IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.7380 of 2016
Date of Decision.07.11.2016

M/s Gaurav Trading Company and another ....Petitioners

Vs

M/s Hanuman Rice Mills and others ....Respondents

Present: Mr. Arun Bansal, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The counsel for the petitioners confines his prayer for direction to the trial Court to dispose of the application (Annexure P6) whereby direction has been sought to be given to the respondents to furnish necessary security in terms of provisions of Order 38 Rule 5 CPC in suit seeking recovery of ₹4.44 crores.

Mr. Arun Bansal, learned counsel appearing for the petitioners submits that the aforementioned amount is outstanding against the respondents. In this regard, suit was filed. Earlier an application was also filed and the trial Court vide order dated 16.09.2016 ordered that the mill which is running shall be deemed to be attached in case the suit for recovery is allowed, the decretal amount can be satisfied as the cost of the mill is more than ₹15 crores.

He further submits that later, on inspection of the revenue records, it is realized that the aforementioned mill stood already mortgaged to Punjab National Bank for an amount of ₹30.85 crores. It is in this backdrop of the matter, the application aforementioned was filed and the reply has also been filed. The application was filed on 17.10.2016 and the matter is adjourned for 24.11.2016 which is evident from the order dated 20.10.2016. Since the amount sought to be recovered is phenomenal, there is every apprehension that the respondents may not tinker away other valuable immovable properties and the petitioner-plaintiff may not be able to seek the recovery of the amount in the eventuality of succeeding in the suit, thus, urges this Court to issue appropriate directions.

I have heard learned counsel for the petitioner and appraised the paper book. The contents of the application Annexure P6, reply Annexure P-7 and as well as order dated 16.09.2016 Annexure P-5 reproduced as under:-

Annexure P-6

"*1. That the aforesaid case is pending for 17.10.2016 before this Hon'ble Court for further proceedings that is production of necessary statement of account by the defendant.*

2. That the applicant had preferred an application under Order 38 Rule 5 CPC praying for attachment of property before judgment in order to furnish security which may be sufficient to satisfy the decree which may be passed against the defendant. The said application was disposed of vide order dated 16.09.2016.

3. That at the time of the hearing of the said application, the defendants submitted that the overall value of their rice mill is more than 15 crores and the said is sufficient for satisfying the recovery of amount of Rs.4.44 crores to which the counsel for the plaintiff also agreed.

4. That in terms of the said order, the petitioner approached the concerned Patwari for reference of the order dated 16.09.2016 in the concerned records.

5. That during the said proceedings, it came to the notice and knowledge of the plaintiff/applicant that the aforementioned mill/landed property of the defendants stood already *mortgaged with the Punjab National Bank, Taraori for Rs.30.85 crores. The defendant did not disclose the said fact before this Hon'ble Court and has tried to mislead this Hon'ble Court and obtained an order dated 6.10.2016. The copy of the said jamabandi showing the endorsement of mortgage is attached.*

6. That considering the aforementioned mortgage of mill for Rs.30.85 crores would clearly show that a mill worth 15 crores cannot even pay the outstanding dues/mortgage money of the Punjab National Bank, Tarori and as such the statement made by the defendants is an act to overreach the ld. Courts.

7. That therefore in such circumstances, this Hon'ble Court may please to direct the defendant to furnish a clear and fair security which may be sufficient to satisfy the decree which may be passed against the defendants.

It is, therefore, respectfully prayed that the order dated 16.09.2016 may please be modified and the defendant may please be directed to furnish necessary security in terms of Order 38 Rule 5 CPC in the interest of justice equity and good conscience.

Dated:17.10.2016 *plaintiff*

Annexure P-7

R/Sir,

It is submitted as under:-

1. That para No.1 of the application as stated is wrong it is not fixed for production of account books.

2. That para No.2 of the application is not denied to the extent that the plaintiff filed application u/o 38 R 5 CPC and it is also not denied, that was disposed of vide order dated 15.09.2016.

3. That para No.3 of the application as stated is wrong. The counsel for the defendant had submitted that the value of the rice seller is more than 15 crores taking in account the charge of the bank on the said seller otherwise the value of the rice seller is much more than 50 crores. The very fact that the bank has advanced a loan of Rs.30 crores proves that the *value of the rice seller is more than the charge of the bank. This Hon'ble Court shall take judicial notice of that fact that the bank does not advance loan on any property more than 60% of its value.*

4. That para No.4 of the application is false and bogus. This ld court has not passed any attachment order, so there was no question of getting the same incorporated in the revenue record.

5. That para No.5 of the application as stated is wrong. It is wrong that the defendant ever misled this hon'ble Court the detailed facts have been given above.

6. That para No.6 of the application as stated is wrong. The value of the rice seller was stated to be more than 15 crores taking into account the charge of the bank otherwise the value of the rice seller is more than 50 crores.

7. That para No.7 of the application as stated is wrong. This ld. Court did not pass any orders for furnishing security nor any case for attachment before judgment or furnishing security has been made out by the plaintiff.

Prayer clause of the application is against facts and law and merits to be dismissed without costs, in the interest of justice."

Annexure P-5

Present: Mr. M.P. Gupta, Advocate for plaintiff.

Mr. A.K. Nirwani, Advoate for defendants.

Written statement and reply to the application filed on behalf of plaintiff under Order 38 Rule 5 CPC filed. Learned counsel for the defendants has suffered a statement to the effect that till the final decision of this case, the defendants shall not sell their rice mill situated at Tarawari and if there arises any necessity for the defendants to sell the same, they shall obtained prior permission of the Court. In view of the said statement, the application filed by the plaintiff under Order 38 Rule 5 CPC is hereby disposed of, along with directions to the defendants not to sell their Rice Mill situated at Tarawari till the final decision of the case and they shall remain duly bound by the statement suffered by the learned counsel in court *today. Both the learned counsel have admitted that total overall value of the Rice Mill of the defendants at Tarawari is certainly more than Rs.15 crores whereas the instant case of the plaintiff is for recovery of an amount of Rs.4.44 crores. In such circumstances, there does not arise any need to restrain the defendant from selling their rice stock as the value of their rice mill is sufficient to cover the claim of the plaintiff.*

The matter is now adjourned to 6.10.2016 for filing replication, if any, and for framing of issues.

-sd-
(Khatri Saurabh)
ACJ(SD) Narwana
16.09.2016."

As per the order dated 20.10.2016, the trial Court is seized of the matter for decision of the application and the matter is fixed for 24.11.2016. In view of the aforementioned, the trial Court is directed to decide the application Annexure P-6 on the next adjourned dated i.e. 24.11.2016.

The revision petition is disposed of with the above direction.

(AMIT RAWAL)
JUDGE

November 07, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No