IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.3960 of 2013
Date of Decision: 24.12.2015

M/s Dashmesh Paper Board Mills and another

.....Petitioners

Vs

Darshan Kumar and others

.....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Aakash Singla, Advocate
for the petitioner.

Mr. Sharad Aggarwal, Advocate
for respondent No.1.

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

RAJ MOHAN SINGH, J.

[1]. Petitioners/defendants have filed this revision petition against the order dated 22.05.2013 passed by Additional Civil Judge (Sr. Divn.) Faridkot, whereby trial Court has ordered to hand over the upto date accounts of petitioner No.1-firm to the Local Commissioner in the application for final decree filed by the plaintiff/respondents in pursuance of preliminary decree for rendition of account dated 15.06.1992.

[2]. The plaintiff/respondent No.1 filed a suit for dissolution

of petitioner No.1-firm and for rendition of accounts. A preliminary decree was passed on 15.06.1992 ordering dissolution of firm w.e.f. 16.04.1985. The operative part of the said judgment is reproduced hereasunder:-

> "*12. On the basis of my findings on issues No.1 to 6 the suit of the plaintiff is hereby decreed preliminary for dissolution of partnership business of defendant No.1 which came into existence with the execution of partnership deed Ex.P24 w.e.f. 16.4.1985 and the share of plaintiff and liabilities on the assets of defendant No.1 as it was on 16.4.1985, was to the extent of 19% and the shares of the remaining partners are as laid down in Ex.P24 and defendants No.2 to 9 are the accounting parties and are liable to render the accounts to the plaintiff and they are directed to render the accounts accordingly, to the plaintiff upto 30.9.1982. Decree-sheet be prepared, accordingly, and the file be consigned to the record room."*

[3]. The judgment and decree dated 15.06.1992 was never assailed by the decree-holder in respect of any inadequacy in the relief. The findings recorded in the said judgment are that the firm stood dissolved on 16.04.1985. Decree-holder is entitled to take rendition of account of his 19% share as on 16.04.1985. On 16.04.1985, new firm with new partners came into being. Now question is whether the executing Court can go beyond 16.04.1985 in the context of rendition of account which

has not been granted to him as per judgment and decree dated 15.06.1992.

[4]. In the application for passing final decree, an application for directing the Local Commissioner to effect the accounts/winding up process of the firm in accordance with the provisions of Sections 45 to 54 of Indian Partnership Act was moved. That application was decided by Civil Judge (Jr. Dinv.), Faridkot vide order dated 21.01.2004 and it was observed in the following manner in concluding part of the order:-

> *"........................This Court is now to see what is the share of the plaintiff/decree-holder and what is liability in the assets of the firm-defendant No.1 as on 16.04.1985, the extent of which has already been determined as 19%. Accordingly, I hold that this Court cannot go beyond the date i.e. 16.04.1985. JDs are directed to hand over the complete record relating to the period upto 16.4.1985 to the Local Commissioner to enable the Local Commissioner to submit his report as per terms and conditions of the decree mentioned in para No.12 of this judgment dated 15.061992. Accordingly, the present application is dismissed.*
>
> *Pronounced.*
> *21.01.2001* *Sd/-*
> *Civil Judge (Jr. Division)*
> *Faridkot."*

[5]. Even in order dated 14.03.2012, passed in objection petition against the report of Local Commissioner dated

06.04.2005, Civil Judge (Sr. Divn.) Faridkot, in para No.11 held in the following manner:-

> *"11. In view of above discussion, the present objection-petition is partly accepted to the extent that the Local Commissioner was required to take the accounts of the JD firm into account at the time of assessing the value of the property of JD firm, but the same is partly rejected holding that the DH is not entitled to take account from 16.04.1985 till date because as per judgment/decree dated 15.06.1992 the firm stood dissolved w.e.f. that date (16.04.1985) and the DH is entitled to take accounts only upto 16.04.1985 and as such in the interest of justice, it is desirable to re-appoint Sh. Ashok Bansal, as Local Commissioner and to direct him, to resubmit his entire report after taking into account the accounts of JD firm as stood on 16.04.1985 after considering the debts and liabilities of the JD firm either in kind or cash towards third party and also by allowing depreciation on the machinery, and building as per rules and then to determine the share of decree holder in terms of money. I, therefore, order accordingly. The fee of Local Commissioner Sh. Ashok Bansal, Advocate, is assessed as Rs.10,000/- to be shared by both the parties, equally. With this, the instant objection stands disposed of."*
>
> Prounouned:
> 14.03.2012 Sd/-
>
> (Gurdarshan Kaur)
> Civil Judge (Sr. Division)
> Faridkot."

[6]. Contrary to the original judgments and decrees dated 15.06.1992 order dated 21.01.2004 and order dated 14.03.2012 passed by Civil Judge (Sr. Divn.) Faridkot, the impugned order has been passed on the premise that no doubt at the time of passing of preliminary decree share of the plaintiff was assessed as 19%, but by no stretch of imagination value of 19% of the assets of the firm of that time may be equated with the value of the same at present i.e. after about 29-30 years.

[7]. The trial Court further observed that it would be against the public interest to restrict the claim as per the decree and ultimately ordered that records of the partnership firm till date for the purposes of proper evaluation be brought i.e. to bring the entire record upto date on 31.05.2013 to be handed over to the Chartered Accountant, so that he may proceed further with the matter.

