HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-2190-2020 (O&M)
Date of Decision: 04.12.2020

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M/s Gill Rice Mills ... Petitioner

VS.

Punjab State Grain Procurement Corp. Ltd. & Ors. ... Respondents

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COCP-1929-2020
Date of Decision: 04.12.2020

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M/s Gill Rice Mills ... Petitioner

VS.

Kulwant Singh ... Respondent

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CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

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Present: Mr. Sanjay Kaushal, Sr.Advocate with
Mr. Arjun Shukla, Advocate for the petitioner

Mr. TS Sidhu, Advocate for PUNGRAIN

None for respondent No.3

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GIRISH AGNIHOTRI, J. (Oral)

The matter has been taken up through video conferencing on account of lockdown due to outbreak of COVID-19 pandemic.

M/s Gill Rice Mills has filed the present revision petition *inter alia* praying for quashing of the impugned order dated 20.08.2020 (P2) whereby *inter alia* the application of the petitioner for vacation of stay granted vide order dated 15.01.2020 (P11) has been dismissed by Ld. Additional District Judge, Gurdaspur. Further quashing is sought of the order dated 15.01.2020 (P11) vide which ld. ADJ, Gurdaspur has stayed the operation of the order dated 10.01.2020 (P9) passed by the Executing Court.

Record of the case shows that on 31.08.2020, notice of motion was issued and interim protection was granted.

The controversy involved in the case though has a chequered history but, this Court, for the sake of brevity and the issue involved in the present case, notices some of the facts which are relevant.

For the facts noticed hereinunder, this Court is of the considered view that the civil revision petition and the contempt petition filed by the petitioner deserves to be partially allowed.

Learned senior counsel appearing for the petitioner submits that vide judgment and decree dated 29.07.2019, the Civil Judge (Junior Division), Gurdaspur had ordered that suit of the plaintiff is decreed with costs. In para 12 of the judgment various details of payments due were mentioned, however for the sake of brevity, it is noticed that the Civil Court vide judgment dated 29.07.2019 directed that the plaintiff/petitioner herein is entitled to aggregate amount of Rs.15,69,00,419.29 paise. It was also ordered that the plaintiff/petitioner is entitled for future interest @ 18% per annum on the said amount from the date of institution of the suit till realization of the amount. The suit in this case was instituted on 10.09.2018.

Learned counsel then submits that when the said payment was not released, the petitioner was constrained to file execution on 06.09.2019.

In para 3 of the revision petition, it has been then pleaded that against the judgment and decree dated 29.07.2019, respondent-judgment debtor preferred an appeal i.e. CA No.443 of 2019 before learned ADJ, Gurdaspur.

On 09.12.2019, an application under Section 41 Rule 5 CPC for staying the execution and operation of the decree and judgment dated 29.07.2019 was filed. The Additional District Judge, Gurdaspur proceeded to stay the operation of the judgment subject to furnishing indemnity bonds by the respondent-judgment debtor in the sum of the decretal amount and with one surety in the like amount to the satisfaction of the learned trial court within 10 working days from the date of passing of the order i.e. 09.12.2019. As per counsel for the petitioner on 17.12.2019, respondent-JD again moved an application before the learned ADJ seeking modification of the order dated 09.12.2019. The petitioner filed its reply to the stay application. Vide order dated 19.12.2019, ld. ADJ, Gurdaspur modified the order dated 09.12.2019. In this order, it was *inter alia* directed that respondent-JD would furnish indemnity bonds against immovable property or bank guarantee to the tune of Rs.20 crores and the time was extended upto 08.01.2020.

At this stage, learned senior counsel with emphasis submits that both the orders i.e. 09.12.2019 and 19.12.2019 were conditional orders yet the conditions stipulated therein were not complied by the respondents. The time granted was upto 08.01.2020 whereas on 08.01.2020, the respondent-JD moved an application before the Executing Court to *inter alia* place on record the term deposit (FDR) in its own name. The petitioner however filed reply to the stay application and also along side moved an application for release of the decretal amount (in view of the fact that respondent-JD had miserably failed to comply with the conditions).

On behalf of the petitioner, it has been further pleaded that vide order dated 10.01.2020, the Executing Court passed a detailed order wherein *inter alia* it was directed that since the respondent-JD has willfully and deliberately not complied with the two orders of ld. ADJ dated 09.12.2019 and 19.12.2019, the remaining amount decretal amount was ordered to be paid to the decree-holder. The list of properties which the petitioner had submitted were further ordered to be attached and decretal amount was ordered to be released immediately.

