

SUPREME COURT OF INDIA

Latim Lifestyle And Resorts Ltd.

Vs.

Saj Hotels (P) Ltd.

(R.C. Lahoti and Brijesh Kumar JJ.)

30.01.2003

ORDER

1. Leave granted in both the petitions.
2. The property known as Saj Resorts, the land and building along with running business, at Mahableshwar, a hill station in the State of Maharashtra, is the subject-matter of the present litigation. The property was owned and operated as a running hotel by M/ s Saj Hotels Pvt. Ltd., a private limited company, hereinafter referred to as 'respondents', for short. Latim Lifestyle and Resorts Ltd., (hereinafter referred to as 'appellants', for short) entered into a Memorandum of Understanding with respondents whereby respondents agreed for sale of the land and building known as Saj Resorts at Mahableshwar as a going concern through the mode of transfer of shares. Appellants purchased 33.33% shares of respondents for a consideration of Rs. 1,50,00,000/-. The possession of Saj Resorts was delivered to appellants. Day-to-day management of affairs of Saj Resorts was taken over by appellants and respondents agreed not to interfere therein. On 27.11.1996 the parties agreed for the transfer of remaining 2/3rd share holdings of respondents to appellants, as per certain terms and conditions mutually agreed upon, the details whereof are not relevant for the purpose of this order. The fact remains that ever since 1996 possession of Saj Hotels and management thereof as a running hotel is with appellants.
3. Complaining of breach of contract, suit for specific performance of the agreement dated 17.5.1997, which was entered into between the parties, was filed by appellants against respondents. The suit ended into a compromise based whereon a compromise decree was passed on 25.2.1999. The compromise decree imposes obligations on both the parties to be performed. A copy of compromise purshis incorporated into the decree is enclosed herewith and marked as Annexure 'A'.
4. There was a sum of Rs. 77 lacs deposited by appellants, during the pendency of a Civil Revision Application [C.R. 413/ 1999] filed by respondents in the High Court of Bom bay which had on May 4, 1999 passed an interim direction calling upon appellants to deposit Rs. 8,22,500/- per month in the High Court. The High Court had directed the Court receiver to take over possession and appoint the respondents as his agents on suitable terms and conditions, on any two defaults in deposit being committed by appellants herein. The appellant made nine deposits of Rs. 8,22,500/- each, totaling upto Rs. 74,02,500/-. The amount was placed in fixed deposit. With interest earned thereon a total amount of Rs. 77,08,714 was transmitted by the High Court to the Executing Court the same has been withdrawn by the respondents under the orders of the Executing Court. The parties are not ad

idem on the issue as to how and against what this amount is to be appropriated or adjusted and we do not propose to express any opinion thereon in the order.

5. The compromise between the parties ended the suit but not the disputes inter se. On 15.5.2001, respondents filed Special Darkhast No. 33 of 2001 for possession of the suit premises complaining of breach of terms by appellants. The Executing Court passed an ex-parte order directing issuance of warrant of possession for delivery over the suit property to respondents. Appellants preferred objections before the Executing Court and complained of breach of terms of compromise decree by respondents. The Executing Court stayed the execution of warrant of possession. Appellants also moved an application on 15.6.2001 being Special Darkhast No. 34 of 2001 complaining of breach of the obligations which were incurred by respondents by reference to Clauses 7, 8 and 9 of the compromise decree and other reliefs. By a common order dated 5th July; 2001 the Executing Court dismissed Special Darkhast No. 33 of 2001 and recalled the order for warrant of possession holding it to be premature. On Special Darkhast No. 34 of 2001 respondents was ordered to deposit the documents mentioned in Clauses 8 and 9 of the compromise decree and also to comply with their obligation under Clause 7.

6. Feeling aggrieved by the abovesaid order respondents preferred two Revision a Applications before the High Court. On 30th October, 2001, in Civil Revision No. 1356/ 2001 the High Court passed an interim order appointing Court Receiver on all the assets of Saj Resorts and respondents to be appointed as agent of the Court Receiver. By a separate order passed in the other Revision Application (Civil Revision No. 1351/2001) further proceedings in the Executing Court tin Darkhast No. 34 of 2001 were directed to be stayed. Two special leave petitions have been preferred by appellants against the abovesaid two interim orders of the High Court. By an interim order of this Court dated 15.11.2001, the appellants' possession was protected and the receiver was directed not to take possession of the suit property.

