IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.5864 of 2015 (O&M)
Date of decision: 09.09.2015

H.D.F.C.Bank Limited and others ... Petitioners

Vs.

Harwant Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. R.S.Bhatia, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned orders dated 02.09.2014 (Annexure P-1), 01.05.2015, (Annexure P-2) and 18.08.2015 (Annexure P-3), whereby, the trial Court has directed the Bank to release the share of plaintiff No.5, which admittedly is lying surplus with the Bank, in the shape of Fixed Deposit Receipt.

Mr. R.S. Bhatia, learned counsel for the petitioners submits that in view of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioner-Bank had taken into possession the mortgaged property, but during the interregnum, such property has been sold after adjusting or appropriating the entire outstanding amount due towards creditor/guarantors an amount of ₹ 1,45,31,471/- is lying with the petitioner-Bank, as surplus. Out of that amount, respective shares of respondents No.2, 3 and 4 had already been disbursed, but the dispute is with regard to share of plaintiff No.5/respondent No.1. He further submits that time and again notices, have been issued to the aforementioned partner for giving consent so that stock in possession of Bank could be sold, for, Bank is incurring the damage charges owing to care and custody. He further submits that in pursuance to the impugned orders dated 02.09.2014, Annexure P-1, dated 01.05.2015, (Annexure P-2), the order dated 18.08.2015, (Annexure P-3), the warrants of attachment of property of the Bank have been issued.

I have heard learned counsel for the petitioners and appraised the paper book.

The Bank, in its preliminary objection, taken in written statement, had admitted that it was having the custody of the surplus amount. In my view, the Court on the basis of admission should not have kept the case pending and rather it could have been disposed of, as per provisions of Order 12 Rule 16 of the CPC.

Be that as it may, the fact remains that share of plaintiff No.5/respondent No.1, has been ordered to disburse, vide impugned order, subject to furnishing of personal bond, security and indemnity bond of equal amount, the apprehension of the Bank that the said order tantamounts to decreeing the suit, is not sustainable, as the interest of the Bank has been protected. Since the other three partners have already given their option permitting Bank to sell stocks in its possession, in my view, Bank would be at liberty to dispose of the stock, at the risk and costs of the plaintiffs, the amount so received, the Bank would deposit the same in such manner and mode as it had been done vis-a-vis the surplus amount i.e. FDR. There is no illegality and perversity in the impugned orders, whereby, the Bank has been directed to release the surplus amount. In view of the candid admission in the written statement, impugned orders cannot be said to have been passed without jurisdiction.

With the aforementioned observations, revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

September 09, 2015
savita