IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.8842 of 2015
Date of Decision: July 22, 2016

HDFC Bank Ltd., Mumbai & others

...Petitioners

Versus

Harwant Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Anand Chhibbar, Senior Advocate with
Mr.Vaibhav Sahni, Advocate,
for the petitioners.

Mr.Mayank Mathur, Advocate,
for respondent No.1.

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AMIT RAWAL, J.

The petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India for setting-aside of the impugned order dated 4.12.2015 (Annexure P-29), whereby the application of the respondent-plaintiffs for taking action against the petitioner-Bank has been allowed and the Bank has been directed to release the amount to the extent of 32.66% (wrongly recorded as 32.04%

in the order), erroneously computed as ₹84,93,545-64P deposited with the Bank in the shape of FDR and as well as for setting-aside the order (Annexure P-28) of the same date, whereby the application dated 28.9.2015 filed by the petitioners for withdrawal of the amount, so deposited under protest in the Civil Court, has been dismissed.

Mr.Anand Chhibbar, learned Senior Counsel assisted by Mr.Vaibhav Sahni Advocate, appearing on behalf of the petitioners submits that the petitioner-Bank had earlier approached this Court vide Civil Revision No.5864 of 2015 challenging the orders dated 1.5.2015 and 18.8.2015, whereby the trial Court, in a civil suit instituted at the instance of the respondent-plaintiffs, had directed the Bank to release the share of plaintiff No.5. The trial Court noticed the fact that respondent-Harwant Singh was a co-sharer to the extent of 142.78 sq.yards out of the total land measuring 437.11 sq.yards. The entire land was mortgaged with the Bank, which was sold under the SARFEASI Act, 2002 for a sum of ₹2,21,11,000/- and an amount of ₹1,49,61,051/- remained deposited with the Bank, which was found excess after realising the outstanding dues. The application was filed by both the co-sharers, i.e., Harnam Singh and Jasbir Singh for release of the amount. The claim of the other applicants has been allowed as an interim measure. Vis-a-vis the claim of the contesting respondent, the trial Court directed the Bank to release the amount equivalent to 32.66% share, out of the total amount lying deposited with the Bank in the shape of the FDR along with interest up to the date of release, subject to furnishing the personal bond in the sum of ₹50,00,000/- and indemnity bond of ₹75,00,000/-. The aforementioned direction came to be passed in the order dated 2.9.2014, however, on 1.5.2015, the trial Court, on the application moved by Harwant Singh for taking action as the Bank had not complied with the order, ordered for attachment of the property. This Court, vide order dated 9.9.2015, disposed of Civil Revision No.5864 of 2015 after noticing the argument of the counsel for the Bank with regard to the share of plaintiff No.5-Harwant Singh. Notices were issued to the partner for giving consent so that stock in possession of the Bank could be sold as the Bank was incurring the damage charges owing to the care and custody. However, this Court had given liberty to the Bank to sell the stocks in its possession, at the risk and costs of the plaintiffs and the amount, so received, would be deposited in such manner and mode as it had been done vis-a-vis the surplus amount, i.e., FDR. With the aforementioned directions, the revision petition was disposed of.

He further submits that the Bank had to again approach this Court vide Civil Revision No.6256 of 2015 as order dated 7.9.2015 could not be brought to the notice of the Court, whereby the Bank was directed to arrange/send the cheque of the attached amount of ₹84,93,545-64P in favour of plaintiff-Harwant Singh, in terms of the order dated 1.5.2015. In fact, as per the calculation sheet attached with the previous revision petition and as well as in the present revision as Annexure P-30, the amount is far less than what has been ordered to be recovered from the Bank and this Court, after noticing the contentions of the parties, disposed of the aforementioned revision petition vide order dated 23.9.2015 directing the trial court 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 in the calculation sheet referred to and as well as the direction contained in the order dated 9.9.2015. As an interim measure, the trial Court was restrained from disbursing the amount till the adjudication of the actual amount in accordance with law.

He also submits that after passing of the order dated 9.9.2015, the Bank had deposited the amount qua 32.66% share of Harwant Singh amounting to ₹42,86,625/- as reflected in the calculation vide cheque No.008637 dated 10.9.2015 for onward disbursement. However, during the interregnum, in the application indicating the aforementioned amount, it was also stated that the attachment, so ordered by the trial Court, be released and the Bank would remit the attached amount to the trial Court. It is in the meanwhile, the petitioner-Bank remitted the entire attached amount of ₹84,93,545-64P by means of a banker cheque/draft dated 10.9.2015, but the trial Court did not adjudicate the application aforementioned.

