IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-COM-12-2022 & CMS-37 & 38-FACOM-2022
DATE OF DECISION: MAY 16, 2022

M/s JSR Cars, Mohali and others

.....Appellants

VERSUS

M/s Jhajjz Pvt. Ltd., Mohali

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sumeet Goel, Sr.Advocate with
Mr. Sameer Rathaur, Mr.Samarjit Pattnaik and
Ms. Rytim Vohra, Advocate,
for the appellants.

Mr. Amit Jhanji, Sr.Advocate with
Mr. Gauravjit Patwalia, Ms.Eliza Gupta &
Mr. Siddharth Bhukkal, Advocates,
for the Caveator-respondent.

*****

AUGUSTINE GEORGE MASIH, J.

CM-37-FACOM-2022

Application is allowed as prayed for subject to all just exceptions.

Permission is granted to place on record photo copies of Annexures A-1 to A-17. Exemption is also granted from filing certified/typed copies of impugned order dated 25.04.2022 as also Annexures A-1 to A-17.

FAO-COM-12-2022 & CM-38-FACOM-2022

Suit for permanent injunction restraining the appellant-defendants from taking forcible possession of the vehicles numbering 25 from the custody of the respondent-plaintiff except in due course of law and after settling the amount alongwith interest, which was spent by the respondent on paying the instalments of loans, registration fees, tax, insurance, accessories of the vehicles as also the margin (profit to appellant-defendants) as also the amount paid to the appellants alongwith maintenance and service of vehicles etc. from 26.07.2017 till 31.03.2021 was filed by the respondent-plaintiff. Alongwith the same, an application under Order 39 Rules 1 & 2 CPC was also filed for restraining the appellants from taking forcible possession of the vehicles as detailed from their custody.

Upon notice having been issued, reply to the civil suit as well as the application under Order 39 Rules 1 & 2 CPC stood filed by the appellant-defendants. An application under Order VII Rules 10 and 11 read with Section 151 CPC was filed for rejection of the plaint being not maintainable. The application Order 39 Rules 1 & 2 CPC of the respondent-plaintiff stands accepted vide order dated 25.04.2022 passed by the Additional District Judge, S.A.S.Nagar Mohali and appellant-defendants have been restrained to forcibly take possession of the vehicles in question from the possession of the respondent-plaintiff. However, the said order has been clarified not to debar the bank from taking possession of the vehicles by following due process of law. It is this order, which is impugned in the present appeal by the appellant-defendants.

It is the contention of learned senior counsel for the appellants that the trial Court should have first decided the application preferred by the appellants under Order VII Rules 10 & 11 CPC and it is after having made up a prima-facie opinion with regard to the jurisdiction of the Court to entertain the suit, the Court should have proceeded to decide the application preferred under Order 39 Rules 1 & 2 CPC . It has been asserted that when no such opinion has been expressed by the Court, the impugned order cannot sustain. In support of this contention, reliance has been placed upon the order passed by the Single Bench of the Madhya Pradesh High Court in W.P. No.14349 of 2014 (Rajpal Singh Vs. Sunder Lal), decided on 30.03.2016 as also observations of Hon'ble Supreme Court in Saleem Bhai Vs. State of Maharashtra, 2003 (1) RCR (Civil) 464.

Another contention, which has been made by counsel for the appellants is that the Civil Court did not have the jurisdiction to grant injunction in the light of the proceedings having been initiated against the appellants relatable to the vehicles in question under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the 2002 Act"). Apart from this aspect, what has been submitted by the counsel for the appellants is that once the loss has been quantified in terms of money, as per the pleadings on the part of the respondent-plaintiff itself, no irreparable loss is likely to be caused to it and, thus, no injunction can be granted when the damages have itself been quantified. In support of this submission, reliance has been placed upon the judgment of Hon'ble Supreme Court in Hindustan Petroleum Corp. Ltd. Vs. Sriman Narayan & another, (2002) 5 SCC 760. On this basis, it has been asserted that impugned order cannot sustain and deserves to be set-aside.

On merits also, it has been asserted that in the facts and circumstances of the case, when the Court itself is of the opinion that there being no written contract between the appellants and the respondent, it being a question of evidence to be led by the parties, prima-facie, there was no occasion, which would tilt the balance of convenience in favour of the respondent, entitling it to the interim injunction as has been granted by the Court, rather by way of injunction as granted, the suit has virtually been decreed in favour of the respondent, which is not permissible in law.

Learned senior counsel for the respondent, on the other hand, has supported the order passed by the trial Court by contending that it is not under the statute that an application, if moved, under Order VII Rules 10 and 11 CPC by a defendant, the same is to be decided at the first instance. Referring to various interim orders passed by the trial Court, learned Senior Counsel has emphasized upon the fact that it was with a consent of the counsel for the appellants that initially an interim order was passed restraining the appellants from taking forcible possession of the vehicles in question. Although an application under Order VII Rule 10 & 11 CPC has been filed but the same has not been pressed into service while the application under Order 39 Rules 1 & 2 CPC was being considered. This, he asserts on the basis of zimni order dated 25.04.2022, which has been passed by the trial Court, on which date the application under Order 39 Rules 1 & 2 CPC was heard and decided and simultaneously date was fixed as 19.05.2022 for consideration on application under Order VII Rules 10 & 11 CPC. This clearly shows that no arguments were heard on the application under Order VII Rules 10 & 11 CPC at the time when the application under Order 39 Rules 1 & 2 CPC was considered and decided.

