108 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 13 of 2019
DECIDED ON: JANUARY 09, 2019

ASEEM KUMAR SINGLA

.....PETITIONER

VERSUS

ADARSH KUMAR SINGLA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Aakash Singla, Advocate
for the petitioner.

*****

AVNEESH JHINGAN, J (ORAL)

The order dated 21.12.2018 passed by learned Civil Judge (Jr. Division), Panchkula (hereinafter referred to as 'learned Trial Court') has been assailed in the present civil revision petition being aggrieved of the direction to affix ad-valorem court fees to the extent of 1/3rd total value of FDR's.

The facts in brief are that the petitioner/plaintiff (hereinafter referred to as 'petitioner') filed a civil suit against the respondents/defendants (hereinafter referred to as 'respondents'). In the suit following prayers were made:-

> "Suit for declaration to the effect that the plaintiff and defendants No.1 and 2 are co-owners in possession to the extent of 1/3rd share each of the following immovable properties:-
>
> a) Residential House measuring 300 meters, Double Storey bearing House No. 791, Sector 8, Panchkula;

b) Booth No. 108 measuring 22.6875 square meter, Sector 2, Urban Estate, Kurukshetra:

c) Plot No. 609 measuring 352-30 meter, Sector 2, Urban Estate, Kurukshetra;

and are entitled to get a transfer in their names in the record of the defendants No.4 to 6:

AND

Further suit for separate possession by partition by metes and bound of 1/3rd share of the plaintiff in the above referred immovable properties:

AND

Further suit for declaration that the plaintiff is entitled to 1/3rd share of moveable and immovable assets of a business concern Singla Medicare, Sole proprietorship concern of Surinder Kumar Singla, since deceased, carrying on business in Cabin No. 5, First Floor, SCO No. 3, Sector 11, Panchkula;

AND

Further suit for declaration that the defendant No.3 is not entitled to carry on the business in the name and style of Singla Medicare, claiming herself to be the sole proprietor of the business concern or by using the licenses granted in the name of Singla Medicare by the Senior Drugs Control Officer, Ambala Zone and by the Sales Tax/VAT Authorities and other Authorities and is not entitled to use the TIN No. 06102501530 and ST No. PKL/HGST/CST/1530 issued by Excise and Taxation Department, Haryana Panchkula and PAN No. AQBPS0742G in name of Sh. Surinder Kumar Singla, sole proprietor of Singla Medicare since deceased;

AND

For rendition of accounts of the moveable and immovable assets of Singla Medicare as on 09.01.2015 i.e. the date of death of its proprietor Sh. Surinder Kumar Singla and the subsequent profits earned by the defendant No.3 wrongly claiming herself to be the sole proprietor of the business concern;

AND

Further suit for declaration that the plaintiff is entitled to 1/3rd share of the FDRs in the name of business concern M/s Singla Medicare, detailed as under:

i) DDP (FDR) A/C No. 50115852692, DOM 06.08.2015, date of premature withdrawal- 26.06.2015, premature amount released- ₹124855/- by transferring the amount to current (cash credit limit) A/C No. 20159098358 of M/s Singla Medicare;

(ii) DDP (FDR) A/C No. 50197680689, DOM 31.05.2016, date of premature withdrawal- 26.06.2015, premature amount released- ₹27,703/- by transferring the amount to current (cash credit limit) A/C No. 20159098358 of M/s Singla Medicare;

(iii) DDP (FDR) A/C No. 50205794146, DOM 31.05.2016, date of premature withdrawal- 26.06.2015, premature amount released- ₹1,08,749/- by transferring the amount to current (cash credit limit) A/C No. 20159098358 of M/s Singla Medicare;

(iv) DDP (FDR) A/C No. 50048793820, DOM 21.01.2016, date of premature withdrawal- 11.08.2015, premature amount released- ₹1,40,435/- by transferring the amount to current (cash credit limit) A/C No. 20159098358 of M/s Singla Medicare;

(v) DDP (FDR) A/C No. 50039940889, DOM 31.10.2015, date of premature withdrawal- 11.08.2015, premature amount released- ₹68,591/- by transferring the amount to current (cash credit limit) A/C No. 20159098358 of M/s Singla Medicare;

AND

Further suit for declaration that the plaintiff is entitled to 1/3rd share of the following FDRs:-

(A) Allahabad Bank, SCO 12-A, Sector 11, Panchkula having “No Nomination Registered” all encashed premature after death with following details:-

(i) DDP (FDR) A/C No. 50090064624 (Lying under lien against OD Current A/c No. 50210180253), in joint name with Miss Aprajita Singla, DOM 23.03.2016, date of premature withdrawal –

23.05.2015, premature amount released- ₹4,69,070/-by transferring the amount to Saving Account No. 20159146268 of Mr. Surinder Kumar Singla held in the joint name with Ms. Aparjita Singla;

(ii) DDP (FDR) A/C No. 50057300143 (Lying under lien against OD Current A/c No. 50210180253), in joint name with Miss Aprajita Singla, DOM 20.06.2015, date of premature withdrawal – 23.05.2015, premature amount released- ₹20,16,874/- by transferring the amount to Saving Account No. 20159146268 of Mr. Surinder Kumar Singla held in the joint name with Ms. Aparjita Singla;

(iii) DDP (FDR) A/C No. 50074884286 (Lying under lien against OD Current A/c No. 50210180253), self to operate, DOM 21.11.2015, date of premature withdrawal – 23.05.2015, premature amount released- ₹1,91,660/-by transferring the amount to Saving Account No. 20159146268 of Mr. Surinder Kumar Singla held in the joint name with Ms. Aparjita Singla;

(B) Saving Accounts:-

Allahabad Bank, SCO 12-A, Sector 11, Panchkula

(i) Saving Account No. 20159139318 in the joint name with Mrs. Bimla Devi;

(ii) Saving Account No. 20159146268 in the joint name with Ms. Aparjita Singh;

(C) State Bank of Patiala (Now State Bank of India), SCO-414, Sector 8, Panchkula, Saving (Pension) Account No. 55116529355; (PPO-6902/OS/PB).

(D) Bank Locker No. 133/67 in the joint name of Surinder Kumar Singla and Ms. Aparjita Singla defendant No.2 at Union Bank of India, SCO No. 389, Sector 8, Panchkula.

(E) Bank Locker No. 24 in the joint name of Surinder Kumar Singla with Adarsh Kumar Singla at Union Bank of India, SCO No. 389, Sector 8, Panchkula.

AND

For rendition of account, directing the defendants to pay the amount of share of the plaintiff, which the defendants have illegally withdrawn from the bank at the back of the plaintiff and the amounts which are still lying deposited in the Bank in the above referred bank accounts/FDRs and Lockers.

AND

For permanent injunction, restraining the defendants from alienating above referred properties in any manner i.e by way of sale, mortgage, lease, gift, transfer deed or in any other mode of transfer or raising any loan or creating any kind of encumbrance/charge and further for restraining the defendants from carrying on business of Singla Medicare on the licenses by misusing the TIN No. 06102501530 and ST No. PKL/HGST/CST/1530 issued by Excise and Taxation Department, Haryana, Panchkula and PAN No. AQBPS0742G in name of Sh. Surinder Kumar Singla, sole proprietor of Singla Medicare since deceased.

During the pendency of civil suit i.e. after issuance of notice, respondents moved an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 raising objection that the petitioner has not affixed the ad-valorem court fee on the plaint. The application was opposed by stating that the relief sought in the suit is for declaration, rendition of accounts and permanent injunction.

The learned trial Court has rightly restricted itself to the plaint and opined that apart from declaration, rendition of accounts and permanent injunction, the petitioner had also claimed the relief of separate possession by partition by metes and bounds of 1/3rd share of the petitioner. Further, there was a relief claimed with regard to 1/3rd share of FDRs amounting to ₹ 31,47,937/-.

The learned trial Court held that the petitioner is required to affix the court fees to the extent of 1/3rd of the total amount of FDRs in which he has sought his share. It was further held that with regard to rendition of accounts, the court is yet to ascertain the amount, therefore, no court fees for rendition of accounts is required to be affixed.

Aggrieved of the order passed by learned trial Court the present civil revision petition has been filed.

Learned counsel for the petitioner argues that the suit is only with regard to rendition of accounts and it is only on the final decision that it would be evident that what amount he is entitled to receive.

The contention raised by learned counsel for the petitioner lacks merit.

It has wrongly been projected that suit is merely for declaration. From the perusal of prayer, it is evident that a direction has also been sought to the respondents to pay the share of the petitioner, which was withdrawn from the bank by the respondents and the amounts which are still lying deposited in the bank accounts/FDRs and lockers.

It is pertinent to note that father of the petitioner was carrying on a proprietorship concern, which was dealing in medicines. After the death of the father of the petitioner, there arose a dispute between the relatives with regard to the share in the business as well as in the property. Learned counsel for the petitioner during the course of arguments has admitted the fact that some of the FDR's are not in the name of proprietorship concern. 1/3rd share being sought includes the FDRs, which are in the name of the deceased (father). In such circumstances, it cannot be said that there is no specified amount, as on date.

The amounts of FDRs in the name of deceased (father) and in the name of business concern are specifically clear. It has been wrongly mentioned that it is merely a suit for rendition of accounts. From the prayer, it is evident that not only declaration but direction for recovery of amount has also been sought.

The contention of learned counsel for the petitioner that the actual amount would only be forthcoming after rendition of accounts does not enhance the case. The learned trial Court while passing the impugned order dated 21.12.2018, has taken care of the said aspect and it has been ordered that no court fee at this stage is required to be paid for un-ascertained amount, which would be ascertained on rendition. The petitioner has only been directed to affix court fee on the amount which is already ascertained or specified.

No interference is called for in the impugned order.

Dismissed.

Learned counsel for the petitioner, at this stage states that the case is fixed for 11.01.2019 before the trial Court, he may be granted 15 days more time to affix the court fee. The said prayer is allowed and petitioner is granted 15 days from today to affix the court fee.

JANUARY 09, 2019 **(AVNEESH JHINGAN)**
sham **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No