He further submits that after passing of the order dated 23.9.2015, as indicated above, the Bank had filed an application dated 28.9.2015 for withdrawal of the amount so deposited under protest in the Civil Court on 11.9.2015 on the premise that the exact amount payable was yet to be determined in the pending suit. During the pendency of the suit, the trial Court vide separate order dated 4.12.2015, decided the application of the respondents for taking action against the Bank afresh. It is the said application which was disposed of and the order is challenged in the present revision petition.

He further submits that this Court had already in the order dated 23.9.2015, directed the trial Court to determine the outstanding amount as per the calculation and instead of pondering upon such issue, the trial Court ordered that the amount of ₹84,93,545-64P, which had not been disputed by the Bank and, therefore, directed the defendants to release the amount to the extent of 32.66% (wrongly recorded as 32.04% in the order) deposited with the Bank in the shape of FDR to Harwant Singh within a period of 15 days. The trial Court also noticed that the amount already stood deposited with the Civil Court be released. It is in these circumstances, the present revision petition has been filed on the ground that there is no pleadings and the directions in none of the applications and in any of the pleadings, the amount as determined by the trial court had been remitted. The admission was only qua the share. The trial Court has not pondered upon the calculation sheet, Annexure P-30 attached with the present revision petition, according to which the outstanding amount is far less than what has been noticed in the impugned order. The suit is still pending. The trial Court ought not to have passed the order as it tantamounts to decreeing the suit.

He further submits that no doubt, this Court in the order dated 9.9.2015 had observed that the Bank had acknowledged the amount of share of respondent Harwant Singh lying deposited with it, but the quantification of the share is a matter of dispute, which has not been examined by the Court and the order has been passed.

He further submits that the trial Court, while passing the impugned order, merely relied upon the statement of account, i.e., documents produced by respondent No.1 in spite of the specific directions given by this Court to give opportunity of hearing to the Bank and produce documentary evidence in this regard, thus, urges this Court for setting-aside of the impugned orders.

Mr.Mayank Mathur, learned counsel appearing on behalf of respondent No.1 submits that once the Bank had already admitted the share of respondent No.1 in the written statement, there was no need to proceed further in the suit. The order under challenge is passed only on the basis of the admission and this Court had already noticed this fact in the order dated 9.9.2015 by taking the aid of provisions of Order 12 Rule 16 CPC . There is no illegality and perversity in the order. The amount ordered to be released is correct and there is no dispute to the same. There is no excess payment of the amount. The Bank is unnecessarily indicating the expenses incurred on the cost of litigation etc., which cannot be fastened upon the respondents once the Bank had already received the excess amount by selling the mortgaged properties. The Bank cannot withhold the excess amount for no rhyme or reason and, thus, urges this Court for affirming the findings.

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

For the sake of brevity, the operative parts of the order dated 9.9.2015 passed in CR No.5864 of 2015 and order dated 23.9.2015 passed in CR No.6256 of 2015 read thus:-

Order dated 9.9.2015

"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."

Order dated 23.9.2015

"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."

The impugned order does not reflect the application of mind in respect of directions contained in the order dated 23.9.2015. There is no reason or the reference given to presume or assume that the Bank had been given opportunity to project its case in respect of the calculation sheet (Annexure P-30) attached with the revision petition at page 146.

It is a matter of record that Annexures P-13 in CR No.6256 of 2015 and P-30 in the present revision petition are identical and the trial Court has merely relied upon the calculation of plaintiff No.5. It is also a matter of record that since during the pendency of the revision petition, the amount as ordered by the trial Court has been released without ordering for refund of the amount. I deem it appropriate to direct the trial Court to determine the outstanding amount by referring to the calculation sheet after affording opportunity to the Bank regarding the outstanding amount qua 32.66% share of respondent No.1 Harwant Singh. The trial Court is misinterpreting the observations given in the order dated 9.9.2015 with regard to the alleged admission in the written statement. The admission is of the share, but not outstanding amount. In case of any dispute with regard to the calculations submitted by the parties to the lis, the Court is enjoined upon an obligation to examine the same and thereafter order for release of the amount and cannot be swayed away with the calculation of one of the party. In case the amount ordered to be released, has been released, I deem it appropriate to issue direction to the trial Court to decide the controversy for determination of the amount qua the share of respondent No.1 Harwant Singh, i.e., 32.66% in accordance with law after granting opportunity to the parties to the lis. In case the amount given in the calculation submitted by the respondent is found to be correct, no order would be required to be passed, but if on the contrary, the calculation is found to be incorrect, the trial Court shall pass an appropriate order for refund of the amount instead of leaving the parties to seek vindication of their grievance either through filing the revision or independent application in order to cut the cost of litigation and time.

Revision petition stands disposed of in terms of the aforementioned directions.

July 22, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned	**Yes/No**
Whether Reportable:	**Yes/No**