At this stage, it is relevant noticed that in para 8 of the petition, the petitioner has further mentioned that in the meantime the executing court vide order dated 24.10.2019 had ordered for the release of 25% of the decretal amount. It is further stated that respondent-JD filed CR-6933-2019 before this Court. Learned senior counsel, in instructions, submits that the said civil revision was dismissed on 02.11.2019. It is his submission that once this Court had dismissed the civil revision petition and had upheld the order dated 24.10.2019 passed by Executing Court, ld. ADJ exceeded in its jurisdiction to further pass the subsequent orders. He, however, submits that on 13.01.2020 (P10), respondent-JD moved an application before ld. ADJ Gurdapsur seeking stay.

Learned counsel for the petitioner then makes reference to the order dated 15.01.2020 (P11) passed by ld. ADJ Gurdaspur wherein without noticing the order passed by this Court ld. ADJ *inter alia* directed that till the disposal of the application before the ld. ADJ further proceedings before the executing Court shall remain stayed. At this stage, learned counsel makes reference to para 9 of the petition to categorically submit that in pursuance to the letter dated 10.01.2020 and 13.01.2020, before orders of ld. ADJ could be issued for compliance by the authorities, Rs.2 crores stood deposited in the account of the petitioner (P12).

As a matter of fact as submitted by the petitioner, under constrained circumstances had filed civil revision before this Court challenging the order dated 08.05.2020 passed by the ld. ADJ, Gurdaspur. In the meantime while the civil revision was pending another impugned order dated 20.08.2020 was passed by ld. ADJ, Gurdaspur. Vide the said order, the executing court was directed not to release the remaining decretal amount. The application for vacation of stay was however dismissed. The grievance further of the petitioner is that vide impugned order dated 20.08.2020, ld. ADJ further proceeded to direct to retrieve/return the amount of Rs.2 crores which was transferred in pursuance to the letter dated 10.01.2020 and 13.01.2020 from the account of the JD to the amount of decree-holder.

As has been noticed above, at this stage, challenging the aforesaid two impugned orders dated 15.01.2020 (P11) and 20.08.2020 (P20) passed by ld. ADJ, the present revision petition has been filed.

This Court had on 31.08.2020 *inter alia* passed the following interim directions:-

> *"In the meantime, in pursuance to the order dated 20.08.2020, the directions to retrieve/return the amount of Rs.2 crores (which was transferred in pursuance to the letter No.21 dated 10.01.2020 and letter No.24 dated 13.01.2020 from the account of Judgment Debtors to the account of decree holders), shall remain stayed."*

Learned counsel for the respondent-PUNGRAIN makes reference to the order dated 15.01.2020 to submit that it has been noticed in the order that necessary documents from the concerned bank against a sum of Rs.20 crores were got prepared and lien was created in favour of the above amount. The amount of Rs.20 crores was kept at the disposal of executing court. Secondly, it is contended that respondent had filed CR-7311-2019 before this Court challenging another order dated 04.11.2019 passed by executing court. It is submitted that vide order dated 22.11.2019, this Court had *inter alia* directed that in the meantime, proceedings in the executing court shall remain stayed till such date as the learned appellate court below is able to take up and consider the petitioner's stay application on merits and pass a speaking order on the same.

Learned senior counsel appearing for the petitioner further makes two submissions. Firstly, it is submitted that the aforementioned order passed by this Court dated 22.11.2019 was only in a situation and was conditional till the Appellate Court i.e. ld. ADJ, Gurdapsur passed final order on the said application. As per ld. counsel, ld. ADJ passed the said order on 09.12.2019 and thereafter on 19.12.2019 whereas both these orders were not complied with by the respondent-JD. He secondly submits that the fact that both the above orders were not complied by the respondent-JD have been itself noticed by the same Court i.e. ld. ADJ in its order dated 20.08.2020 who passed the earlier orders dated 09.12.2019 and 19.12.2019. Para 10 of the said order is reproduced:-

