

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4971 of 2015 (O/M)
Date of decision : 5.8.2015

M/s Raja Ram Corn Products, Punjab Pvt. Ltd. Appellant

Versus

Suncity Projects Pvt. Ltd. and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Puneet Bali, Senior Advocate, with,
Mr. Vibhav Jain, Advocate, for the appellant.

Mr. Aashish Chopra, Advocate, for respondent No. 1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH, J. (ORAL)

Appellant has filed this appeal against the order dated 13.7.2015, passed by the learned Additional District Judge, Chandigarh, vide which the application of the appellant for attaching Tower No. 3-A, Parikrama Group Housing Society, Sector-20, Panchkula, in compliance with the order dated 29.5.2015, passed by this Court in FAO No. 2232 of 2015 titled as M/s Raja Ram Corn Products Punjab Pvt. Ltd. Versus Suncity Projects Pvt. Ltd., was dismissed.

The short controversy involved in the present case is that the present appellant had earlier filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') for

grant of interim protection in the form of requiring the respondent to furnish appropriate security for recovery of Rs. 20 crores plus interest at the rate of 12% per annum from the date of award i.e. 23.10.2013 till the date of recovery. Shri Ranjit Kumar Jain, the learned Additional District Judge, Chandigarh, vide order dated 27.1.2015, dismissed the said application. Aggrieved by the said order, the present appellant filed FAO No. 2232 of 2015 before this Court, which was disposed of on 29.5.2015. The operative part of the order passed by this Court on 29.5.2015 is reproduced as under :-

“ Therefore, I am of the view that the order passed by the learned Additional District Judge, Chandigarh, dated 27.1.2015 is not sustainable in the eye of law. The same is accordingly set aside. The respondent is directed to furnish the security in the sum of Rs. 24 crores before the learned Additional District Judge, Chandigarh, where the objections under Section 34 of the Arbitration Act, 1996 are pending, to satisfy the award that may be ultimately upheld against them, within a period of four weeks from today. If the security is not furnished within four weeks, tower No. 3-A, Parikrama Group Housing Society, Sector-20, Panchkula, is ordered to be attached. However, such attachment shall be subject to the earlier encumbrances and the interest created in favour of the third person before the date of passing of this order. The attachment will continue till the award, if finally affirmed in favour of appellant, is satisfied.

Consequently, the present appeal is allowed.”

In pursuance to the said order, the present appellant filed an application before the lower Court for attaching Tower No. 3-A, Parikrama Group Housing Society, Sector-20, Panchkula, which was dismissed by Shri Ranjit Kumar Jain, learned Additional District Judge, Chandigarh. The relevant extract of the said order is reproduced as under :-

“3. Heard. Judicial filed perused. The order has been passed by Hon'ble High Court of Punjab and Haryana in FAO No. 2232 of 2015 (O/M) vide which order passed by this Court on 27.1.2015 while disposing off petition under Section 9 of the Arbitration and Conciliation Act, 1996, has been set aside with direction by the Hon'ble High Court to respondent Suncity Projects Private Limited to furnish the security in the sum of Rs. 24 crores before Additional District Judge, Chandigarh where petition under Section 34 of the Arbitration and Conciliation Act, 1996 is pending (in this Court) to satisfy the award that may be ultimately upheld against them, within a period of four weeks from today i.e. the order passed by the Hon'ble High Court. If the security is not furnished within four weeks, tower No. 3-A, Parikrama Group Housing Society, Sector 20, Panchkula, is ordered to be attached. However, such attachment shall be subject to the earlier encumbrances and the interest created in favour of the third person before the date of passing of this order. The attachment will continue till the award, if finally affirmed in favour of appellant, is satisfied. So, from the very operative part of this order passed by the Hon'ble High

Court vide which FAO No. 2232 of 2015 (O/M) has been disposed off itself is exhaustive. Nowhere it is required by the Hon'ble High Court to undersigned to pass any order of attachment of said tower which would certainly be over stepping and over and above the order of Hon'ble High Court which cannot be passed by this Court and which is also against the propriety. As regards furnishing of security in the sum of Rs. 24 crores before this Court, no such security has been furnished. Certainly it is upto to the applicant to approach appropriate forum having the jurisdiction over the property where same is situated for getting attached the property and getting implemented the order of Hon'ble High Court. Perhaps this application has been filed under misconception in this Court and same is not maintainable. So, application is hereby dismissed.”

I have heard learned counsel for the parties and have also carefully gone through the file.

