

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)

CR-923-2022

Decided on : 16.03.2022

M/s Ashoka Aluminum Pvt. Ltd. and another

..... Petitioners

Versus

Roshan Industries

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanyam Khetarpal, Advocate
for the petitioners.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 25.01.2022 (Annexure P-4) passed by Civil Judge, Jr. Div., Yamunanagar whereby application for summoning the witness and permission to deposit the expenses was declined.

2. The petitioners No.2 and 3 are running a private limited company under the name and style of M/s Ashoka Aluminum Pvt. Ltd. Co. while respondent is a manufacturer of all kinds of castings and crucibles. A suit for recovery of Rs.4,50,000/- along with interest was instituted by the respondent alleging that the petitioners were liable to pay the said amount in exchange of goods supplied on various dates i.e. 01.04.2014, 29.04.2014 and 04.06.2014.

3. Learned counsel for the petitioners *inter alia* contends that no such order was ever placed to the respondent on the dates as alleged in the suit for recovery and rather in the financial year, 2013-14, the firm of petitioners No.2 and 3 had been declared Non Performing Asset(NPA) and

Dena Bank had taken over the possession of their firm to recover the dues, which were well within the knowledge of the respondent. It has been thus, submitted that in the aforementioned circumstances, the question of placing an order for goods on the given dates did not arise. Learned counsel further submits that the examination of the witnesses i.e. Clerk/official concerned of Dena Bank and office of District Magistrate, Raipur, Chhattisgarh alongwith all relevant record including the proceedings conducted under the SARFAESI Act were necessary for proper adjudication of suit for recovery, which fact was ignored by the Court below while passing the impugned order. It has also been submitted that the petitioners were unable to get the witnesses examined on various dates due to the restrictions imposed on account of the outbreak of pandemic as they belonged to Raipur, Chhattisgarh.

4. Heard learned counsel and perused the impugned order and other documents.

5. This Court has no hesitation in observing that the application moved by the petitioners-defendants for summoning the concerned officials from Dena Bank and Office of District Magistrate, Raipur, Chhattisgarh is nothing but a tool to prolong and delay the culmination of the suit for recovery, which has been pending before the Civil Judge, Jr. Division, Yamuna Nagar for almost 06 years. It needs to be noticed that the Court below had fixed the date for recording of the defendants' evidence on 20.02.2020, which was prior to the nationwide lockdown imposed on account of the outbreak of the pandemic. Thereafter, once regular proceedings in the Courts resumed, the case was adjourned by the Court concerned, for evidence of the defendants-petitioners on as many as 5 dates

i.e. 18.03.2021, 08.04.2021, 10.05.2021, 03.11.2021 and 24.11.2021. It is thus, apparent that the defendants-petitioners failed to avail of the several effective opportunities given to lead evidence.

6. Still further, it stands clearly reflected from the written statement of the defendants-petitioners, which has been annexed with the petition as Annexure P-2, that it was well within their knowledge that their firm had been declared a NPA and the Bank concerned had also taken possession of their firm to recover the dues. In the circumstances, there is no manner of doubt and rather it is obvious that the defendants would have already been in possession of all the relevant documents including the ones pertaining to their firm having been declared a NPA and also its possession having been taken over by Dena Bank. Thus, it does not appeal to logic as to why the defendants-petitioners would in the circumstances and now at such a belated stage want to summon witnesses i.e. Clerk/Official concerned from the Dena Bank and office of District Magistrate, Raipur, Chhattisgarh. Still further, the defendants-petitioners for reasons best known and rather very obvious had chosen not to lead any oral evidence and on the contrary, wanted to get witnesses summoned qua the proceedings, which as per their own admitted case was already within their knowledge.

7. As a sequel to above, no ground is made out to interfere in the impugned order passed by the Court below. Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

16.03.2022
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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No