IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4869 of 2015 (O&M)
Date of decision: 07.10.2015

M/s Dabriwala Steel and Engineering Company Ltd. & another

...........Petitioners

Versus

M/s Saket Steels Ltd.

...........Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

Present: Mr. Anand Chhibbar, Senior Advocate,
with Mr. Ranjit Chawla, Advocate,
for the petitioners.

Mr. Munish Jolly, Advocate,
for the respondent.

Ritu Bahri, J.

Challenge in this petition is to the order dated 07.07.2015 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Faridabad, whereby issue have been re-framed.

M/s Saket Steels Ltd.-plaintiff (respondent herein) filed a suit (Annexure P-2) for specific performance against the defendants-petitioners on 16.07.1990 for enforcement of agreement to sell dated 14.07.1987 (Annexure P-3). Thereafter, in the year 1990, defendant-petitioner No.1 company became sick under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. Liquidation proceedings had started before this Court on 24.02.1995 in CP No.31/1995. On the other hand, in the civil suit, the trial Court passed an exparte decree dated 19.04.1996 in favour of the plaintiff-respondent. Meanwhile, on 22.03.2006, the petitioner-company had filed a revival petition before this Court under Sections 391 and 394 of the Companies Act, 1956, being CP No.51 of 2006. The plaintiff-respondent, on 05.07.2006 joined the proceedings in the aforesaid revival petition by filing an application i.e. CA No.482 of 2006 and sought execution of the exparte decree passed by the Court in the above said suit. The trial Court vide order dated 19.03.2009 (Annexure P-4) disposed of the revival petition along with the CA No.482/2006 and set aside the exparte decree dated 19.04.1996 as the plaintiff-respondent had not taken any permission under Section 446 of the Companies Act, 1956 to continue with the civil suit after the company had wound up. Against the order dated 19.03.2009, various appeals were filed before this Court and the Division Bench of this Court vide order dated 15.07.2013 (Annexure P-5) disposed of all the appeals. However, with respect to the civil suit between the defendant-petitioner and the plaintiff-respondent, they were relegated to the position as they were on 24.02.1995. The parties were free to move appropriate legal proceedings by interim applications or otherwise before that court for consideration on merits. The trial Court was to take decision on the suit preferably within one year.

After the matter was relegated to the trial Court, again the defendant-petitioner made an application under Order 6 Rule 17 CPC for amendment of the written statement. This application was allowed vide order dated 13.12.2013 (Annexure P-8). This order was challenged by the plaintiff-respondent by filing CR No.443 of 2013, which was disposed of by this Court vide order dated 21.02.2014 (Annexure P-9). It was observed in the said order that earlier issues No.7 and 8 as framed on 02.06.1992 would stand and the defendants would be free to adduce evidence in support of those issues and the plaintiff-respondent would have a right of rebuttal in support of his case. The defendants were granted liberty to file a fresh written statement within 10 days and the plaintiff could file his application thereafter, within four weeks. It was further observed in the said order that if, the trial court feels that additional issues would require to be framed, it would be free to do so after taking assistance of both the learned counsel. After framing of additional issues, the parties would have a right to adduce evidence pro and contra.

Pursuant to the aforesaid order, the amended written statement (Annexure P-10) was filed by the defendants-petitioners by giving details of all the proceedings, which were initiated under the Companies Act, 1956 before this Court. It was stated that a one time settlement scheme was entered into for the purpose of revival of the company. In the liquidation proceedings of defendant No.1-company, Rs.4.10 crores were realized after auction of its first plot i.e. Plot No.136, Sector 24, Faridabad, by the Official Liquidator. Rs.3.80 crores had been received as highest bid for another property and the total amount realized for the company was Rs.7.90 crores. The plea taken in the written statement was that it would cause a great hardship to defendant No.1-company, if it had to execute the agreement to sell dated 14.07.1987 after a gap of almost 26 years, as the market value of the suit property as on date is more than 200 times bigger than the advance taken by the defendants-petitioners from the plaintiff-respondent.

Thereafter, the defendants-petitioners filed an application

(Annexure P-17) for framing of additional issues in the suit. The impugned order dated 07.07.2015 (Annexure P-1) has been passed on the said application, which was hotly contested by both the parties.

