IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.4306 of 2008 (O&M)
Date of Decision: August 26, 2016

National Fertilizer Limited, Sector 17-D, Chandigarh & another

...Appellants

Versus

Harsaroop Singh

...Respondent

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

Present: Mr.Arvind Mittal, Advocate,
for the appellants.

Mr.R.S.Bajaj, Advocate &
Mr.M.S.Sachdev, Advocate,
for the respondent.

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AMIT RAWAL, J. (Oral)

Appellant-defendants are aggrieved against the preparation of the final decree to the tune of ₹8,54,042-41P along with interest @ 18% per annum w.e.f. 19.12.1989 for the period 1982 to 1987.

Mr.Arvind Mittal, learned counsel for the appellant-defendants submits that preliminary decree in a suit for rendition of accounts was passed vide judgment and decree dated 2.9.1998, whereby the appellants were directed to produce the statement of accounts for the amount due to the respondent-plaintiff. Mr.Rajiv Bansal, C.A. was appointed as Local Commissioner, who submitted his report dated 9.5.2003. During the course of the hearing of the present appeal, it was urged before this Court that the Local Commissioner had not taken into account certain records/instructions/circular leading to weeding out of the same and this Court vide order dated 13.9.2012, gave the parties liberty to appear before the Local Commissioner and apprise him about the record which could not be placed before him. The Local Commissioner's report dated 21.5.2013 has again come on record, which is also against the appellant-defendants. The Local Commissioner has again not taken into consideration the instructions and there is a slight modification, but the same has also not supported the version of the respondent-plaintiff. In fact, the record is eighteen years old, but as per the Rules, record beyond eight years was weeded out. This aspect has not been taken into consideration by the Courts below and, thus, there is illegality and perversity in the impugned judgments and decrees of both the Courts below.

Mr.R.S.Bajaj and Mr.M.S.Sachdev, learned counsel for the respondent-plaintiff submit that Local Commissioner's report Annexure P-1 reveals that the appellant-defendants had been dilly dallying the matter by not producing the statement of accounts by raising the plea of voluminous and scattery record. Many letters were written by the Local Commissioner to apprise the record and ultimately report was that it was not with them and they requested the Local Commissioner to inspect the record by visiting Chandigarh. The record was produced before the Local Commissioner, but it was ledger. When again confronted, they did not place on record the same and said that it was lying in the Zonal Office, Chandigarh. The said plea ought not to be accepted by the Court for remanding the matter back to the Local Commissioner to consider the pleas of the respective parties afresh, but it appears that the appellant-defendants are again delaying the execution of the final decree and even the report reveals that statement of accounts produced before the Local Commissioner could not have been altered as it was lacking certain protocol and requirement of law and, thus, urge this Court for affirming the findings.

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

This Court has come across many cases where the State exchequer and the funds of the private Corporations run by the State are being taken at a very ease not realising the fact that preliminary decree of the aforementioned amount along with interest @ 18% passed way back, keeps on increasing day by day, though the aforementioned amount after deducting the TDS of ₹2,20,000/- had been deposited in the year 2008. The stand taken by the appellant-defendants before the Local Commissioner reads thus:-

> "*I again issued notice dated 27.5.2002 to the defendant company through S.Karam Singh, Asstt.Area Manager of the defendant company, who had personally brought the reply to the first notice, wherein the defendant company was directed to produce the whole account books in my office for 30.5.2002. But the defendant company vide their intimation letter dated Nil which was signed by Sh.Kulbhushan Deputy Manager (Law) Central Marketing Office, N.F.L., Noida and counter signed by their counsel Sh.V.K.Sareen, Advocate, Jalandhar, informing me that the record of the defendant company was voluminous and heavy and scattery and it was not possible to bring the record to Jalandhar and that they requested me to visit Chandigarh for inspection of the accounts (My notice dated 27.5.2002 and defendant company intimation letter dated Nil are enclosed herewith). On receipt of above intimation letter from the defendant company, I moved an application to this Hon'ble Court for issuing direction to the defendant company to produce all the relevant record in my office (copy of my application is enclosed herewith). Thereafter I received a notice dated 20.5.2002 intimating me that the defendant company have submitted some record in this Hon'ble Court and I may inspect the same alongwith the original case file (The notice in original is enclosed). On receipt of the above noted from*