Otherwise, on merits also, it has been asserted by counsel for the respondent that the trial Court has dealt with each and every aspect and has rightly come to a conclusion that an irreparable loss would be caused to the respondent-plaintiff in case the vehicles are taken from its possession. Counsel has further contended that as far as the proceedings under the 2002 Act are concerned, the same are not against the respondent-plaintiff and, therefore, has no bearing. Further, the interest of the Bank/Financial agency has been taken care of by the trial Court.

We have considered the submissions made by the counsel for the parties and have gone through the pleadings, the impugned order as also the submissions of counsel for the parties but are unable to accept the contention of the counsel for the appellants.

As far as the first plea of learned senior counsel for the appellants that an application under Order VII Rules 10 & 11 CPC should have been first decided and thereafter an application for injunction should have been taken up for consideration, suffice it to say that there is no such mandate under the statute. It is for the trial Court to take a call on it as the same would depend upon the facts and circumstances of each case. The matter, at times, cannot be kept in abeyance without passing an order on a plea of grant of interim injunction merely because an application under Order VII Rules 10 & 11 CPC has been preferred for rejection of the suit. Depending upon the facts and circumstances of the case and the urgency involved, apart from the basic principles dealing with the balance of convenience, prima-facie case and irreparable loss, which a party is likely to suffer, the Court can proceed to decide the matter expeditiously even prior to deciding the application under Order VII Rules 10 & 11 CPC. The judgment, therefore, relied upon by counsel for the appellants cannot be accepted to operate in all circumstances as the aspect, as has been pointed out above, has neither been envisaged nor taken into consideration and the Courts had proceeded to decide the matter in the given facts and circumstances of that particular case.

In the present case, as is apparent from the interim order which has been passed by the trial Court, the order of restraint was passed with the consent of counsel for the respondent, which initially continued till the consideration of application under Order 39 Rules 1 & 2 CPC, which was decided in favour of the respondent-plaintiff by the trial Court vide impugned order dated 25.04.2022. These interim orders clearly indicate that there has not been any effort on the part of the counsel for the appellants to press the application under Order VII Rules 10 & 11 CPC. Rather, the order of even date i.e. 25.04.2022 reads as under:-

> *"Arguments on the application under Order 39 Rules 1 & 2 CPC heard. Vide my separate detailed orders of even date, the application has been allowed.*
>
> *Now to come up on 19.05.2022 for consideration on the application under Order 7 Rule 10 & 11 CPC as well as for production of vehicles before the banks for inspection."*

A perusal of the above would show that on the date when the application under Order 39 Rules 1 & 2 CPC has been decided, application under Order VII Rules 10 & 11 CPC was fixed for consideration at a subsequent date.

As regards the plea of counsel for the appellants with regard to the maintainability and jurisdiction of the Civil Court to grant an interim injunction, when the proceedings under the 2002 Act were going on, suffice it to say that it is an admitted position that the respondent-plaintiff was not a party to the said proceedings. Appellant-defendants may be a party but the aspect with regard to bank proceeding against the respondent-plaintiff has been kept open by the learned trial Court while passing the impugned order. The restraint order, which has been passed, is against the appellants and not against the bank. The proceedings, therefore, under the 2002 Act, are not in any manner affected by the interim injunction granted by the trial Court vide the impugned order. The said plea against the respondent-plaintiff cannot, therefore, be sustained.

As regards the plea of senior counsel for the appellants that the loss having been quantified by the respondent-plaintiff and, therefore, no irreparable loss is likely to be caused, which would call for an interim injunction to be granted in favour of the respondent-plaintiff, suffice it to say that the nature of the business, which is being carried out by the respondent-plaintiff is admittedly renting out the vehicles for tour purposes. In case the possession of the vehicles is taken by the appellant-defendants by force and not in due course of law, an irreparable loss would cause to the respondent-plaintiff, it being running a travel business. The same if in any case is permitted, the respondents would not be able to pay EMIs, which would be, in any case, against both the parties and especially the respondents and this is precisely what has been ordered by the trial Court vide its impugned order. Therefore, in the given facts and circumstances of the present case, we do not find this ground also to be sustainable for setting-aside the impugned order.

In view of the above, finding no merit in the present appeal, we dismiss the same.

As the main appeal stands decided, no orders are required to be passed on CM-38-FACOM-2022, which is an application for stay.

(AUGUSTINE GEORGE MASIH)
JUDGE

May 16, 2022
khurmi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No