IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 6256 of 2015

Date of decision : September 23, 2015

HDFC Bank Ltd.and others

.... Petitioners

Versus

Harwant Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anand Chhibbar, Senior Advocate with
Mr. R. S. Bhatia, Advocate and
Mr. Gaurav Mankotia, Advocate
for the petitioners.

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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?

<u>Amit Rawal, J (oral).</u>

Mr. Anand Chhibbar, learned Senior Advocate assisted by Mr. R. S. Bhatia, Advocate appearing on behalf of the petitioners submits that the Bank had already approached this Court against the impugned orders dated 2.9.2014, 1.5.2015 and 18.8.2015 vide CR No. 5864 of 2015 and this Court while noticing the contention of the Bank, dismissed the revision petition by observing that the Bank would be at liberty to dispose of the stock, at the risk and costs of the plaintiffs, and the amount so received by the Bank would be deposited in the same manner as it had been done viz-a-viz the surplus amount i.e.in the shape of FDR.

He further submits that this Court did not interfere with the order and observed that the disbursement of the surplus amount would not come in the way of the Bank viz-a-viz non grant of consent by the one of the partners of the firm. He further submits that though the order dated 9.9.2015 passed in CR No. 5864 was not available, in the meantime, on the application filed by Harwant Singh before the trial court it disposed of the application vide impugned order dated 7.9.2015 (Annexure P-1) without issuing notice to the Bank, by passing the following order:-

> *"Heard. In view of the contents mentioned in the application and vide order dated 1.5.2015 passed by this Court, the State Bank of Patiala, Sai Market Branch is directed to arrange/send the cheque of the attached amount of Rs. 8493545.64P in favour of the applicant/plaintiff-Harwant Singh, in terms of the order dated 1.5.2015 passed by this Court.*
>
> *Hence, the application in hand is disposed of."*

He further submits that since the other partners have already taken their shares viz-a-viz surplus amount and the respondent-Harwant Singh is entitled to his share, which is calculated as per the calculation sheet annexed as Annexure P-13 with this petition. Since the bank has been given liberty to dispose of the stock, at the risk and costs of the plaintiffs, the bank would not be averse to the payment of the outstanding amount of respondent-Harwant Singh, after adjudication of the same.

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

The operative part of the order dated 9.9.2015 passed in CR No. 5864 of 2015 reads thus:-

> *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. “

In view of the aforementioned, the bank had been given liberty to dispose of the stock without waiting for the consent of respondent-Harwant Singh. In essence, the impugned order dated 1.5.2015 (Annexure P-10) had been passed by the trial court directing the Bank to pay the surplus amount to Harwant Singh-respondent. Since the aforementioned order passed in CR No. 5864 of 2015 was not brought to the notice of the trial court, neither it was in possession of the Bank, the trial court remained oblivious of the aforementioned order and passed the order without hearing the bank. The contention of the Bank is that the amount outstanding, as per the calculation, is far less than what has been ordered to be recovered.

In my view, the manner and mode vide which the impugned order has been passed, cannot be sustained, as it has been passed at the back of the petitioners.

Accordingly, the impugned order dated 1.5.2015 (Annexure P-10) is set aside. The trial court is directed to pass an order in accordance with law, after giving an opportunity of hearing to the Bank, subject to determination of outstanding amount, as apparently shown by the Bank in the calculation (Annexure P-13), much less keeping in view the directions contained in the order passed in CR No. 5864 of 2015 dated 9.9.2015.

In the meantime, the trial court is restrained from disbursing the amount, as noticed in the impugned order dated 1.5.2015 till adjudication of actual amount in accordance with law.

Accordingly, the civil revision is disposed of.

Copy of the order be given dasti under the signatures of the Reader attached to the Bench.

(AMIT RAWAL)
JUDGE

September 23 , 2015
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