Mr. Anand Chhibbar, learned senior counsel, while referring to the order dated 15.07.2013 (Annexure P-5) passed by a Division Bench of this Court, has argued that pursuant to the said order, both the parties were given liberty to move interim application(s), which the trial Court was to decide on merits as defendant No.1-company had been revived. Thereafter, the amended written statement was filed, which was taken on record, as much water had flown when the company was wound up on 24.02.1995 till it was revived vide order dated 19.03.2009 (Annexure P-4). While referring to the amended written statement, learned senior counsel has argued that the company had to sell two of its plots at the costs of Rs.7.90 crores, whereas the debts of SBI itself was of Rs.22,96,34,254/-. Hence, under Section 529-A of the Companies Act, 1956, the entire liquidation amount would have to be absorbed by the secured creditor i.e. SBI itself. In the above background, in the written statement, a specific prayer was made that execution of agreement to sell between the parties would cause much hardship to the defendants-petitioners. The defendants-petitioners had made an application for framing of additional issues as per the observations made by the Division Bench of this Court vide order dated 15.07.2013 (Annexure P-5). However, the trial Court has not appreciated the facts stated in the detailed written statement and has not re-framed the issues as set out in the application. He has referred to the judgment passed by this Court in ***Kaptan Singh Vs. Kulbir Singh,*** Civil Revision No.6648 of 2010 (decided on 20.07.2012), to contend that after filing of the amended written statement, the defendants should have been given opportunity to cross-examine the witnesses of the plaintiff so that defendants could demolish the case of the plaintiff-respondent by way of cross-examination.

Learned counsel for the respondent, on the other hand, has argued that vide order dated 15.07.2013 (Annexure P-5), the Division Bench of this Court had disposed of the appeal on the agreed terms of both the parties. It as agreed that the suit would start from the stage as was on 24.02.1995 when the defendant-company was wound up. He has vehemently argued that after filing of the amended written statement, the evidence of the plaintiff-respondent had been closed and appropriate issues have been framed vide order dated 07.07.2015 (Annexure P-1). He has further argued that the only objection of the defendants-petitioners is that the suit should not have been decreed and specific issue with regard to Section 20 of the Specific Relief Act should be framed, which is as under:-

> "19. Whether it is equitable at this stage to grant the decree of specific performance of the agreement to sell dated 14th July, 1987 in favour of the plaintiff in pursuance of Section 20 of the Specific Relief Act, 1963 or any other applicable provisions of the Specific Relief Act, 1963? OPD"

While referring to the order dated 07.07.2015 (Annexure P-1), he has argued that issue Nos. 10, 11 and 12, re-framed on the application made by the defendants, shall cover all the aspects of the agreement to sell, including the provisions and discretion given to the trial Court under Section 20 of the Specific Relief Act. The defendants-petitioners are merely trying to delay the process of trial as all the issues, which have been re-casted by the trial Court do not require any interference.

Heard, counsel for the parties.

At this stage, reference can be made to issues, which have been re-framed by the trial Court vide order (Annexure P-1). Same are reproduced as under:-

1. Whether the plaintiff company duly incorporated under the Companies Act as alleged in the plaint? OPP
2. Whether the transfer of the property suit in favour of the plaintiff company by the defendant was recommended by the Director of Industries on 28.12.1997, if so, its effect? OPP
3. Whether the plaintiff has always been ready and willing to perform its part of the contract? OPP
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether the suit is liable to be stayed in view of preliminary objection No.2? OPD
6. Whether the plaintiff is estopped from filing the present suit by its own act and conduct? OPD
7. Whether the agreement of sale dated 14.07.1987 was cancelled by mutual consent in July, 1990 as alleged in the written statement? OPD
8. Whether afres agreement was arrived at between the parties as alleged in the written statement, if so, its effect? OPD
9. Whether in the alternative, the plaintiff is entitled to recover an amount of Rs.8,50,000/- alongwith interest at the rate of 18% p.a. as alleged in the plaint? OPP
10. Whether the agreement dated 14.07.1987 cannot be enforced on account of the non-compliance of the stipulation for getting the permission to transfer the suit property from the defendant No.1 to the plaintiff from Estate Officer, HUDA? OPD
11. Whether the agreement to sell dated 14th July, 1987 entered between the parties had become frustrated and could not be performed due to unforeseen contingencies? OPD
12. Whether the agreement to sell dated 14th July, 1987 (for short "said agreement"), entered into between the plaintiff and the defendants was rescinded/novated in pursuance of the understanding for the plaintiff agreeing to take the refund of the advance money of Rs.2,00,000/- given by it to the defendants in pursuance of the said agreement? OPD
13. Whether the plaintiff had the knowledge of the encumbrances of the suit property under the deeming provisions of law? OPD
14. Whether the defendant company has validly entered into the agreement to sell dated 14th July, 1987? OPD
15. Whether the plaintiff has been liable for delay and latches to pursue the remedy of specific performance against the defendants, which disentitle it to

