In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.5628 of 2016
Date of Decision: 1.9.2016

Banwari Lal

---Petitioner

versus

M/s Kashmiri Lal Jagdish Kumar Commission Agents and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Aayush Gupta, Advocate
for the petitioner

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Rekha Mittal, J.

The present petition has been directed against order dated 19.7.2016 passed by the Additional Civil Judge (Senior Division), Fazilka whereby the trial court has directed the respondent to produce the record since April 2010 onwards instead of with effect from 1.11.2004 onwards.

Counsel for the petitioner has submitted that in para 4 of the written statement, the respondents have raised a plea that on 21.7.2008, the account was squared up. In the subsequent year, Yog Raj borrowed an amount of Rs. 60,000/- on 2.5.2019 (appears to be wrongly typed as such in place of 2009) in cash and Rs. 2,58,000/- on 15.5.2009 by way of cheque. It is argued that as the respondents in the written statement has raised a plea with regard to squaring up the accounts on 21.7.2008 and borrowing of amount in the year 2009, the same is sufficient to show that they are in possession of account books even prior to April 2010 but they have intentionally withheld the same. It is further submitted that failure of the respondents to produce the account books of the year 2008 and 2009 should lead to an adverse inference against them at the time of final disposal of the suit.

I have heard counsel for the petitioner, perused the paper book and the impugned order.

The petitioner has filed a suit for recovery of Rs. 17,75,966 against M/s Kashmiri Lal Jagdish Kumar Commission Agents, Mandi Ladhuka Tehsil and District Fazilka through Sh. Kashmiri Lal Bhusri. The instant application was filed for issuance of direction to the defendants to produce the account books dated 1.11.2004 to 31.5.2009. The respondents/defendants filed their response to the application and submitted that defendants are income tax assessees and as per provisions of the Income Tax Act, the firm is to maintain account books of six years with effect from end of the relevant assessment year. The defendant firm is not in possession of the account books required by the plaintiff.

The trial court disposed of the application by holding that in case the defendants are in possession of record for the last six years only i.e. since April 2010, they are directed to produce the same. In case the defendants ever relies upon any account book earlier to that, an adverse inference will be drawn. It appears that while disposing of the application, the Court below did not insist upon the defendants/respondents to file an affidavit in support of their reply to the application. Counsel for the petitioner, on instructions, has stated that no such affidavit was filed. As the respondents have taken a specific plea that they are not in possession of account books prior to the period except six years from the end of the relevant assessment year, no error much less illegality can be found in the order passed by the trial court rejecting plea of the petitioner seeking production of account books for the period 2004-2009. Nevertheless, before proceeding further, the trial court would insist an affidavit to be filed by the respondents that they are not in possession of account books from the year 2004 till 2009.

Plea raised by the petitioner with regard to an adverse inference to be drawn against the respondents for failure to produce the account books despite allegations in the written statement that accounts were squared up on 21.7.2008 would be open to be raised at an appropriate stage of the proceedings before the trial court.

With these observations, the petition stands disposed of.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondents in order to avoid inconvenience and incurring expenditure by them. However, if the respondents have any grievance to express, they shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

1.9.2016
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No