I am of the view that the learned Additional District Judge, Chandigarh, has mis-directed himself by wrongly interpreting the order of this Court. This Court had specifically directed the lower Court that if security is not furnished within four weeks, Tower No. 3-A, Parikrama Group Housing Society, Sector-20, Panchkula, is ordered to be attached. The said direction was certainly given to lower Court. The learned Additional District Judge, Chandigarh, has observed that nowhere it is required by the Hon'ble High Court to the undersigned to pass any order of attachment of said tower which would certainly be over stepping and over and above the order of the

Hon'ble High Court which cannot be passed by this Court and which is also against the propriety. This Court fails to understand as to how the learned Additional District Judge, Chandigarh, by complying with the order of this Court would have over stepped and over and above the order of this Court and what propriety would have been breached. Rather, by not implementing the order of this Court, the learned Additional District Judge, Chandigarh, has shown the defiance to this Court. Rather, his order is against the propriety. When the order passed by the learned Additional District Judge, Chandigarh, in application under Section 9 of the Act was set aside and the appeal was allowed and certain directions were given by this Court, the order of this Court stood as if the order passed by the learned Additional District Judge, Chandigarh, has been modified and consequently, the said order stands at the same footing as if it has been passed by the learned Additional District Judge, Chandigarh.

The learned Additional District Judge, Chandigarh, has observed that security of Rs. 24 crores has not been furnished. Therefore, the learned Additional District Judge, Chandigarh, was required to proceed with the attachment of Tower No. 3-A, Parikrama Group Housing Society, Sector-20, Panchkula. The learned Additional District Judge, Chandigarh, has further observed that it is upto the applicant to approach the appropriate forum having jurisdiction over the property where the same is situated for getting

the property attached and getting implemented the order of this Court.

I am of the view that the same is also wrong interpretation of the order passed by this Court on 29.5.2015 in FAO No. 2232 of 2015 as well as the relevant provisions. Section 42 of the Act lays down as under :-

“42. **Jurisdiction.**- Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

It shows that in the arbitration matters, the jurisdiction of the Court is exclusive. No other forum can come into picture. Moreover, this Court has the jurisdiction over the States of Punjab and Haryana as well as Union Territory of Chandigarh, and when this Court directs the lower Court that on the failure to furnish the security within four weeks, the said Tower No. 3-A of the said Group Housing Society is order to be attached, that would mean that the lower Court was authorised to effect the attachment. The power to attach the property flowed from the order of this Court and could not be restricted by the interpretation of the learned Additional District Judge, Chandigarh. In this way, the impugned order is nothing, but

defiance of the order passed by this Court on 29.5.2015 in FAO No. 2232 of 2015. Therefore, the impugned order dated 13.7.2015, passed by the learned Additional District Judge, Chandigarh is not sustainable in the eye of law and the same has to be set aside. The same is accordingly set aside.

Consequently, the present appeal is allowed.

Before parting with the judgment, this Court finds that while deciding application under Section 9 of the Act, vide order dated 27.1.2015, the learned Additional District Judge, Chandigarh, had taken the view that Section 9 of the Act is limited to the protection of property, which is subject matter of the arbitration. This Court has found that the same is contrary to the provisions of Section 9 of the Act. Thereafter, the impugned order dated 13.7.2015 has been passed by the learned Additional District Judge, Chandigarh, refusing to implement the order of this Court. Therefore, without making any further comments in the matter, this Court is of the view that the parties may not get justice from the Court of Shri Ranjit Kumar Jain, learned Additional District Judge, Chandigarh, in the main petition filed under Section 34 of the Act, titled as Suncity Projects Pvt. Ltd Versus M/s Raja Ram Corn Products Punjab Pvt. Ltd. and others, which is stated to be fixed for arguments. The further proceedings of the said case were stayed by this Court. Therefore, keeping in view the extra ordinary situation where the learned Additional District Judge is acting contrary to the

law and in defiance of the order of this Court, the said arbitration case bearing Arbitration Case No. 11 of 22.1.2014, titled as Suncity Projects Pvt. Ltd Versus M/s Raja Ram Corn Products Punjab Pvt. Ltd. and others. is withdrawn from his Court and transferred to the Court of the learned District Judge, Chandigarh, with a direction to conclude the arguments and dispose of the same within two months. The present application shall also be decided by the learned District Judge, Chandigarh. The order of this Court passed on 29.5.2015 in FAO No. 2232 of 2015 shall be implemented in letter and spirit.

The appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

5.8.2015
sjks