In the High Court of Punjab and Haryana at Chandigarh

CR-8555-2016 (O&M)
Date of Decision: March 07, 2019

Mahavir Singh and others

... Petitioners

Versus

Aggarwal Estates Pvt. Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Siddharth Mittal, Advocate,
for the petitioners.

Mr. M.S. Rana, Advocate,
for respondent No.5.

Amit Rawal, J.(Oral)

CM-26050-CII-2016

For the reasons mentioned in the application, the same is allowed and legal representatives of petitioner no.2 – Ram Chander, who expired on 08.08.2015, as per the details given in para no.2 of the application, are impleaded.

CR-8555-2016

Present revision petition is directed against the impugned order dated 24.12.2015 (Annexure P/1) whereby request of the petitioners-defendants in a civil suit for releasing the amount along with interest has been rejected.

Mr. Siddharth Mittal, learned counsel, appearing on behalf of the petitioners, submitted that M/s Aggarwal Estate Pvt. Ltd – respondents no. 1 to 4 being the plaintiffs instituted the civil suit for declaration and mandatory injunction against the defendants for withdrawal of the amount of fixed deposit bearing No. 782849 dated 12.06.2000 along with interest credited to the saving bank account in the name of defendants in Punjab and Sind Bank, Gurgaon on the premise that the defendants did not have any right and title on the afore-mentioned amount as the defendants violated the terms of agreement under which the amount was deposited by the plaintiff, with further relief of mandatory injunction directing the Manager of Punjab and Sind Bank to release the fixed deposit and saving account with upto date interest to the plaintiffs. In the afore-mentioned suit, the petitioners filed written statement and set up a counter claim and ultimately, a settlement (Annexure P/8) was arrived at between the parties whereby the trial Court vide order dated 18.12.2004 disposed of the suit in terms of the compromise which was marked as Ex.C1. As per the settlement, the second party i.e. petitioners/defendants would take Rs.62,50,000/- and the first party i.e. the company after clearing the loan amount on the said FDR, will take the remaining amount. It was also agreed between the parties on the said FD of Rs. 50,00,000/- whatever interest accrued on sum of Rs. 50,00,000/- will be added to the same and from the Rs. 62,50,000/- will be taken by the second party. The petitioners - defendants sought the release of the amount vide letter dated 10.01.2005 (Annexure P/1) by addressing it to the Bank. The Bank despite decree, failed to release the amount Resultantly, forced to file the application by impleading the Bank. The Bank instead of releasing the amount, filed an application for recalling of order dated 08.09.2007 of the trial court issuing release warrants to the Bank. The said application was dismissed vide order dated 01.02.2011. Finally, the Bank deposited the amount with the trial Court on 21.04.2012. The petitioners have not been granted interest for the period from 2004 to 2012, thus, preferred the application for releasing the amount, but the same has erroneously been rejected. It has been further argued that as per the order of the trial Court dated 08.09.2007, the Court directed that total interest accrued on the amount after 18.12.2004 be divided equally amongst the parties. The reasons assigned by the Court was that petitioner did not raise any objection and remained silent for all this period, therefore, not entitled to interest.

Mr. M.S. Rana, learned counsel, appearing on behalf of respondent no.5 – Bank submitted that whatever the directions were issued had been complied with. There was no order of the Court in keeping the amount of FDR and its interest. Bank cannot retain any amount as it was under the directions of the Court, in view of, the previous round of litigation.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of learned counsel for the petitioners.

The findings of the trial court in rejecting the application is fallacious and perverse. Bank cannot be permitted to retain the amount particularly when it was in their custody and remained deposited in pursuance of the direction of the Court. Whatever the interest accrued, was required to be disclosed. The reply, that the interest amount was unclaimed amount and calculated as per directions of Reserve Bank of India is not justified. In pursuance of specific direction in the year 1992, in the FDR, it was mentioned that no payment shall be made without the permission of the Court. It was not in the domain of the Bank to shift the amount into nonclaimed amount towards liability of the payment of interest, if, at all, permission of the court, could have been taken. All this factors remain un-addressed, therefore, the order cannot be said to be justify, reasonable or rational.

For the reasons aforementioned, impugned order is set aside. Matter is remitted to the trial court to decide the application in view of the observations made herein above by seeking entire details, reply, to the request of the petitioner and pass the order in accordance with law. Let this exercise shall be undertaken within a period of four months. Application (Annexure P/13) is revived.

Revision petition is allowed accordingly.

March 07, 2019 **(Amit Rawal)**
vkd **Judge**

Whether reasoned / speaking : Yes / No

Whether reportable : Yes / No