> *"Now the question is whether the appellants have complied with the order of this court dated 19/12/2019 or not? It is a matter of record that the appellants had appeared before the learned executing court on 08/01/2020 for complying with the directions of this court. It is also a matter of record that the appellants had kept Rs.20 crores at the disposal of learned executing court. No doubt, the document produced by appellants before the learned executing court was not a bank guarantee but it was a term deposit whereby a lien on the above term deposit was created in favour of the executing court. There is also no doubt about the fact that the appellants have not complied with the directions of this court in letter and spirit but they have substantially complied with the same. They had kept Rs.20 crore at the disposal of the executing court. This appeal is against a money decree. The purpose of directing the appellants to furnish bank guarantee was only to secure the payment of the decreetal amount. Merely because the appellants submitted a term deposit instead of a bank guarantee before the learned executing court,*

it cannot be said that the appellants have intentionally not complied with the directions of this court because at that time, the term deposit was a valid document and its value was Rs.20 crore. Moreover, in order to show the bona fide intention of the appellants their counsel has also placed on record a copy of the bank guarantee got prepared by the appellants on 15/01/2020 for furnishing before the learned executing court. In these circumstances, this court is of the considered opinion that the appellants have substantially complied with the directions of this court and act of learned executing court in proceeding further to realize the remaining amount of decreetal amount was not proper. If the above said amount is allowed to be realized at this stage, it will frustrate the purpose of filing of this appeal."

At this stage, learned counsel submits that the petitioner was constrained to file CM-9421-CII-2020 on 28.10.2020. In this application in para 5 it was specifically pleaded as under:-

"That the petitioner is facing great financial hardship due to the acts of the respondent whereby for more than 7 years they remained in the illegal possession of the property of the petitioner. Petitioner had taken loan to the tune of Rs.4 crores from the Punjab and Sind Bank, Batala to purchase the paddy which was later on illegally taken by the respondents and now the Bank is insisting the petitioner to pay the outstanding amount otherwise they would auction the house and property of the petitioner."

Record shows that notice of the application was issued on 02.11.2020.

Learned counsel for the petitioner submits that the petitioner was also constrained to file COCP-1929-2020 against the Branch Manager of State Bank of India with a prayer for initiating appropriate contempt proceedings against him as despite orders of this Court, the petitioner is not being allowed by the Bank to withdraw the funds from his own bank account.

Notice of motion in the contempt petition was issued on 25.09.2020. Reply to the contempt petition has been filed by the respondent. In reply, it has been *inter alia*, submitted that in compliance to this Court's order, the amount has not been retrieved/returned from the account and the same is lying in the shape of FDR in the name of the petitioner as stated herein above.

At this stage, learned senior counsel submits that firstly the respondent-Bank in the contempt petition had apparently acted upon the letter dated 16.01.2020 (P14) written by respondent-JD in civil revision. He therefore submits that in view of the orders passed dated 31.08.2020 by this Court, the Bank cannot be permitted to act upon the letter dated 16.01.2020 of the respondent-JD. Secondly, he submits that he has instructions from his client to give an undertaking that the said Rs.2 crores shall not be utilized by the petitioner for any personal purpose but for depositing the same with the Punjab and Sind Bank, Batala which has been insisting the petitioner to pay the outstanding amount of loan else face auction of the house/property. He therefore submit that since there is a money decree in his favour by the competent Civil Court, the interim stay granted vide impugned orders itself deserves to be vacated and the entire amount should be paid to him.

In peculiar facts and circumstances as noticed above, this Court deems it appropriate to issue the following directions:-

(i) it is directed that the main case fixed for 22.12.2020 before ld. ADJ, Gurdaspur be decided on merits as expeditiously as possible preferably within <u>*3 months*</u> from today. At this stage, it is important to notice that both the parties have apprised the Court that case is ripe for arguments and can be disposed on the date fixed i.e. 22.12.2020. However, in case the Court deems it appropriate to issue further directions and accordingly adjourn the matter, a maximum of one opportunity each be granted to both the parties and the case be decided within the time stipulated above.

(ii) Till the decision by the ld.ADJ, Gurdaspur and 10 days thereafter, as prayed by the parties, interim directions dated 20.08.2020 shall continue except with the modification as ordered by this Court vide order dated 31.08.2020.

(iii) the petitioner shall stand-by his undertaking and is permitted to utilize/transfer Rs.2 crores which was transferred in his account vide letters dated 10.01.2020 and 13.01.2020 noticed in the impugned order dated 20.08.2020 towards deposit to the Punjab and Sind Bank against loan on the property and house of the petitioner. It is matter of fact that *qua* the same commercial property of the petitioner for which the petitioner intends to deposit Rs.2 crores, a separate attachment proceedings are pending before the Deputy Commissioner on the request of the respondent-JD, which are not the subject matter of the present case.

With these observations and directions, the civil revision petition along with miscellaneous application(s) as well as the contempt petition stand disposed of.

So ordered.

04.12.2020 **(Girish Agnihotri)**
vishal shonkar **Judge**

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*