IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6707 of 2017 (O&M)
Date of Decision: 02.11.2017

Karan Sood (NRI) ... Petitioner

Versus

M/s Kay Pee Industries and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Hittan Nehra, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Sr. Advocate,
with Mr. Mukul Aggarwal, Advocate,
and Mr. Saurabh Arora, Advocate,
for the caveator/respondents.

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RAJIV NARAIN RAINA, J.

1. Heard the petition for final disposal with respondents on caveat.

2. The heft of the paper-book is completely disproportionate to the narrow point which is actually involved and is no longer in controversy in view of the order dated March 30, 2017 passed in a review application in Civil Revision No.2370 of 2016 titled *Karan Sood v. M/s Key Pee Industries and others* and the further order dated May 04, 2017 by co-ordinate bench. The order dated March 30, 2017 has material bearing on the case and has been concealed in the petition and the same was brought to the notice of this Court during the hearing when Mr. Ashok Aggarwal, learned Senior counsel assisted by Mr. Mukul Aggarwal, and Mr. Saurabh Arora, Advocates produced the order to the great discomfort of the petitioner and

to his peril. These two orders i.e. March 30, 2017 and May 04, 2017 are reproduced below one after the other:-

> *"**<u>C.M. No.7201-CII of 2016</u>***
>
> *Learned senior counsel appearing for the applicant-petitioner submits that against the order of dismissal of the revision petition, the applicant-petitioner had preferred an SLP before the Hon'ble Supreme Court which was dismissed and thereafter had availed the remedy of suit and did not envision that the defendant in the newly instituted suit would come up with the plea of provisions of Order 7 Rule 11 CPC. It is in this backdrop of the matter, delay of 357 days occurred in filing the review application.*
>
> *I am of the view that the explanation given above is fair and just. Resultantly, the delay of 357 days in filing the review application is condoned.*
>
> *Application is allowed.*
>
> ***<u>C.M. No.7202-CII of 2017</u>***
>
> *Application is allowed.*
>
> *Exemption from filing certified copies of Annexures P-1 to P-6 is granted and the same are taken on record.*
>
> ***<u>R.A. No.44-CII of 2017</u>***
>
> *The prayer in the application is for modification of the order dated 01.04.2016 on the premise that the suit for specific performance on behalf of the applicant-petitioner before the trial Court under Order 22 Rule 10 CPC has been filed and objection has been taken on behalf of the defendant-respondent by taking the aid of provisions of Order 7 Rule 11 CPC. The basis of the application moved under Order 7 Rule 11 CPC is on account of observations given by this Court with regard to provisions of Section 19(2)(g) of the Partnership Act, 1932. In my view, such an application moved shall be decided by the trial Court uninfluenced with the findings rendered by this Court.*
>
> *The review application is disposed of with the above observations.*
>
> *March 30, 2017"*

> *"Prayer in the application is for correction/modification of the order dated 30.03.2017, whereby, due to inadvertence, presence of Mr. Pankaj Jain, Advocate for Mr. Hittan Nehra, Advocate for the applicant-petitioner has wrongly been mentioned instead of Mr. Puneet Bali, Senior Advocate with Mr. Hittan Nehra, Advocate and further at second page of the order, the provisions of Order 22 Rule 10 CPC need to be deleted.*
>
> *In view of the aforementioned, the presence of Mr. Puneet Bali, Senior Advocate with Mr. Hittan Nehra, Advocate is marked and at second page of the order, the provisions of Order 22 Rule 10 CPC are deleted.*
>
> *The application stands allowed.*
>
> *Registry is directed to make necessary correction in the order dated 30.03.2107.*
>
> *May 04, 2017"*

3. The orders in RA No.44-CII of 2017 in CR No.2370 of 2016 are taken on record as Mark 'A'.

4. The main petition i.e. CR No.2370 of 2016 filed by the present petitioner Karan Sood (NRI) was dismissed on April 01, 2016 by Amit Rawal, J. The petitioner had then approached this Court against an order of the trial Court dismissing his application under Order 1 Rule 10 of the CPC in a suit seeking specific performance of an agreement to sell dated March 12, 2009. The second grievance in the case was that the trial Court wrongly allowed the application for substitution of the plaintiff with the applicant in the application under Order 22 Rule 10 CPC on the point that erstwhile partners had retired from the partnership w.e.f. January 15, 2014 and the new partners/applicants had joined the partnership. The operative part of the order is reproduced for ready reference:

> *"Though during the course of arguments, he submits that there is custom usage between the erstwhile partner namely Vinayak Sood and his father. Vinayak Sood had been*

paying all the taxes on the part of the firm, therefore, he was well within his right to enter into agreement to sell in respect of property belonging to the firm and, therefore the prohibition carved out in Sub-Section 2 of Section 19 of the Partnership Act is not applicable. I am afraid that aforementioned contention is not sustainable for the reason that no custom usage was pleaded or placed on record before the trial Court. For the sake of brevity, Section 19 (2) of the Partnership 1932 is extracted herein below:-

"19. Implied authority of partner as agent of the firm-

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to----

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm or

(h) enter into partnership on behalf of the firm."