[8]. The impugned order dated 22.05.2013 has been assailed in the present revision petition. At the time of issuance of notice of motion, this Court passed the following order on 08.07.2013:-

> *"Counsel for the petitioners contended that the disputed partnership firm came into existence in the year 1981 and it was ordered to be dissolved w.e.f. 16.04.1985, vide judgment and preliminary decree dated 15.06.1992, and therefore, accounts of the firm*

up to 16.04.1985 only and not thereafter could be ordered to be produced before the Local Commissioner appointed for taking accounts for passing of final decree.

Notice of motion to respondents no. 1 to 6 only (legal representatives of plaintiff – since deceased) for 20.08.2013.

Respondents no. 1 to 6 be also served through their counsel in the lower court namely Mr. R. K. Singla, Advocate, Faridkot.

Meanwhile, operation of the impugned order (Annexure P-1) of the trial court, relating to accounts since after 16.04.1985 shall remain stayed, provided the petitioners produce the accounts till 16.04.1985."

[9]. Thereafter on 08.07.2014, the following order was passed:-

"A written request for an adjournment has been made by the learned counsel for the petitioners which is opposed by the learned counsel for the respondents. However, keeping in view the interest of justice, the matter is adjourned to 12.1.2015.

In the meantime, the objection raised by the learned counsel for the respondents needs to be noticed that the order of this Court dated 8.7.2013 warranted the petitioners to produce the accounts of the firm till 16.4.1995. The restraint order granted was contingent upon this condition. If the needful has not been done till today as has been pointed out by the learned counsel for the respondents, then in such an eventuality, the benefit of interim order cannot be *granted to the petitioners as they have failed to comply with the directions of this Court. The learned trial Court shall take this fact into consideration.*

A copy of this order be sent to the learned trial Court."

[10]. Learned counsel for the petitioners has vehemently argued that the decree dated 15.06.1992 was never assailed by the decree-holder in terms of any inadequacy contained therein, therefore, that decree has to be honoured in letters and spirit. Even the subject matter was subsequently endorsed in order dated 21.01.2004 as well as in order dated 14.03.2012 passed by Civil Judge (Sr. Divn.) Faridkot. The order dated 21.01.2004 has also become final as it was never assailed by anyone in due course.

[11]. Even in the order dated 15.02.2005 passed by this Court, nothing substantial was decided, rather orders dated 15.06.1992 and 21.01.2004 passed by the trial Court were affirmed and endorsed. For ready reference order dated 15.02.2005 passed by this Court in revision petition is also to be noted which is reproduced hereasunder:-

"The grievance of the petitioner is that on terms of the decree, evaluation of the share has to be as on 16.04.1985 and not on any date subsequently. But in the impugned order, the learned trial court has, infact, created cloud over the said part of the decree by

getting evaluation of the property as it stood on 16.04.1985 as well as till date. It is argued that the evaluation of the property is as on 16.04.1985 as per the decree passed and in terms of the order earlier passed on 21.01.2002.

Vide Impugned order, the learned trial Court has appointed the Local Commissioner to evaluate the property as it exists on 16.04.1985 and as well as till date, only to avoid any further objections and the questions regarding valuation of the property. The trial Court is bound by the terms of the decree dated 15.06.1992.

The argument raised by the learned counsel for the petitioner is only based on apprehension. The trial Court is bound by the judgment and decree dated 15.06.1992 and the earlier order dated 21.01.2004. In view thereof the present revision petition stands disposed of as premature."

[12]. In view of aforesaid, it is noticed that the controversy cannot be extended beyond the subject matter which was decided in decree dated 15.06.1992 and subsequently endorsed in orders dated 21.01.2004 and 14.03.2013 passed by the trial Court. Once the partnership business came to be dissolved and a new partnership deed Ex.P-24 came to be in existence w.e.f. 16.04.1985, therefore, assets and liabilities of the firm as on 16.04.1985 were to be decided with reference to share of each of the partner.

[13]. Apparently new partners have nothing to do with the old partnership firm. Therefore, even if the partnership business went on with new composition of partners, the old partners have nothing to do in the firm of new partners, even, if some of the old partners were added in the composition of new partners. The rights and liabilities of the partners crystallise on the date of dissolution of earlier partnership firm i.e. on 16.4.1985.

[14]. Learned counsel for the respondent No.1 has tried to support the impugned order with the assertion that before the settlement of accounts, it is not open to the surviving partners to utilise the assets of partnership to their exclusive advantage. Learned counsel cites ***Mansha Ram vs. Tej Bhan, 1958 AIR (Punjab) 5.***

[15]. Having considered the aforesaid, I am of the view that the facts of the cited case are somewhat different and have no application in the present context. Even otherwise, the rights and liabilities of the partners were crystallised on the date of dissolution of the firm which as per pointed date was 16.04.1985 and even the judgment and decree dated 15.06.1992 passed by the trial Court which was subsequently endorsed in orders dated 21.01.2004 and 14.03.2012 passed by Civil Judge. The said date cannot be postponed to cover the relief as ordered by the trial Court in the impugned order.

[16]. Resultantly, this revision petition is allowed, impugned order dated 22.05.2013 passed by the Additional Civil Judge (Sr. Divn.) Faridkot is set aside.

December 24, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**