
(2004) 05 DEL CK 0048

In the Delhi High Court

Case No : E.A. No. 438 of 2003 and Execution Petition No. 281 of 2001

Deepak Electric and Trading Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-05-2004

Acts Referred:

Citation : (2004) 111 DLT 788 : (2004) 75 DRJ 300

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Sunil K. Mittal, for the Appellant; Raman Oberoi, for the Respondent

Judgement

Mukundakam Sharma, J.—By this order I propose to dispose of the application filed by the decree-holder under Order XXI Rule 1 of the Code of Civil Procedure. The said application is filed by the decree-holder seeking for a direction to the judgment debtor to deposit/pay to the decree-holder the balance amount of Rs. 59,318.85 paise forthwith in terms of the decree in question failing which praying for issuance of warrants of attachment as against the judgment debtor.

2. It is stated that in terms of the decree passed by the court in Suit No. 1673-A/1996, the decree-holder is entitled to receive a sum of Rs. 7,41,256/- as on November 21, 2001, as against which it is also submitted that in terms of the order dated February 17, 2003 passed by this Court in the present execution petition the decree-holder received a total amount of Rs. 7,32,706/- only out of the total amount payable as Rs. 7,92,024.85 paise leaving a balance of Rs. 59,318.85 paise. Since the said amount is not paid in this Court, this application is filed seeking for the aforesaid relief. Notice was issued on the said application upon which the judgment debtor has filed a reply contending inter alias that the decree-holder was entitled only to receive an amount of Rs. 5,94,656/- in terms of the decree passed by this Court, whereas the decree-holder has so far received an excess payment of Rs. 1,38,050/- which the decree-holder is obliged to return to the judgment debtor. In terms of the aforesaid pleadings of the parties I have heard the learned counsel appearing for the parties and have also

perused the records.

3. An award was passed by the learned Arbitrator on January 17, 1996. After publication of the said award it was prayed that the award should be made a rule of the court and a decree in terms of the award could be passed. The said proceedings were registered and numbered as Suit No. 1673-A/1996. However, an objection was filed in the aforesaid proceedings under sections 30 and 33 of the Arbitration Act which was considered by this Court. By order dated September 28, 2001, this court dismissed the aforesaid objections as time barred and made the award a rule of the court. A further order was passed for drawing up a decree in terms of the award with future interest at the rate of 12% per annum on the principal amount from the date of the decree till the date of payment. It is, however, required to be mentioned at this stage that during the pendency of the aforesaid suit in this court a statement was made by the counsel appearing for the Union of India that the Union of India would deposit the amount in the name of the Registrar of this Court. As a statement was made before this court on April 16, 1998 in the presence of counsel for the decree holder, the said statement was recorded. A further order was also passed by this court that the awarded amount be deposited without prejudice to the rights and contentions of the parties. It was also ordered that the amount so deposited shall be kept by the Registrar in a F.D.R. with a nationalised bank subject to further order of this court. On November 27, 1998, the statement of the counsel for the Union of India was again recorded by this court in the presence of the counsel for the decree-holder that the awarded amount has already been deposited with the Registrar of this court and in case the petitioners wanted to withdraw the same they could do so by furnishing security to the satisfaction of the Registrar of this court. On July 16, 1999, again the statement of the counsel for the Union of India was recorded that a sum of Rs. 5,94,656/- had been deposited in compliance of the order passed by this court on April 16, 1998. it was also ordered that the said amount would be kept in a FDR for an initial period of three months. Finally, by order dated September 28, 2001 the suit was disposed of and the award was made a rule of the court and a decree in terms of the award was passed with future interest at the rate of 12% per annum on the principal amount from the date of the decree till the payment is made. In fact the said order which was passed by this court for a direction to pay the future interest at the rate of 12% per annum on the principal amount from the date of the decree till the date of payment was superfluous as payment of the principal amount was already made by the Union of India as the same was deposited in this Court. An appeal was preferred as against the judgment and decree dated September 28, 2001 by the Union of India which was registered as FAO (OS) No. 551/2001. The said appeal was disposed of by this court by judgment and order dated January 3, 2003 and by the said order the appeal was dismissed. Since according to the decree-holder further amount was liable to be paid by the judgment debtor, Therefore, the aforesaid execution petition No. 281/2001 was registered and a notice was issued to the judgment debtor, i.e., the Union of India.