claim the relief of specific performance of the said agreement in view of the facts and circumstances of the matter? OPD

16. Relief.

Grievance of the petitioners is that the agreement dated 14.07.1987 could not be specifically performed, as issue No.10, if proved, will hit the execution of the agreement in favour of the plaintiff-respondent and on account of non compliance of the stipulation, the agreement could not be executed. At the same time, issue No.11 shall cover all the things which have been taken place after the defendant-company was wound up on 24.02.1995 till the date when revival orders were passed by this Court. Finally, with regard to issue No.12, the defendant-company (petitioners herein) is to prove whether the agreement to sell dated 14.07.1987 was rescinded when the plaintiff-respondent had agreed to take refund of the advance money of Rs.2,00,000/- given by it to the defendants in pursuance of the said agreement. All these three issues would cover each and every event, which had taken place between winding up and revival of the defendant-company.

The trial Court, after examining the evidence led by the defendants-petitioners on the above issues, shall be in an appropriate position to take a decision as per Section 20 of the Specific Relief Act. Hence, there was no requirement to frame any specific issue, as sought by the defendants-petitioners in its application (Annexure P17). The discretion under Section 20 of the Specific Relief Act, 1963 is always with the trial Court. Moreover, the judgment(s) referred to by learned counsel for the petitioners that an opportunity to cross-examine the witnesses of the plaintiff should be given, will not be required to consider as the impugned order (Annexure P-1) was passed on an application made by the defendants-petitioners seeking framing of additional issues. In the said application, there was no prayer that the plaintiff-respondent be recalled for re-examination/cross-examination. In the present case, initially 9 issues were framed by the trial Court on 02.06.1992, which are as under:-

1. Whether the plaintiff company duly incorporated under the Companies Act as alleged in the plaint? OPP
2. Whether the transfer of the property suit in favour of the plaintiff company by the defendant was recommended by the Director of Industries on 28.12.1987, if so, its effect? OPP
3. Whether the plaintiff has always been ready and willing to perform its part of the contract? OPP
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether the suit is liable to be stayed in view of preliminary objection No.2? OPD
6. Whether the plaintiff is stopped from filing the present suit by its own act and conduct? OPD
7. Whether the agreement of sale dated 14.07.1987 was cancelled by mutual consent in July 1990 as alleged in the written statement? OPD
8. Whether afresh agreement was arrived at between the parties as alleged in the written statement, if so, its effect? OPD
9. Whether in the alternative, the plaintiff is entitled to recover an amount of Rs.8,50,000/- along with interest at the rate of 18% per annum as alleged in the plaint? OPP
10. Relief.

On all the above said issues, the plaintiff-respondent had led his evidence. Apart from the above issues, the issues which were re-framed vide order (Annexure P-1) are issues No.10, 11, 12, 13, 14 and 15. Onus to prove all these issues is on the defendants-petitioners. Therefore, at the stage of recording of evidence of the defendants-petitioners, the plaintiff is not required to be re-examined on the additional issues, which have been re-casted vide order (Annexure P-1). Any how, this prayer was not made by the petitioners in their application (Annexure P17) and at the time of passing of order (Annexure P-1).

In view of the above, this Court is of the view that the additional issues No.10 to 15 have been rightly framed by the trial Court keeping in view all the developments, which had taken place between winding up of the defendant-company and its revival on 19.03.2009 (Annexure P-4). No ground is made out to interfere in the impugned order.

Accordingly, the present petition being devoid of any merit, is dismissed.

(RITU BAHRI)
JUDGE

07.10.2015
ajp