

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 3684 of 2015(O&M)
Date of decision : March 1, 2016

Nachattar Singh and another

..... Petitioners

Versus

M/s Puran Chand Vinod Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Gupta, Advocate
for the petitioners.

Mr. Rakesh Gupta, Advocate
for respondent No.1.

Mr. O. S. Batalvi, Advocate
for respondent No.2.

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?

Amit Rawal, J (oral).
CM No. 4576-CII of 2016

C.M.is allowed.

Annexures R1/1 to R1/5 taken on record.

CR No. 3684 of 2015(O&M)

The petitioners-judgment debtors are aggrieved of the impugned order dated 7.3.2015 (Annexure P-10) whereby in an

execution application bearing No. 170-8/10 the trial court on consideration of the prayer made in the application filed on behalf of the decree-holder, who is none else but a partnership firm called upon the firm to receive the amount as Jyoti Singla the other partner has not been held entitled to receive the amount on behalf of the firm as since judgment debtor has not made the payment to the decree holder, but instead the property of judgment debtor has been ordered not to be released and decree holder firm has been entitled to receive the amount from the judgment debtor and proceed with the execution.

Learned counsel for the petitioners-judgment debtors submits that the suit was filed by the partnership firm which was decreed and the judgment and decree dated 11.12.2009 has attained finality on 25.10.2010. In discharge of the legal liability Jyoti Singla the other partner had received the entire decretal amount by suffering a statement before the Court on 16.2.2013 (Annexure P-7). Now the executing court without appreciating the fact that the decree was on behalf of the firm and all acts by the partners are binding upon the firm is proceeding ahead with execution application. In case, the other partner is aggrieved, he is entitled to recover the amount from Jyoti Singla and not in the manner and mode as noticed by the trial court.

Mr. Rakesh Gupta, learned counsel appearing on behalf of respondent No.1 submits that as per the explanation carved out in Section 19(2) of the Indian Partnership Act, 1932, the said act of Jyoti Singla, partner is not permissible in law because the decree

has been passed in favour of the firm, therefore, the firm cannot be prevented from seeking vindication of its grievance. In essence, the decree cannot remain in-executable in view of the prevalent evidence.

Mr. O.S. Batalavi, learned counsel appearing on behalf of respondent No.2 acknowledges the receipt of decretal amount.

I have heard learned counsel for the petitioners and appraised the paper book and of the view that there is force and substance in the arguments of learned counsel for the petitioners. Section 19 and 22 of the Indian Partnership Act, 1932 provides that an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner shall be binding upon the firm. The same reads thus:-

Section 22 Mode of doing act to bind firm:- In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Section 19:-

Implied authority of partner as agent of the firm.—

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm, or

(h) enter into partnership on behalf of the firm.

The statement Annexure P-7 is an act done on behalf of the firm in an execution proceedings initiated under Order 21 Rule 11 CPC which reads thus:-

“Statement of Jyoti Singla wife of Vinod Kumar Singla son of Sh. Narain Dass, resident of Gur Bazar, Malout, Partner of firm M/s Puran Chand Vinod Kumar along with her counsel Sh. Inderjit Arora, Advocate

Stated that I have received the entire amount on behalf of the firm in the present execution application and nothing is due. I have got no objection if the attachment is released in the present execution application.”

Thus, there is no force in the plea of Mr. Rakesh Gupta, learned counsel appearing on behalf of respondent No.1 that such an act would not bind the firm.

In case the other partner has grievance, he is at liberty to

appropriate the same from other partner and not in the manner and mode by seeking attachment of the property of judgment debtor who has satisfied the decree.

Keeping in view the aforementioned facts, the execution application stands satisfied and is ordered to be consigned. The impugned order is set aside.

The civil revision stands allowed.

(AMIT RAWAL)
JUDGE

March 1 , 2016
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