy of the said order dated 02.02.2016 is enclosed herewith for your reference*.”*

22. Thus, the Decree holder has approached the Lodha Committee for seeking the payment of the sums to it in satisfaction of the Decree which is for a quantified sum, which was not the case earlier when the Decree Holder approached the Lodha Committee or the Supreme Court directly. However, from the response of the Committee it is clear that the payment to the Decree holder is beyond its mandate. At this stage, it is clear to the Court that the Judgement Debtor is not appearing. There is no means to get the payment made to the Decree holder and there are no assets that can be attached as the known assets are all under the control of the Lodha Committee, as per Ms. Akanksha Kaul ld. Counsel for the Decree Holder.

23. Considering the above facts and circumstances, the execution petition is disposed of giving liberty to the Decree Holders to avail of its remedies in accordance with law, including filing of an application, if it is so advised before the Supreme Court, by placing the copy of this judgement/decree.

24. Ld. counsel for the Decree Holder is accordingly permitted to withdraw the present petition with liberty to avail of any remedies as are available to the Decree Holder either presently or at a future stage.

25. The execution petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

MARCH 21, 2024

Rahul/dn

(corrected and released on 28th March, 2024)