7. During the pendency of special leave petitions the following amounts have been deposited by appellants with the Registrar General of this Court:

Date of deposit Amount

21.11.2001 Rs. 25,00,000/-

1.12.2001 Rs. 25,00,000/-

8.5.2002 Rs. 23,00,000/-

17.6.2002 Rs. 2,00,00,000/-

The documents referred to in Clauses 7 to 10 of the compromise decree have also been deposited by respondents with Registrar General of this Court. Inspection of the documents has been carried out by appellants. The amount lying with the Registrar General of this Court has been placed in fixed deposits awaiting decision in these appeals:

8. As jointly agreed we have heard the learned counsel for the parties on all the controversies arising for decision between them in the two revisions pending in the High Court. The manner in which we propose to dispose of these appeals and make directions therein the need for decision on merits by

the High Court in the two Civil Revisions namely C.R.Nos. 1356 and 1351 of 2001 pending in the High Court is done away with.

9. It cannot be doubted and disputed that the rights and obligations of the parties stand crystalised into the recitals of the compromise decree dated 25.2.1999. During the course of hearing each of the two learned counsel for the parties, emphasized the obligations cast by the compromise decree on the opposite party and submitted that the compromise decree spells out reciprocal promises and in the submission of each of the learned counsel his party was not obliged to perform its promise unless the opponents performed their reciprocal promises. The compromise decree does not in so many words specify the obligations incurred thereunder by each of the parties to be 'reciprocal promises'. However, each of the learned counsel submitted that the promises incorporated in the compromise decree are necessarily reciprocal and unless the other party performs its obligations, it was not necessary for his party to perform his own obligations. Thus, in short, blame for non-execution of the compromise decree is laid by each one on the other. In our opinion, it would suffice to state that the obligations incurred by the parties under the compromise decree cannot be termed 'reciprocal compromises', inter-dependent on each other for performance. All the obligations incurred by the parties under the compromise decree are independent obligations and each party must perform its own obligations directed towards fulfillment and consequent discharge and satisfaction of the decree. To the extent to which any controversy survives for adjudication, the same can be taken care of by the Executing Court which can still compel fulfillment of obligations respectively to the extent to which either party is obliged to do but has failed in discharging the same. The Executing Court may issue the necessary process, appoint Commissioner or direct detention in civil imprisonment of the party found in breach and thus execute the decree.

10. Though the objections are very many; in substance, according to the appellants they are no longer under an obligation to pay the amount of 'compensation on investment' under Clause 2(D)(ii) because they could have under Clause 3 made early payments and secured waiver either in full or on pro rata basis of the quantum of compensation on investment if only respondents would have fulfilled their part of the obligations. Secondly, it is submitted on behalf of the appellants, that they are justified in insisting on transfer of a marketable title to them before they make the payments which right of theirs would not be satisfied unless respondents discharge their obligations under Clauses 8, 9 and 10 of the compromise decree. On the other hand, the principal grievance of the respondents is that they have always been ready and willing to discharge their obligations under Clauses 8,9 and 10 but they were disabled from performing their obligations because of the breach committed by the appellants in honouring the schedule of payments of the various amounts in accordance with the terms of the compromise decree. It was anther submitted that the recitals of the compromise decree spell out and permit the schedule of payments being proponed by the appellants to their advantage but the compromise decree does not contemplate or permit the payment being made beyond the time-frame set out in the compromise decree.

11. It is not disputed that the amount of Rs. 77 lacs deposited by appellants in the High Court of Bombay and withdrawn by respondents was as against the obligation cast on appellants by the interim order of the High Court dated 4th May, 1999 requiring appellants to deposit Rs. 8,22,500/- per month. So far as the amount payable by appellants to the respondents under the terms of the compromise decree is concerned an amount of Rs. 2,73,00,000/- has been deposited by appellants on different dates with the Registrar General of this Court and has been placed in fixed deposit under the orders of this Court. It is also not disputed that appellants have neither paid nor tendered any amount as against the amount of Rs. 2,29,25,000/- (erroneously totalled as 2,18,00,000/- in the

compromise deed, as conceded to by the learned counsel for the parties) referable to Clause 2(D)(ii). So far as the amount of Rs. 74,02,500/- (totaling upto Rs. 77,08,714/- with interest earned) deposited under orders of the High Court dated 4.5.1999 in Civil Revision No. 413/ 1999 is concerned, the amount has been disbursed to respondents but there is a controversy whether the amount is to be taken into account in discharge of appellants' obligation to pay the consideration under the compromise decree.

