IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7754 of 2014 (O&M)
Date of decision : 21.03.2016

Sarabjit Kaur and others

...Appellants

Versus

M/s Punjab Kashmir Finance Ltd. and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. A.S. Gill, Advocate for the appellants.

Mr. Rohit Sud, Advocate for the respondent No.1.

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AMIT RAWAL, J. (Oral)

CM No.20663-CII of 2014

For the reasons stated in the application, which is duly supported by an affidavit, delay of 327 days in filing the appeal is condoned.

Application is allowed.

Main Case

The appellant is aggrieved of the order, whereby application filed by M/s Punjab Kashmir Finance Ltd. under Section 9, has been allowed restraining the respondent/Borrower from alienating his share in the land as mentioned in the headnote of the application and qua other respondents, has been dismissed.

Mr. A.S. Gill, learned counsel appearing on behalf of appellants submits that pith and substance of the order shows that every finding is in favour of the appellant but yet Objecting Court allowed the application. De hors of the fact that the award has been passed and objection under Section 34 of the Arbitration and Conciliation Act was dismissed and FAO in that regard is stated to be pending.

Mr. Rohit Sud, learned counsel appearing on behalf of respondent No.1 submits that present appeal has become infructuous owing to the passing of the award, much less, dismissal of the objection, thus, no cause of action survives.

I have heard learned counsel for the parties and appraised the paper book and of the view that order under challenge is not sustainable. Para 7 of the order reads thus:-

> *"7. To my mind the contentions of the applicant are devoid of any merit because another arbitration application bearing No.ARB/0200037/2010 titled M/s Punjab Kashmir Finance Ltd. Vs. Sukhminder Singh's is also pending in this Court for today. In that application, the applicant had sought for appointment of receiver for the vehicles bearing registration No.HR-37B-5813, HR-37B-5913 & HR-37B-9513 (Eichers). That application has been duly contested by the Respondent and in that application receiver was appointed, who had taken the above said truck in his custody. In that application, it has been brought on the file by Respondent Sukhminder Singh that he is paying installments regularly but the same has*

been misused by the applicant company. It has been brought on the file by the Respondent that he had made payment of Rs.22 Lacs till now. In support of his contentions he has placed on the file large number of receipts issued by the applicant company for payment of installments. It has also been brought on the file by the Respondent that in the year 2007 truck bearing No.HR-3720-9513 met with an accident which caused total loss and even driver of the said truck died in the said accident. The truck was sent for repair to Guru Nanak Workshop and Respondent informed the applicant and requested it to report the matter to the Insurance Company and lodge insurance claim of truck and driver and sent the surveyor for estimating the extent of loss but they had not done so for the reasons best known to them. It has also been brought on the file by the Respondent that even after expiry of considerable period neither the applicant sent its representative nor sent any surveyor for estimating the loss and damage caused to the vehicle in the accident. Even after passing of 36 months neither the applicant nor any surveyor of Insurance Co. had come to assess the loss and vehicle is still lying in the said workshop. The death claim of the driver has also not been given. It has also been brought on the file that despite this the respondent did not stop payment of installments and used to pay regular installments of remaining two trucks bearing truck No.HR3720-9513 was not running on the road and due to negligence and default on the part of the applicant, loss has been suffered by the Respondent. It has also been paid by him were illegally adjusted by the applicant against the installments of damaged vehicle and huge amount has been created in the books of account by the applicant against the Respondents by putting false and fake expenses *and over installments and over due charges. This fact is clear from the statements of account brought on the file by the applicant. It seems that all this has been done by the applicant company to put these two vehicles in default category so that the applicant can grab all the vehicles in default category so that the applicant can grab all the vehicles. It is further brought on the file by the Respondent that the applicant is intentionally getting damaged truck No.HR-3720-912 insured from the Insurance Co. despite knowing the fact that said vehicle is un-assessed lying in total loss condition in the above said workshop for more than three years and illegally put the insurance charges upon the Respondent. Due to negligent attitude of the applicant, the Respondents had to suffer huge loss. From this fact, it can be safely said that it is not the Respondent, who is defaulter, but it is the applicant who had forced the Respondent into debt trap despite the fact that the Respondent had been regularly paying installments. It shows that both these petitions are mis-use of process of law because in petition No.ARB-0200037/2010 applicant got appointed receiver and took the vehicle in their custody and they had not taken care of the vehicles and all the trucks had been damaged and in the present case Punjab Kashmir Finance has filed the present application for restraining respondent Sukhminder Singh from alienating his share in the land, as detailed in the head note of the application. It is just double jeopardizes, which cannot be allowed. No doubt, the applicant company is entitled to recover the remaining amount but they cannot be allowed to mis use the process of law. As such the Respondent no.1 is restrained from alienating his share, as detailed in the head note of the application till payment of remaining amount whereas petition against Respondents No.2 and 3* *stands dismissed. File be consigned to the record room."*

Tenor of the order shows that every observation is against the respondent but Addl. District Judge has assigned no reasons in declining the relief and granted in favour of respondent-M/s Punjab Kashmir Finance Ltd.. Even otherwise such relief cannot be granted. At the best remedy if any for the respondent is to seek execution of the award in accordance with law i.e. they are at liberty to file execution application which is stated to be pending.

Keeping in view the aforementioned facts and circumstances, order passed in the application under Section 9 is not maintainable and is hereby set aside.

Appeal stands allowed.

21.03.2016 **(AMIT RAWAL)**
pawan **JUDGE**