

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

C.R. No.668 of 2017 (O&M)

Date of Decision: 01.02.2017

Darshan Tyagi

....Petitioner

Versus

H.D.F.C Bank Limited and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. K.S. Jetley, Advocate
for the petitioner.

DAYA CHAUDHARY, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India for quashing of impugned order dated 01.11.2016 passed in Misc. Application under Sections 151 and 153 CPC in Civil Suit No.2 of 2012 titled as **HDFC Bank Limited vs Darshan Tyagi and others** by the Court of Additional Civil Judge (Senior Division), Ambala.

Briefly, the facts of the case, as made out in the petition, are that the petitioner was defendant before the trial Court and HDFC Bank filed a Civil Suit for recovery of an amount of ₹ 1,90,52,089.33 including interest calculated upto 30.11.2011 along with costs as well as future interest @ 12% p.a till realization against the petitioner and others. Written statement to the suit was filed by the petitioner. Suit was decreed vide judgment and decree dated 12.08.2016.

The petitioner, being aggrieved by said judgment and decree dated 12.08.2016 passed by the trial Court, filed an application for recalling of said judgment on account of error apparent on record. The said

application was dismissed vide order dated 01.11.2016 which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the judgment and decree was obtained by way of fraud as certain documents and transactions which were having relevancy in deciding the claim were not brought to the notice of the Court. Learned counsel also submits that the judgment and decree obtained by playing fraud on the Court, is nullity and non est in the eyes of law. The impugned order has been passed only on the ground that remedy of appeal was available and Court was not to review its own judgment. It is also mentioned in the impugned order that the application was moved under Sections 151 and 153 of the Code of Civil Procedure, whereas, it should have been moved under the relevant provisions of the Code of Civil Procedure.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order dated 01.11.2016 passed by the learned Additional Civil Judge (Senior Division), Ambala.

In the impugned order, it has been mentioned while dismissing the application by learned Additional Civil Judge (Senior Division), Ambala that the application has not been moved under relevant provision. The application was moved under Sections 151 and 153 of the CPC.

Admittedly, the suit filed by HDFC Bank was decreed vide judgment and decree dated 12.08.2016. As per case of the plaintiff-Banking Company, it was carrying on the banking business under the Banking Regulation Act, 1949, incorporated under the Companies Act, 1956. Defendant-petitioner was in the employment of the predecessor of the plaintiff-bank and after its merger, he became employee of the plaintiff-

bank. Defendant nos.2 and 3 were also temporary employees of the bank, who were working on contractual basis . Their services came to an end in the month of February 2008 and August 2008, respectively. Defendant No.1 was working as Deputy Cluster Head Ambala and defendant Nos.2 and 3 were working with him in Agriculture Section. Some complaint of cheating was made against the defendants by the customers alleging that they had misappropriated and embezzled their money for their own benefits by forging the bank records. A criminal case was also registered in the form of FIR No.13 dated 16.01.2009 under Sections 405/409/420/467/471 and 120-B IPC against all the defendants and they were arrested and challaned for said offences. It was also the allegation against them that they embezzled an amount of ₹1,90,52,089.33 including interest upto 30.11.2011. In the written statement of the suit, the allegations were denied stating therein that the petitioner-defendant had no role to collect instalments directly from the borrowers as there was a separate collection wing for monitoring the defaulters regularly and periodically. Ultimately, the suit filed by the plaintiff-Bank was decreed with costs and the plaintiff-Bank was held entitled to a decree for recovery of said amount along with interest from petitioner-defendant No.1. Petitioner moved Misc. Application under Sections 151 and 153 of CPC for recalling of judgment and decree dated 12.08.2016 by raising certain grounds that the judgment and decree was obtained by the plaintiff-bank by fraud as objections filed by petitioner-defendant No.1 were not considered. The judgment and decree obtained by playing fraud with the Court is nullity and non est in the eyes of law. It was mentioned that there were error apparent on the record as mentioned in para No.5 and its sub paras, which have not been discussed by the Court. It was

mentioned that the Court did not read Exhibit P-3, Exhibit P-10 and P-11 and the statement of DW-1 in between lines or read casually. It was also mentioned in the application that the observation made by the trial Court are perverse in law and those cannot stand when Exhibit P-2, Exhibit P-3 and Exhibit P-10 plus the statements are read in between lines. The relevant portion of the impugned order is reproduced as under :-

*“6. The present application has been moved under Sections 151 and 153 of the Code of Civil Procedure. Under Sections 151 and 153 of the Code of Civil Procedure, the Court cannot review its own judgment or sit in appeal against its own order. However, there is a specific provision under Section 114 of the CPC, for review of judgment and the present application has not been moved under the relevant provision of the Code of Civil Procedure. The application in hand is not maintainable. Learned counsel for the applicant-defendant No.1 has placed reliance upon the case law **2012(1) Civil Court Cases 159 (Delhi) (Supra)**. The aforesaid case law cited by learned counsel for the applicant-defendant No.1 is not applicable to the facts and circumstances of the present case. Since the present application is misconceived, false and frivolous, abuse of process of law thus is, hereby, dismissed with exemplary cost of Rs1,000/- to be deposited in District Legal Services Authority, Ambala. A copy of this order be kept in the main case file and thereafter, the main case file be sent back to record room. Application file be consigned to the record room after due compliance.”*

On perusal of said observation made in para No.6 of the impugned order, the application for recalling has been dismissed only on the ground that specific provisions have not been mentioned in the

application and the Court cannot review its own judgment or sit in appeal against its own order. The application has been dismissed being not maintainable.

It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that the Court should not take the technical objections in declining the prayer even if there are specific provisions. Moreover, the Court is having inherent powers under Section 151 CPC and the application should have been considered. Neither it has been mentioned in the impugned order that the Court was having powers to review its order in case some mistake is apparent on record. Without considering the contents of the application, the same has been dismissed on technical ground that the Court cannot review its own judgment. Inherent powers can be used by the Court if that is necessary to meet out the ends of justice or to prevent the abuse of process of Court. The powers can also be exercised if certain reasons are there and Court comes to the conclusion that there is a mistake/error apparent on record.

In the present case, no finding has been given by the trial Court as to whether there is no error apparent on record. Simply, it has been mentioned that the application has been moved under the wrong provisions and the Court cannot review its own judgment.

By considering the submissions made by learned counsel for the petitioner and on perusal of impugned order dated 01.11.2016, the present petition deserves to be allowed and the impugned order dated 01.11.2016 is set aside with a direction to the Additional Civil Judge (Senior Division), Ambala to reconsider the application afresh within a

period of two weeks from the date of receipt of certified copy of the order and pass necessary order in accordance with law.

01.02.2017
gupreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes