IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.5569 of 2017 (O&M)
Date of Decision.09.04.2019

Ravi Gupta ...Petitioner

Vs

Vipin Gupta and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for respondent No.1.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order whereby the application of the petitioner for production of following documents has been dismissed.

"a) Copy of the balance sheet deposit with SBl bank along with stock statement;

b) Copy of the certain documents i.e. purchaser bills, sales tax bills, expenses bills, bank statement and other supporting vouchers for justification of the entries.

C) Stock register and valuation due to inability of sales bills and purchaser bills,the balance of HDFC Bank not shown in the balance sheet as on 31.03.2009 and 31.03.2010. Sales and Purchaser figures in the balance sheet are not reconciled with the sales tax returns since no data is provided;

d) Bank ledger of SBI Bank for the period 01.04.2010 to 31.08.2010 not provided,balance sheet as on 31.03.2007 not provided for checking the pending balance.

e) Cash book not provided and only day book is provided.

f) Balance sheet and statement submitted with the bank are not provided to co-relate audited balance sheet."

Learned counsel appearing on behalf of the petitioner submitted that the petitioner-plaintiff filed the suit for rendition of accounts against the respondents, in view of dissolution of partnership firm constituted vide partnership deed dated 3.12.2006 and the partners had share to the extent 25% each. The suit was filed in the year 2013. During the pendency of suit, application for production of following documents was submitted which was allowed vide order dated 12.09.2016.

"a. Stock register for the year 2007-08, 08-09, 09-10 and 2010 to 30.08.2010

b. cash book for the year 07-08 (page no.1 to 114), 08-09 (page no.1 to 143), 09-10 (1 to 163) and 2010 till 30.08.2010.

c. Ledger books for the year 07-08(page no.1 to 316), 08-09(page no.1 to 263),09-10 (page no. 1 to 363) and 2010 to 30.08.2010

d. statement of State Bank of India w.e.f. 01.01.2007 to 30.08.2010, pertaining to firm

e. Statement of HDFC bank w.e.f. 01/01/2007 till

30.08.2010,pertaining to firm.

f. Income tax returns for financial year 2006-07, 07-08, 08-09,09-10 and 2010-11

g. Sales tax return w.e.f. 30.06.2007, 30.09.2007, 31.12.2007, 31.03.2008, 30.06.2008, 30.09.2008, 30.12.2008, 31.03.2009, 30.06.2009, 30.09.2009, 31.12.2009, 31.03.2010.

h. Vat form-1 w.e.f.01/04.2010 to 30.06.2010.

However when the defendant led in evidence, it was realized that the documents were not complete and documents sought to be produced by way of second application have been erroneously rejected, on the ground, that plaintiff had been blowing hot and cold at the same time as on one hand stated that documents were not supplied when the earlier application was filed but on the other hand, in affidavit stated was supplied with all the documents. Defendants-respondents did not categorically deny the averments in para 4 by asserting that all the documents were supplied. Court below in such circumstances ought to have taken the aid of provisions of Section 114 (g) of the Indian Evidence Act.

Learned counsel for the respondents-defendants submitted that the second application would not be maintainable, which is hit by doctrine akin to *res judicata.* The application is bereft of the reasoning as to how and under what circumstances, previous documents were not in accordance with the request of the applicant.

I have heard learned counsel for the parties, appraised the paper book and of the view that on juxtaposition of the documents referred to in the previous order and as well as present documents, few are *sine qua non* for adjudication of the suit for rendition of accounts as the ousted partner does not have any possession or control over the firm. The dominion in other words is of the firm. It would be in the fitness of things to extract para 4 of the application and corresponding para of the reply, for, contents of para 4 were emphatically denied.

> *"4. That the defendant No.1 despite the directions given by this Hon'ble Court has only produced document which are incomplete and the chain of the documents are missing in the following manner:-*
> *a) Copy of the balance sheet deposit with SBl bank along with stock statement;*
> *b) Copy of the certain documents i.e. purchaser bills, sales tax bills, expenses bills, bank statement and other supporting vouchers for justification of the entries.*
> *C) Stock register and valuation due to inability of sales bills and purchaser bills,the balance of HDFC Bank not shown in the balance sheet as on 31.03.2009 and 31.03.2010. Sales and Purchaser figures in the balance sheet are not reconciled with the sales tax returns since no data is provided;*
> *d) Bank ledger of SBI Bank for the period 01.04.2010 to 31.08.2010 not provided,balance sheet as on 31.03.2007 not provided for checking the pending balance.*
> *e) Cash book not provided and only day book is provided.*
> *f) Balance sheet and statement submitted with the bank are not provided to co-relate audited balance sheet."*
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> ***Reply***
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> *4. That para No.4 of the application is absolutely wrong and hence vehemently denied. The documents have*

already been supplied to the applicant-plaintiff in compliance of the order passed by this Hon'ble Court on 12.09.2016. So, beyond the said order, the plaintiff has got no right to demand any other document at the fag end of the trial."

The order under challenge, in such circumstances, is not sustainable and bereft of reasoning. In case, defendants did not supply such documents, Court could have drawn adverse inference as per provisions of Section 114(g) of the Indian Evidence Act.

The order under challenge is set aside and the revision petition is allowed in the above terms, subject to payment of costs of ₹5000/- which shall be condition precedent.

(AMIT RAWAL)
JUDGE

April 09, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No