4. It is an admitted position that during the pendency of Suit No. 1673-A/1996 the awarded amount of Rs. 3,26,134/- along with interest of Rs. 2,68,522/-, totaling Rs. 5,94,656/-, was deposited by the judgment debtor in this court as per letter dated April 20, 1999. A copy of the said letter is placed on record as Annexure `R-1". The interest on the principal amount was calculated up to the date of payment, i.e., up to April 20, 1999. A statement showing interest calculation from the date of the award up to the date of payment is also annexed and marked as Annexure `R-2". A perusal of the said statement showing interest calculation indicates that the interest is calculated on the principal amount from the date of the award up to the date of payment. The amount was deposited in this court by letter dated April 20, 1999 which is also recorded in the order sheet of Suit No. 1673-A/1996, and the decree-holder was allowed to withdraw the same by furnishing security. The decree-holder, Therefore, had notice of the deposit made. However, no security was furnished by the decree-holder, and, Therefore, the said amount was kept in a fixed deposit account and subsequently the same was paid to the decree-holder along with the accrued interest thereon. It is, however, indicated from the records that the judgment debtor has paid a sum of Rs. 7,32,706/- against the FDR deposited with the Registrar of the Delhi High Court which includes the amount of Rs. 5,94,656/- and further interest of Rs. 1,38,050/- which has accrued on the FDR deposited with the Registrar of the Delhi High Court. In my considered opinion, since the judgment debtor was required to pay to the decree-holder the principal amount along with interest in terms of the award, the same was also ordered to be paid to the decree-holder, subject to furnishing of security, as the objection was pending. The judgment debtor has discharged its liability by depositing the amount in this court with notice to the decree-holder. If the same would have been withdrawn by the decree-holder at that stage, there was no question of making any payment towards interest on the said amount. However, the said amount was not withdrawn at that stage by furnishing security as ordered by this Court and accordingly the amount was kept in a fixed deposit account. The judgment debtor was entitled to use and utilise the said amount and since he did not choose to use and utilise the said amount during the pendency of the said suit in this Court, Therefore, I am of the considered opinion that the decree-holder would also be entitled to receive the interest which accrued on the said amount, and the same was rightly paid to the decree-holder. The contention of the judgment debtor, Therefore, that the interest of Rs. 1,38,050/- which had accrued on the F.D.R. deposited with the Registrar, Delhi High Court, for the period from September 28, 2001 till March 27, 2003 is to be refunded to the judgment debtor, is devoid of merit and is rejected.

5. On the other hand, the contention of the counsel appearing for the decree-holder is that the decree-holder is entitled for payment of interest at the rate of 12% per annum instead of accrued interest on the F.D.R. for the period from September 28, 2001 till March 17, 2003 paid at a lower rate, and that it is to be compensated by the judgment debtor by way of making payment of additional

amount of Rs. 59,318.85 paise. It was submitted that the said amount was not deposited in this Court in accordance with the provisions of Order XXI Rule 1 of the CPC and, Therefore, the said deposit is inconsequential and is not to be taken notice of. In my considered opinion the aforesaid contention is without any merit for the simple reason that when the amount was deposited in this Court by the judgment debtor, the decree-holder received notice of the deposit of the said amount and in fact an order was also passed by this Court that it would be open for the decree-holder to withdraw the said amount by furnishing appropriate security to the satisfaction of the Registrar of this Court. The decree-holder chose not to withdraw the said amount by furnishing security and, Therefore, it was ordered that the said amount shall be kept deposited in this Court but would lie in a fixed deposit account. Therefore, the judgment debtor had discharged its liability of making payment of the entire awarded amount in terms of the award and nothing further was due and payable by the said judgment debtor to the decree-holder. The decree-holder has received the payment of the entire amount which is due and payable under the decree. In coming to the aforesaid conclusion I am fortified by the decision of this Court in Babu Ram Gupta Vs. Union of India (UOI) and Another, , Ralhan Lal Chand Vs. Union of India and Others, .

6. In the light of the aforesaid discussions and observations, I hold that this application has no merit. The decree stands satisfied and, Therefore, no further amount is payable to the decree-holder.

Execution Petition No. 281/2001:

The execution petition was disposed of by order dated March 24, 2003. However, it stood revived in view of filing of the aforesaid application by the decree-holder. The said application also stands disposed of today by a separate order. Therefore, nothing survives in this execution petition. The same also stands closed.