this Hon'ble Court, I moved an application dated 21.8.2002 to this Hon'ble Court for giving directions to the Civil Ahlmad of this Hon'ble Court to hand over the record submitted by the defendant company and the original case file to me and this Hon'ble Court was pleased to direct the civil Ahlmad to do the needful. On which I collected the relevant record from the Civil Ahlmad, under my receipt (copy of the receipt is attached herewith). After going through the said record, I came across the statement of account Ex.D1 and was failed to understand as from which of the ledger of the defendant company the Ex.D1 was prepared as there were two sets of ledger pertaining to the account of the plaintiff. I then moved an application dated 31.8.2002 to this Hon'ble Court for issuing directions to the defendant company to disclose from which of the ledger the Ex.D1 has been prepared and which of the two ledgers was correct and be taken into consideration enabling me to prepare the correct report regarding the account of the parties. Thereafter, this Hon'ble Court issued me notice dated 4.2.2003 directing me to inspect both the ledgers as well statement submitted by the decree holder and further directed me to issue notice to both the parties through their counsels to remain present at the time of inspection of the account books etc. by me and directed me to submit my report dated 29.3.2003.

On receipt of this notice dated 4.2.2003 of this Hon'ble Court I issued notice to Sh.V.K.Sareen, Advocate, Jalandhar, counsel for the defendant company and Sh.Hans

Raj Sharma, Advocate counsel for the plaintiff for appearance before me on 8.3.2003 which their respective parties (order of this Hon'ble Court dated 4.2.2003) and a copy of my notice to both the parties dated 22.2.2003 are attached herewith). Accordingly, the plaintiff with counsel Sh.H.R.Sharma, Jalandhar and defendant company through Sh.S.C.Ludhra, Senior Asstt.Manager, NFL, Chandigarh alongwith their counsel came present on 8.3.2003 and in their presence I inspected the account books of the defendant company as well as the statement of account of both the parties produced in the Court."

The present report after the order of this Court reads thus:-

"Since I was directed to scrutinize the existing record with Ld.Trial Court, therefore I scrutinized to the record submitted by the parties before the courts alongwith the clarifications/explanations of both the parties.

Scrutiny of the record produced by M/s National Fertilizer Limited itself reveal that same has not been prepared in proper serial i.e.year/date wise which is against the accounting principles. Query was made to M/s National Fertilizer Limited to explain that why this record has not been prepared in proper serial and how CAG has audited this record but they failed in giving any reply.

As per Ex.P13 dated 29.04.1986 and Ex-P2 dated 23.07.1987, while sending statement of accounts for the year 1985-86 and upto 31.3.1987 respectively to S.Harsaroop Singh, it was clearly written that the statement does not include the opening balance as on 01.04.1983. I fail to understand that how this record can be audited by CAG when accounts are still under reconciliation.

After going through the whole relevant record, considering the suggestions and clarifications submitted by both the parties, I found that as per statement of accounts of M/s National Fertilizer Limited and admitted by them, a total sum of Rs.4885365.53 was received by M/s National Fertilizer Limited from S.Harsaroop Singh. There were some accounting adjustments also in the account books and accordingly the goods were supplied. But S.Harsaroop Singh admitted the adjustments and goods received by him worth Rs.4031323.12 only. The only controversy between the parties is regarding the sum of Rs.854042.41 only."

On juxtaposition of both the reports, it appears that the appellant-defendants had been dilly dallying the matter and taken the adjournments for putting off the matter before the Local Commissioner at ease and not realising that there is already a decree of ₹8,54,042-41P along with interest @ 18%. The execution application has been filed and the aforementioned amount has been deposited in the year 2004, though the decree is of 2.12.2003.

In my view, the stand taken by the appellant-defendants before the Local Commissioner at the second stage was not taken when the first report came as according to rules applicable, weeding out of the record was in their knowledge. It appears that the decrees are being objected to at the behest of the concerned officers. The people have stopped reposing faith in the Civil Courts owing to the tendency of long time being consumed in deciding the suits and are resorting to other relevant measures, including criminal action, which, *per se* is not permissible or legally enforceable. I am of the view that the report of the Local Commissioner is perfect i.e. as per the records and does not call for any interference keeping in view the aforementioned facts.

It is also said that in such cases the TDS cannot be deducted. Mr.Mittal submits that the amount of TDS shall be deposited in the Executing Court within a period of two months from the date of receipt of certified copy of this order. In case it is not deposited, it shall include the element of interest as indicated in the final decree.

I do not intend to differ with the findings rendered by the Courts below in passing the final decree. Instead of imposing costs, I issue a warning that the department should be careful while taking the decision of filing the appeals in the higher courts.

Appeal stands dismissed.

August 26, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

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