I have also gone through the agreement to sell dated 30.09.2013 it is signed by one of the partner where property was in ownership of firm and their embargo of Sub Section 2 of Section 19 would be applicable as there is no consent of other partner. In case the petitioner is aggrieved, he is well within his right to seek specific performance of his agreement to sell thereafter seek clubbing but not in the manner and mode which has been adopted. Third party claiming separate interest cannot thrust upon as the plaintiff, who is dominus litus. Moreover, the allowing of the application under Order 22 Rule 10 at the behest of the aforementioned person Kunal Aggarwal, Rajan Gupta, is

> *on the premise that erstwhile partners Vinayak Sood and his father retired from the partnership firm w.e.f. 15.01.2014, therefore, they are having subsisting right and thus aforementioned persons have the right to pursue the remedy seeking enforcement of the agreement to sell dated 12.03.2009.*
>
> *Keeping in view the aforementioned facts and circumstances and observation hereinabove, impugned order is affirmed.*
>
> *Revision petition stands dismissed."*

5. The main plank of challenge to the impugned order in the present petition is that this Court vide order dated April 01, 2016 reproduced above has specifically given a right to seek specific performance of the agreement to sell dated September 30, 2013 to the petitioner Karan Sood and to seek clubbing of Civil Suit No.9 dated April 05, 2013 titled M/s Kay Pee Industries and v. M/s JMD Limited and others, pending in the Court of Sh. Rajinder Singh, Civil Judge (Junior Division), Ludhiana and Civil Suit No.4243 of 2016 titled Karan Sood v. M/s Kay Pee Industries, M/s JMD Limited & M/s Aarpee Logistics Pvt. Ltd. and three other proforma respondents (suit for specific performance) in which the present impugned order dated August 23, 2017 has been passed by the Civil Judge (Junior Division), Ludhiana dismissing the application under Section 151 CPC declining clubbing of the two suits.

6. The suit filed in 2013 has reached the culminating milestones in the life of a suit while the present suit is at its initial stage. The application filed nder Section 151 CPC was contested by the respondents claiming it to be absolutely misconceived since the evidence in the suit filed by M/s Kay Pee Industries is almost over and done with barring examination of some formal witnesses etc. The respondents claimed that the suit filed by Karan

Sood is based on a forged and fabricated document which is otherwise also illegal as already observed by the High Court. It was asserted before the trial Court that the plaintiff applicant is trying to join hands with his father and the duo of father and son have created a document in order to defeat the rights of the answering defendant. The dispute relates to substantial and valuable property. If the two suits are clubbed it will cause immense damage to the respondents herein and it will indefinitely prolong the suit which is almost mature for final decision. The application amounts to a back door entry by the plaintiff in the suit filed by defendant No.1, observed the Court below and rightly so.

7. Moreover, application by plaintiff Karan Sood in the suit of 2013 praying for impleadment as parties has already been dismissed. The High Court has dismissed the revision petition and the Special Leave to Appeal before the Supreme Court has not been granted and the SLP stands dismissed. The learned trial Court has noticed the order dated April 01, 2016 and especially the part underlined in the order reproduced above.

8. Mr. Ashok Aggarwal, learned Senior counsel appearing for the respondents submits that the High Court order can not suffer interpretion as suggested by Mr. Hittan Nehra that the order contains a pre-determined path ordained by Court and carries a right-creating direction to the trial Court for clubbing by way of a direction or that the suit for specific performance of agreement had to be filed come hail or snow. Mr. Nehra's submission is that the Court said so. This is absurd reasoning not forthcoming from the order. The Courts are not advisors to litigants or what to do in future litigation.

9. I agree with Mr. Aggarwal that the order cannot be read in the

manner in which Mr. Nehra tries to read it and on the other hand the learned senior counsel is well within its right to argue that the orders passed in review by this Court on March 30, 2017 have clarified the entire position by recording that any such application shall be decided by the trial Court uninfluenced by the findings rendered by this Court in the order dated April 01, 2016. As a horror of horrors the same has been kept concealed from this Court even when the order was passed in the presence of Mr. Pankaj Jain, learned counsel appearing for Mr. Hittan Nehra, learned counsel for the review applicant.

10. This conduct is reprehensible and amounts to suppression of material fact and concealment of a judicial order when not annexed with the file or adverted to in the pleadings and the petition is consequently liable to be dismissed on this short ground alone. When the order was passed by brother Amit Rawal, J. on May 04, 2017 Mr. Nehra appeared in the application for correcting the name of Senior counsel who actually appeared on that date.

11. The petitioner has clearly overreached the Court and tried to extract an order unwittingly from Court by hiding the subsequent order and in this manner obstructing the administration of justice. But the situation has been saved only by reason of appearance of the respondents on caveat.

12. As a matter of fact in the order dated April 01, 2016 this Court had clearly voiced the settled principle in law that third party claiming separate interest cannot thrust himself upon the plaintiff, as the plaintiff is the dominus litus of his suit.

13. The Civil Judge (Junior Division), Ludhiana has done well in

dismissing the application under Section 151 CPC and refusing to club the two suits vide impugned order and in this process adjourning the case for filing of reply to the defendant No.1's application under Order 7 Rule 11 of the CPC.

14. In view of the conduct of the petitioner and the active concealment of judicial orders having direct bearing on the lis, this petition is dismissed with ₹1 lakh as costs to be paid to the respondents by the petitioner on the next date of hearing fixed before the trial Court at Ludhiana.

15. Caveat is discharged.

16. However, nothing said in this order will be read as an expression of opinion on the merits of the suit for specific performance from where this petition arises and the learned trial Court would remain uninfluenced by any observations made herein since they were only with a view to decide upon order passed in an application under Section 151 CPC for clubbing of the two suits which prayer has been suitably declined by the trial Court.

17. Orders reserved are pronounced today.

(RAJIV NARAIN RAINA)
JUDGE

02.11.2017
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Whether speaking/reasoned Yes

Whether reportable No