12. During the course of hearing we asked the learned counsel for appellants that they should deposit in the Court the above-referred to amount of Rs. 2,29,25,000/- and the amounts so deposited would obviously be subject to disbursal under the orders of the Court. The learned counsel for appellants responded by submitting that unless and until all the documents of title were made available to them by respondents, it will not be possible for the appellants to manage for the funds and therefore they may not be called upon to deposit the amount unless and until the Court has been pleased to secure delivery of all the documents as per compromise decree to them.

13. Having heard the learned counsel for the parties and having noted their respective contentions we are of the opinion that the adjudication as to the several controversies raised between the parties should be left to the Executing Court which is still seized of them and we do not deem it proper if any final opinion thereon is expressed either by the High Court or by this Court since it would be premature to do so. It is therefore directed as under:-

(1) The Executing Court shall secure compliance of the obligations spelled out by the compromise decree on each of the parties and none of the parties shall be entitled to contend that the obligations are reciprocal promises and one party cannot be compelled to discharge its obligations unless the other party has discharged its obligations.

(2). The amount of Rs. 2,73,00,000/- lying in deposit in this Court shall soon on maturity of the fixed deposit be collected by the Registrar General and transmitted along with interest accrued thereon to the Executing Court by drawing up a demand draft or pay order in the name of the Executing Court which amount shall be collected by the Executing Court, retained by it in deposit, and invested in fixed deposit for a reasonable period so as to avoid loss of interest thereon.

(3) All the documents deposited by respondents with the Registrar General of this Court shall also be safely transmitted to the Executing Court.

(4) The Executing Court shall carry out the inspection of the documents either by itself or through a Court Commissioner so as to satisfy itself whether the documents of the description and in the manner contemplated by the compromise decree have been filed by respondents. Such documents shall, on such satisfaction of the Executing Court, be delivered to appellants retaining photocopies thereof on the record of the Executing Court.

(5) Within such time as may be appointed by the Executing Court appellants may be called upon to deposit the amount of Rs. 2,29,25,000/- also with the Executing Court.

(6) The amount of Rs. 77,00,000/- deposited by appellants in compliance with the order of the High Court dated 4.5.1999 passed in Civil Revision No. 413/1999 (being the amount calculated @ Rs. 8,22,500/- p.m., as ordered by the High Court) shall be liable to adjustment and appropriation as ordered or to be ordered by the High Court in the said revision petition, or else by the Executing

Court.

(7) It shall be in the discretion of the Executing Court to release the amount available with it to respondents either in its entirety or in part as the Executing Court may deem fit. The Executing Court while exercising its discretion to release the amount shall keep in view the conduct of the parties and the extent of the obligations under compromise decree discharged by the parties before it.

(8) So far as the amount of sale consideration recited in the compromise deed is concerned, the same is certainly liable to be paid by appellants to respondents as per the terms of the compromise deed. It will be for the Executing Court to determine the extent of compensation on investment payable by appellants to respondents by reference to Clause 2(D)(ii) and Clause 3 of the compromise decree and consequential orders shall be passed depending on the factual findings arrived at by the Executing Court.

(9) It shall also be in the discretion of the Executing Court to determine if appellants are liable to pay any amount, and if so, then what amount to respondents on account of interest for delayed payments or on account of compensation on investment consistently with the terms of the decree.

(10) The Executing Court shall pass all such consequential or incidental orders and secure compliance thereof as may be necessary in its opinion for effectuating discharge and satisfaction of the decree in its letter and spirit.

(11) If the Executing Court may at any stage find Appellants committing breach of its obligations or violating the orders of the Executing Court, the Executing Court shall be free to direct possession over Saj Resorts- the landed property and running business- being taken over by receiver or being restored to respondents subject to such equitable adjustments as may be in the ends of justice.

(12) The amount of interest earned on fixed deposits made by this Court shall go with the principal.

14. We make it clear that we have not touched upon and expressed any opinion on the nature of amount due and payable or paid under the interim order of the High Court dated 4th May, 1999 which shall be in the discretion of the High Court or if left open by the High Court then the Executing Court.

15. The impugned orders of the High Court are set aside; the two Civil Revision Applications (No. 1356/2001 and No. 1351/ 2001) before the High Court shall be treated as disposed of as infructuous. Both the appeals are disposed of in the abovesaid terms. No order as to the costs.