IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2587 of 2015 [O&M]
Date of Decision : May 8th, 2015

M/s Pawan Kumar and Company and others. .... Petitioners

Versus

Allahabad Bank and another .... Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Parvez Chugh, Advocate,
for the petitioners.

Dr. BHARAT BHUSHAN PARSOON, J.

This revision petition has been preferred by the petitioners [Plaintiffs before the Court below] for setting-aside/modifying order dated 17.3.2015 [Annexure P/4] passed by the Court of Additional District Judge, Ferozepur, whereby appeal preferred by the respondents-Bank against the order allowing application under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 of the plaintiffs, has been dismissed, but at the same time, the petitioners have been called upon to deposit the amount due and subject to this condition, auction of the properties of the petitioners-plaintiffs has been stayed. The petitioners were also given two months time to comply with the order dated 17.3.2015. Prayer now has been made for waiving off the said condition.

Plaintiffs-petitioners herein, had obtained loan facilities from the respondent – Allahabad Bank, but had failed to maintain financial discipline and schedule of re-payments, resulting in action for recovery of the loan amount by the respondent-Bank. Since the payment was not forth-coming, the defendant-Bank, respondents herein, had taken over the possession of the plant and machinery etc. of the petitioners-plaintiffs, but even then the payment was not made by them. Rather, the plaintiffs have alleged fraud and forgery to the defendants in a suit filed by them against the defendants.

Controverting allegations of the plaintiffs, the defendant-respondent had claimed that there was neither any fraud nor forgery and the plaintiffs-borrowers having become defaulter had come forward for adjustment of their accounts and had even been diluting their liability by making payment through various courses including from proceeds of the fixed deposit receipts of the plaintiffs. Rather, the plaintiffs had taken consent of the respondent-Bank to adjust the outstanding dues of plaintiff No. 9 – M/s Ferozepur Gram Dall & Oil Mills, Border Road, Ferozepur.

Condition of payment of a certain amount to stall the auction is alleged to be bad claiming that possession of the properties of the plaintiffs is already with the respondent-Bank and that they are not able to generate money to clear their debts.

Perusal of the paper-book during the course of arguments reveals that the respondent-Bank had been rendering financial assistance to the plaintiffs in a bid to support and sustain them. However, when their turn to return the borrowed amount with interest came, they became defaulters and did not adjust the loan account forcing the Bank to proceed against them whereupon possession of the premises of the plaintiffs has also been taken.

Merely because the respondent-Bank is in possession of the premises of the plaintiffs, petitioners herein, *ipso facto* is no ground to accept the plea of the petitioners. Even if talks of compromise, as claimed by learned counsel for the petitioners, are continuing, it is not an impediment for compliance of the impugned order dated 17.3.2015

[Annexure P/4]. The appellate Court discussing all the facts as also the attending circumstances had come to a firm finding that if the plaintiffs were to get the auction of the property stayed, then they were required to make the due payment with the creditor-Bank within two months from the date of impugned order, i.e., 17.3.2015. To cut-short the miseries of the plaintiffs, the first Appellate Court has also fixed the time-frame for decision of the main suit, i.e., within six months.

During the course of arguments, learned counsel for the petitioners did not come-forward with any other plausible and reasonable explanation or the suggestion.

The impugned order is well written detailing the facts and explaining the attending circumstances *prima facie* case as also balance of convenience rather, is in favour of the respondent-Bank and against the plaintiffs. Irreparable injury would also be caused to the Bank if the absolute injunction is granted in favour of the plaintiffs-petitioners.

There is no merit in the revision petition and the same is dismissed *in limine.*

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

May 8th, 2015
som

1.Whether Reporters of local papers may be allowed to see the judgment?
2.Whether to be referred to the Reporters or not?
3.Whether the judgment should be reported in the Digest?