

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 177 of 2017

Date of decision :10.02.2022

M/s Basav Agro World

...Petitioner

Versus

M/s International Tractors Limited and another

...Respondent

Coram : Hon'ble Mr. Justice Arun Monga

Present : Ms. Supriya Garg, Advocate, for the petitioner.

(Presence marked through video conference)

ArunMonga, J. (Oral)

Revisionist/Defendant No.1 is aggrieved against the order dated 21.12.2021 (Annexure P1) passed by learned Additional District Judge, Hoshiarpur whereby while allowing the civil appeal and setting aside the *ex parte* decree dated 09.12.2008, the defendant No.1 has been directed to deposit Rs.50 Lakhs in the trial court within a period of three months from the date of impugned order or in the alternative furnish bank guarantee/ indemnity bonds to the tune of Rs.50 lakhs within one month from the date of impugned order valid upto the decision of the main suit, failing which the *ex parte* judgment and decree dated 09.12.2008 will be restored/revived automatically.

2. Brief facts first. Defendant no.1/petitioner had applied to plaintiff/ respondent no.1 for becoming authorized stockist for sale, service and spares of Sonalika Tractors in Karnataka State. It was appointed stockist. Defendant/respondent no.2 in consideration of respondent No.1/

plaintiff having agreed to supply tractors to petitioner/defendant no.1 on credit, furnished a bank guarantee of a sum of Rs. 50 lakhs in favour of the plaintiff. As per the terms of the said bank guarantee, respondent No.1/plaintiff supplied tractors and parts thereof to petitioner/defendant no.1 from time to time and a sum of Rs.51,93,913/- is due from petitioner/defendant no.1 to respondent No.1/plaintiff. When petitioner/defendant no.1 failed to pay due amount, plaintiff invoked the said bank guarantee vide their letter dated 07.08.2003 sent through registered cover, which was duly received by defendant no.2 on 12.08.2003. Neither did defendant no.2 make any payment nor sent any reply to the said letter. Respondent No.1/plaintiff took up the matter with Reserve Bank of India, Bangalore Branch vide letter dated 29.10.2003, which in turn took up the matter with defendant/respondent no.2. Various letters were written to defendant no.2 by the plaintiff, but most of those letters have been received back with report "refused to receive". It is pleaded that the Chairman of defendant no.2 and one of the partners of petitioner/ defendant no.1, namely, Mr. Basav Raj Channappa Nelavagi in collusion with each other fraudulently withheld the payment of the respondent No.1/plaintiff.

3. Upon notice, the defendants did not prefer to contest claim. They were proceeded against *ex parte* vide order dated 30.11.2015 and 20.08.2007. The suit for recovery of Rs. 51,93,913/- with interest was decreed *exparte* against the petitioner/defendant No.1 for a sum of Rs.62,65,158/- with interest @ 12% per annum from the date of suit till realization, vide judgment and decree dated 09.12.2008 (Annexure P3) passed by learned Additional Civil Judge (SD), Hoshiarpur.

4. Petitioner/defendant No.1 filed an application (Annexure P4) under Order 9 Rule 13 CPC for setting aside *ex parte* judgment and decree dated 09.12.2008, which was dismissed with costs by learned Additional Civil Judge (Senior Division), Hoshiarpur vide order dated 19.04.2017 (Annexure P5).

5. Feeling aggrieved, petitioner/defendant No.1 filed appeal against order dated 19.04.2017 (Annexure P5), which was disposed of vide impugned order dated 21.12.2021 (Annexure P1) by the learned Additional District Judge, Hoshiarpur, whereby though the *ex parte* judgment and decree dated 09.12.2018 (Annexure P3) were set aside and the parties were directed to appear before learned trial Court on 17.01.2022, but a condition was imposed that the petitioner/defendant No.1 would deposit Rs.50 Lakhs in the trial Court within three months of the passing of the impugned order i.e. 21.12.2021. As an alternative, petitioner/defendant No.1 was given option to furnish bank guarantee/indemnity bonds to the tune of Rs.50 Lakhs within one month from the date of impugned order valid up to the decision of main suit. Hence, the present revision.

6. Learned counsel for the petitioner argues that the Court has power to impose as a condition for restoring the case for rehearing but the condition so imposed has to be reasonable and not allowing the recovery suit *per se*. It would not be equitable for the Court to impose any conditions at all, such as the present one where it is absolutely clear that service of the present suit was never effected upon the petitioner and the same was decreed *ex spparte* in favour of the respondent/plaintiff vide judgment dated 09.12.2008. In support of her arguments, she placed reliance on Sushil

Kumar Sabharwal vs Gurpreet Singh and others (2002) 5 Supreme Court Cases 377.

7. Learned counsel for the petitioner further argues that the Court cannot exercise its powers to put the petitioner/defendant No.1 on such terms as may have the effect of prejudging the controversy involved in the suit and virtually decreeing the suit.

8. Learned counsel for the petitioner further argues that the learned Additional District Judge has ignored the fact that the matter regarding recovery is pending adjudication and can only be decided after giving each party a chance to plead their claims and any kind of interpretation and inference at this stage would be wrong and unjust upon any party. Thus, the prayer is for withdrawal of the heavy condition so imposed upon the petitioner.

9. Having heard the learned counsel for the petitioner, no ground to interfere is made out.

10. On 20.01.2022, this Court adjourned the matter to 28.01.2022 on the request of learned counsel for the petitioner to enable him to seek instructions qua providing of a collateral security equivalent to the amount sought to be recovered in the suit by the plaintiff. The order dated 20.01.2022 , reproduced herein below:-

“At the request of learned counsel for the petitioner, adjourned to 28.01.2022, in order to seek instructions, on the Court query, qua providing of a collateral security equivalent to the amount sought to be recovered in the suit by the plaintiff.”

On the adjourned date i.e. 28.01.2022, learned counsel for the petitioner sought more time to get instructions in terms of order dated 20.01.2022.

11. The pendency of the civil suit was within the knowledge of the petitioner/ defendant No.1 as is evident from the fact that at the time of filing quashing petition by the petitioner/defendant No.1 before this Court on 12.02.2007, the factum of pending suit at Hoshiarpur was pleaded in that petition. Learned Additional District Judge, Hoshiarpur has rightly observed in the impugned order that as the amount is due since long and if the respondent No.1/plaintiff succeeds in its claim, this amount will come out near Rs.1.5 crore after calculating interest on due amount involved in the original suit.

12. In the premise, the condition imposed by the learned Additional District Judge cannot be said to be unreasonable while allowing the civil appeal filed by the petitioner and setting aside the *ex-parte* judgment and decree dated 09.12.2008. No fault can be found with the approach of the learned Court below. The authority relied upon by learned counsel for the petitioner is distinguishable on the facts of the instant case.

13. Dismissed.

10.02.2022
vs

(Arun Monga)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No